



INDUSTRIAL RELATIONS COURT RULES

In force under the *Industrial Relations Act 1988*

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Statutory Rules 1994 No. 357¹

Industrial Relations Court Rules

WE, Judges of the Industrial Relations Court of Australia, make the following Rules of Court under the *Industrial Relations Act 1988*.

Dated 11 October 1994

M R WILCOX C.J.
R M NORTHROP J
J A KEELY J
D M RYAN J
M C LEE J
J W VON DOUSSA J
M F MOORE J
M J BEAZLEY J
Judges of the Industrial
Relations Court of Australia

B R WALSH
Registrar

ORDER 1**PRELIMINARY****Short title**

1. These Rules may be cited as the Industrial Relations Court Rules.

[NOTE: These Rules commence on gazettal: see *Acts Interpretation Act 1901*, s. 48, as applied by *Industrial Relations Act 1988*, s 486 (4).]

Repeal

2. Statutory Rules 1994 No. 110 as amended by 1994 Nos. 145 and 200 are repealed.

Interpretation

3. In these Rules, unless the contrary intention appears:

“**Act**” means the *Industrial Relations Act 1988*;

“**arbitration**” means arbitration conducted under an arbitration order;

“**arbitration order**” means an order referring a matter to an arbitrator as mentioned in Order 72, rule 1;

“**arbitrator**” means an arbitrator to whom a matter is referred under an arbitration order;

“**Australia**” or “**the Commonwealth**” means the Commonwealth of Australia and when used in a geographical sense includes external territories;

“**authorised representative**” means a person who is entitled under section 469 of the Act to represent a party or an intervener in a proceeding before the Court; provided that a person who would be an authorised representative upon the grant of leave by the Court to represent the party or intervener, shall be deemed to be an authorised

person up to the time at which the person is first able to seek such leave;

“committee” includes a person entrusted under a law of the Commonwealth, or of a State or Territory, with the care or management of the person or estate of a mentally disabled person;

“Commonwealth” means the Commonwealth of Australia and includes a Territory;

“convention” means an agreement, arrangement, treaty or convention made between the Crown in right of the Commonwealth or, where appropriate, in right of a State, and a country other than Australia regarding legal proceedings in civil matters;

“convention country” means a country other than Australia to which a convention applies;

“corporation” includes any artificial person other than an organisation;

“Court” means the Industrial Relations Court of Australia constituted under Part XIV of the Act;

“cross-claim” includes a counter-claim, cross-action, set-off, and third party claim;

“directions hearing” means a directions hearing appointed in an application pursuant to Order 4, and except for the purposes of computation of time within which acts must be done, includes any other hearing on which the Court gives directions as to the conduct of the proceedings;

“document” includes any record of information which is a document within the definition contained in s.7A of the *Evidence Act 1905* and any other material data or information stored or recorded by mechanical or electronic means;

“document exchange box” means a box in a document exchange approved by the Registrar;

“examination” includes where relevant an examination held pursuant to an order made under Order 24, and, in proceedings under Part IIIB of the *Evidence Act 1905*, includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by the Court under that Part;

“**examiner**” includes an officer of the Court or any other person appointed under Order 24, or under paragraph 7V(1)(a) or (b) of the *Evidence Act 1905*, for the purpose of an examination before the examiner of any person;

“**hearing**” includes any hearing before the Court, whether final or interlocutory, and whether in open court or in chambers;

“**Judge**” means a Judge of the Court (including the Chief Judge) and in the expression “**the Court or a Judge**” means a Judge sitting in chambers;

“**Judicial Registrar**” means a judicial registrar appointed under section 375 of the Act;

“**mediation**” means mediation conducted under a mediation order;

“**mediation or arbitration order**” means a mediation order or an arbitration order;

“**mediation order**” means an order referring a matter to a mediator as mentioned in Order 72, rule 1;

“**mediator**” means a mediator to whom a matter is referred under a mediation order;

“**mentally disabled person**” means a person who, owing to mental illness, is incapable of managing his or her affairs in respect of the proceedings;

“**minor**” means a person under the age of 18;

“**oath**” includes affirmation;

“**organisation**” has the same meaning as in the *Industrial Relations Act 1988*;

“**person under disability**” means a minor or mentally disabled person;

“**pleading**” includes a statement of claim and a cross-claim to which Order 5 applies and subsequent pleadings, but does not include an application, notice of motion or affidavit;

“**proper place**” in relation to any proceeding:

- (a) where there has been no transfer means the place at which the proceeding was commenced;
- (b) where there has been a transfer means the place to which the proceeding was transferred;

“Registrar” means the Registrar or a District Registrar of the Court, and includes a Deputy Registrar or a Deputy District Registrar of the Court or other officer for the time being discharging the duties of any one of them, and when used in relation to any proceeding means the Registrar or District Registrar at the proper place;

“Registry” includes the Principal Registry and a District Registry;

“Rules” means Industrial Relations Court Rules;

“Sheriff” includes a Deputy Sheriff or any person for the time being discharging the duties of Sheriff or Deputy Sheriff;

“trial” includes any hearing other than an interlocutory hearing; and

“tutor” means a next friend, guardian *ad litem* or committee of a person or estate of a person under disability.

Order on terms

4. Unless the contrary intention appears, where under these Rules the Court has the power to make an order or do any other act or thing, it may make that order or do that other act or thing on terms.

Alternative method of filing

5. (1) This rule applies to any document which is required or permitted by the Rules to be filed.

(2) A document to which this rule refers may be filed at any Registry.

(3) A document to which this rule refers may be:

(a) posted to a Registry; or

(b) sent by facsimile transmission to a Registry; or

(c) left, addressed to the Industrial Relations Court of Australia, at its box at the Australian Document Exchange;

with a written request that the document be filed.

(4) A document is filed under this rule when it is accepted in the Registry to which it is sent.

(5) An officer of the Court shall mark on the document the date of its acceptance.

(6) Whenever copies of a filed document are required by the Rules to be returned to the filing party, such copies are to be made available for collection but need not be posted to that party.

Serial Number

6. (1) The first document filed in any proceeding shall have a serial number assigned to it for the Registry in which it is filed, and that and each other document in the proceeding shall bear that number preceded by a reference to the appropriate Registry

together with a reference to the calendar year in which the first document is filed.

(2) A new series of numbers shall be commenced at the beginning of each calendar year.

Forms

7. (1) Subject to subrule (2), the forms in the First Schedule shall be used where applicable notwithstanding the absence of any specific provision in the Rules in respect of the use of any particular form.

(2) A reference in these Rules to a Form by number is a reference to the Form so numbered in the Schedule.

(3) It shall be sufficient compliance with these Rules as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

Relief from Rules

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

Proceedings wanting or in doubt

9. (1) Where a person desires to commence a proceeding or take any step in a proceeding, and the manner or form of procedure is not prescribed by the Act or the Rules or by or under any other Act, or that person is in doubt as to the manner or form of procedure, the Court may, on application by that person, give directions.

(2) A proceeding commenced in accordance with the directions of the Court shall be well commenced.

(3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

Industrial Relations Regulations

10. In any case where the Regulations made under the Act prevail over the provisions of these Rules, it shall, to the extent that duplication would otherwise be involved, be unnecessary to comply with these Rules.

ORDER 2

SITTINGS AND VACATION

Sittings

1. Full Court sittings shall be held at such times and places as the Chief Justice directs.

Vacations

2. (1) There shall be a fixed vacation in each year during the period from the beginning of the Monday before 24 December until the first Monday in February together with such other variable vacation or vacations as the Chief Justice shall determine.

(2) A hearing shall not be held in the fixed vacation, unless the Court otherwise orders.

Court holiday

3. The day after Easter Monday in each year is a holiday to be observed by the Court and the Registry.

ORDER 3

TIME

Month

1. In any judgment or order and in any document in any proceeding, unless the context or subject matter otherwise indicates or requires, “**month**” means calendar month.

Reckoning

2. (1) Any period of time fixed by rules or by any judgment or order or by any document in any proceeding, shall be reckoned in accordance with this rule.

(2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Where, apart from this subrule, the period in question, being a period of 5 days or less, would include a day on which the Registry is closed, that day shall be excluded.

(4) Where the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.

Extension and abridgment

3. (1) The Court or a Judge may by order extend or abridge any time fixed by the Rules or by any judgment or order.

(2) The Court or a Judge may extend time under subrule (1) either before or after the time expires and whether or not an application for the extension is made before the time expires.

(3) The period within which a person is required by rules or by any order to serve, file or amend any pleading or other document may be extended by consent without an order for extension.

Fixing times

4. Where no time is fixed by the Rules or by any judgment or order of the Court or a Judge for the doing of any thing in or in connection with any proceeding, the Court may, by order, fix the time within which the thing is to be done.

Vacation

5. In the period from the beginning of the day on which the fixed vacation begins until the end of 14 January next following, time shall not, unless the Court otherwise orders, run so as to put any party in default in respect of any act for the doing of which a time is fixed by the Rules or by any judgment or order of the Court but business may be done during that period.

Registry hours

6. (1) The District Registries of New South Wales and Victoria shall be open to the public for business between 10 in the morning and 4 in the afternoon, except on Saturdays, Sundays and other holidays.

(2) The Principal Registry and the District Registries of the States other than New South Wales and Victoria and of the Territories, shall be open to the public for business from 10 in the morning until 1 in the afternoon and from 2 until 4 in the afternoon, except on Saturdays, Sundays and other holidays.

(3) A Registry may in the discretion of the Registrar, and shall on the direction of a Judge, be opened at other times for urgent business.

ORDER 4

COMMENCEMENT OF PROCEEDINGS

Commencement by application—Form 5

1. (1) Except as otherwise provided in these Rules all proceedings in the Court's original jurisdiction shall be commenced by filing an application.

(2) An application shall be in accordance with Form 5.

Parties

2. (1) A party claiming relief shall be called an applicant.

(2) A party against whom relief is claimed shall be called a respondent.

Relief claimed

3. (1) An application must specify:

(a) the relief claimed by the applicant; and

(b) if the relief depends on a provision of an Act—the Act and the provision.

(2) Where the claim for relief includes a claim for the determination or direction of the Court on any question, the application shall state the question.

(3) Exemplary damages shall be specifically claimed.

Name, address etc.

4. (1) An application shall contain:

(a) the name and address of the applicant;

- (b) where a party sues or is sued in a representative capacity a statement of that fact;
- (c) where the applicant sues by a solicitor or authorised representative, the name, address and telephone number of the solicitor or authorised representative;
- (d) where the applicant sues by a solicitor and that solicitor has another solicitor as agent in the proceeding, the name, address and telephone number of the agent; and
- (e) an address for service.

(2) Where it appears from an application that the applicant sues by a solicitor or authorised representative:

- (a) the solicitor or authorised representative shall, on request in writing by a respondent, declare in writing whether the application was filed by the solicitor or authorised representative; and
- (b) if the solicitor or authorised representative declares in writing that the application was not filed by the solicitor or authorised representative, the Court may, on application by a respondent, stay the proceeding.

Notice to appear

5. Where there is a respondent, an application shall bear a note that:

- (a) if there is no attendance before the Court by the respondent or his or her counsel or solicitor or authorised representative at the time and place stated in the application, the proceeding may be heard and the respondent will be liable to suffer judgment or an order against him or her; and
- (b) before any attendance at that time the respondent must enter an appearance in the Registry.

Affidavit or statement of claim—Form 7

6. (1) The applicant shall file and serve with the application either an affidavit or a statement of claim, whichever is appropriate.

- (2)** The affidavit or statement of claim shall show:
- (a)** the nature of the applicant's claim; and
 - (b)** the material facts on which it is based.

Filing and copies

7. (1) Upon an application and affidavit or statement of claim being filed, the Registrar on the applicant's request shall sign and seal with the seal of the Court a sufficient number of copies of the application for service and proof of service.

(2) The serial number of the proceeding shall be endorsed on each document.

Date for directions hearing

8. Subject to rule 9, an application shall state a date for a directions hearing.

Claim for interlocutory relief

9. (1) Where a claim for interlocutory relief is included in an application, that claim shall be distinctly made.

(2) A date for the hearing of the claim for interlocutory relief must be endorsed on the application.

(3) If a date for hearing is endorsed on the application under subrule (2), a separate date for a directions hearing must not also be endorsed on the application.

(4) At the hearing of the claim for interlocutory relief the Court may give such directions as it thinks fit, as in a directions hearing.

Endorsement of date

10. (1) The date for a hearing under rule 8 or rule 9 must be obtained from the Registry.

(2) If the Court has made an order abridging time, the application must bear a note of the order made.

Time for service

11. A copy of an application and affidavit or statement of claim must be served, in accordance with Order 7, on the respondent named in the application, unless the Court otherwise orders, not less than 5 days before the date appointed for hearing under rule 8 or rule 9.

Alteration of date

12. (1) Where a date for hearing has been obtained or made, the Court or the Registrar may alter the date to a later date and may authorise the solicitor or authorised representative for a party to make corresponding alterations in any copy for service of any application or notice.

(2) The Registrar may give authority by telephone or by any other means that the Registrar thinks fit.

Alteration of date where service less than 5 days before hearing

13. (1) Where an application and affidavit or statement of claim have been served upon the respondent named in the application less than 5 days before the date for hearing endorsed on the application under rule 8 or 9, the Court or Registrar may alter the date to a later date and may authorise the solicitor or authorised

representative for a party to give notice to the respondent of the altered date by:

- (a) posting an altered copy of the application by registered post:
 - (i) to the usual or last known place of business or abode of the respondent; or
 - (ii) if appropriate—to the place at which the application was served; or
- (b) sending an altered copy of the application by facsimile transmission directed:
 - (i) to the facsimile transmission number operated at, or in connection with, the usual or last known place of business or abode of the respondent; or
 - (ii) if appropriate—to the facsimile transmission number operated at, or in connection with, the place at which the application was served.

(2) The authority may be given by telephone or by such other means as the person giving the authority thinks fit.

Suit in person

14. (1) Subject to subrule (2) and to Order 43 (“Disability”), any person may proceed in the Court by a solicitor or authorised representative or in person.

(2) Except as provided by or under any Act, a corporation may not, without the leave of the Court, commence or carry on any proceeding otherwise than by a solicitor or authorised representative.

(3) Subrule (2) does not apply to an organisation.

Proceeding by rule—Form 6

15. (1) This rule operates only for so long as paragraph 342 (2) (a) of the Act specifies the making of a rule as a condition precedent to the grant of financial assistance.

(2) A proceeding under sections 208 or 209 of the Act must be by rule, in accordance with Form 6, calling upon the person or organisation concerned to show cause why the order should not be made.

(3) An application for a rule under subrule (2) may be made to a Judge *ex parte* supported by an affidavit verifying the facts upon which the application is based.

(4) The affidavit in support of an application under section 208 of the Act must set forth:

- (a) the rule, or rules, of the organisation, to which the application relates;
- (b) the nature of the order sought; and
- (c) a short statement of the reasons relied on by the applicant.

(5) The affidavit in support of an application under section 209 of the Act must set forth:

- (a) the rule or rules of the organisation the performance or observance of which is in question;
- (b) the nature of the order sought; and
- (c) a short statement of the grounds relied on by the applicant as establishing the obligation of the person against whom the order is sought to perform or observe the rule or rules in question.

(6) As soon as practicable after an application for a rule specified in subrule (1) is granted, the applicant shall file the rule and the supporting affidavit with the Registrar.

Proceeding under section 261 of the Act

16. (1) This rule operates only for so long as paragraph 342 (2) (q) of the Act specifies the making of a rule as a condition precedent to the grant of financial assistance.

(2) A proceeding under section 261 of the Act must be by rule in accordance with Form 6, calling upon the person or organisation concerned to show cause why the order should not be made.

(3) An application for a rule under subrule (2) may be made to a Judge *ex parte* supported by an affidavit verifying the facts upon which the application is based.

(4) The affidavit in support of an application under section 261 of the Act must set forth:

- (a) the rule, or rules, of the organisation to which the application relates;
- (b) the nature of the order sought; and
- (c) a short statement of the reasons relied upon by the applicant.

Preliminary discovery

17. (1) Where, on application by any person, it appears to the Court or a Judge that:

- (a) the applicant, having made reasonable inquiries, is unable to ascertain the identity of a person for the purpose of commencing proceedings against that person or is unable to ascertain the description of any person sufficiently for that purpose; and
- (b) some person has or may have knowledge of facts, or has or may have in his or her possession, custody or power any document or thing tending to assist in the ascertainment of the identity or description of the person concerned;

the Court or a Judge may order that person:

- (c) to attend before the Court or a Judge and be orally examined on any matter relating to the identity or description of the person concerned; and

- (d) to produce to the Court or a Judge any document or thing in his or her possession, custody or power relating to the identity or description of the person concerned.

(2) Where, on the application of any person, the matters mentioned in paragraph (1) (a) appear to the Court or a Judge and it further appears to the Court or a Judge that a corporation has or may have in its possession, custody or power any document or thing tending to assist in the ascertainment of the identity or description of the person concerned, the Court or a Judge may order the corporation or any officer of the Corporation to produce any document or thing in the possession, custody or power of the corporation relating to the identity or description of the person concerned.

(3) In this rule:

“description” includes the name, place or residence, place of business, occupation and sex of the person concerned;

“person concerned” means the person referred to in paragraph (1) (a).

(4) An application for an order under this rule shall be in accordance with Form 5A, the person or corporation against whom the order is claimed being made respondent to the application.

(5) An order made under subrule (1) or (2) shall be served personally on the person or corporation ordered to attend or to produce any document or thing.

(6) An application for an order under subrule (1) or (2) shall be made in the Division in which the proceedings referred to in paragraph (1) (a) would be dealt with.

(7) An order under subrule (1) or (2) shall not require a person to attend or to produce any document or thing on any day on which his or her attendance, or production by that person, is required, unless a sum sufficient to meet his or her reasonable expenses of complying with the order in relation to that day is paid or tendered to that person at the time of service of the order or not later than a reasonable time before that day.

(8) Where an order under subrule (2) requires a corporation to produce any document or thing, the sum mentioned in subrule (7) may be paid or tendered to any person apparently an officer of, or in the service of, the corporation and apparently of or above the age of sixteen years.

(9) Where any person incurs expense or loss in complying with an order under subrule (1) or (2) in an amount exceeding any sum paid under subrule (7), the Court or a Judge may order the applicant to pay to that person an amount sufficient to make good the expense or loss.

ORDER 5

CROSS-CLAIMS AND THIRD PARTY CLAIMS

Claim by respondent

1. (1) A respondent may cross-claim against an applicant for any relief to which the respondent would be entitled against the applicant if the applicant were a respondent in a separate proceeding commenced in the Court by the respondent for that purpose.

(2) A respondent may cross-claim against any person whether another party or a third party for any relief which is related to or connected with the subject of the proceeding.

(3) Without prejudice to the generality of subrule (2), a respondent may cross-claim for contribution or indemnity.

Cross-claim—Form 1

2. (1) A cross-claim shall be entitled in the proceeding with an addition showing the names of the parties to the cross-claim.

(2) Order 4, rule 3 applies to a cross-claim whether the cross-claim is against an applicant or any other person.

Title

3. On a cross-claim being filed, a document afterwards filed or used in the proceeding shall be entitled in the manner in which the cross-claim is entitled.

Rules applicable where statement of claim

4. Rules 5 and 6 of this Order apply where a proceeding is commenced by application supported by statement of claim, or where the Court has ordered that the proceeding continue on pleadings.

Pleading—Forms 8, 9, 10

5. (1) A respondent may file a pleading by way of cross-claim within the time fixed for filing his or her defence or any extension thereof.

(2) A cross-claim under subrule (1) shall be in accordance with Form 8, 9 or 10.

(3) Where a cross-claimant cross-claims solely against a party who claims in the proceeding against the cross-claimant, the cross-claimant may add the cross-claim to his or her defence.

(4) Subject to Order 11, rule 16 (which relates to embarrassing proceedings and the like), a cross-claimant may in the cross-claim plead all or any of the facts relied on by reference to the prior pleadings in the proceeding.

(5) A cross-claimant must, in addition to pleading any other facts on which he or she relies, plead the facts showing that the cross-claim is one to which rule 1 of this Order applies.

Service of prior pleadings—Form 11

6. (1) A respondent to a cross-claim who is made a party to the proceeding by the filing of the cross-claim may, by notice filed

and served on the cross-claimant, require the cross-claimant to serve on him or her all or any of the pleadings in the proceeding filed before the filing of the cross-claim.

(2) A respondent to a cross-claim may add a notice under subrule (1) to his or her notice of appearance.

(3) Where a notice under subrule (1) is served on a cross-claimant then, unless the Court otherwise orders, the cross-claimant must, within 3 days after service of the notice or such longer time as may be specified in the notice, serve on the respondent to the cross-claim giving the notice each pleading mentioned in the notice.

Rules applicable where affidavit

7. Rules 8 and 9 apply where a proceeding is commenced by application supported by affidavit and where:

- (a) a cross-claim is filed before the directions hearing; or
- (b) a cross-claim is filed after the directions hearing and the Court has not ordered that the proceedings continue on pleadings.

Cross-claims by leave

8. (1) Subject to subrules 9 (1) and (2), a respondent may cross-claim against an applicant or any other party without the leave of the Court, but may not cross-claim against any other person not being a party without such leave.

(2) Subject to subrule (4), a respondent must not cross-claim against an applicant before he or she has filed an affidavit in reply to the applicant's claim.

(3) A cross-claim must be in accordance with Form 8 or 9, and accompanied by an affidavit stating:

- (a) the nature of the cross-claim;
- (b) the material facts on which the cross-claimant relies; and

- (c) the facts showing that the cross-claim is one to which rule 1 applies.

(4) A respondent who cross-claims against an applicant only may include the matters referred to in subrule (3) in the affidavit in reply to the applicant's claim, and need not file a separate affidavit in support of the cross-claim.

Cross-claim after directions hearing

9. (1) A respondent desiring to cross-claim after the directions hearing must obtain all necessary directions at the directions hearing in relation to the cross-claim, including the time within which the cross-claim is to be filed.

(2) A respondent who does not obtain directions pursuant to subrule (1) must not cross-claim after the directions hearing without the leave of the Court.

Service

10. (1) Where a respondent to a cross-claim has, on the date of filing the cross-claim, an address for service in the proceeding, the cross-claimant must, on that date, serve the cross-claim on the respondent to the cross-claim.

(2) Where a respondent to a cross-claim has an address for service in the proceeding, personal service of the cross-claim on the respondent is not required.

(3) Order 7, rule 11 (which relates to cases where filing operates as service) does not apply to the service of a cross-claim.

Conduct of proceeding generally

11. (1) Subject to this Order and to Order 11, a proceeding on a cross-claim must follow as nearly as may be the course of the

proceeding on the originating process in respect of which the cross-claim is filed.

(2) Subject to this Order and to Order 11, and without limiting the generality of subrule (1), these Rules apply to a cross-claim and the proceeding arising from it as they apply to the originating process in respect of which the cross-claim is filed and the proceeding arising from it.

(3) Subrules (1) and (2) apply as if:

- (a) the cross-claim were the originating process in respect of which the cross-claim is filed;
- (b) the cross-claimant were an applicant; and
- (c) the respondent to the cross-claim were a respondent.

(4) An applicant in an originating process need not enter an appearance to a cross-claim in the same proceeding.

(5) An appearance entered by a party to the proceeding shall, upon service of a cross-claim on him or her, operate as an appearance to the cross-claim.

(6) A cross-respondent who has not previously entered an appearance in the original proceedings must enter an appearance:

- (a) where the cross-claim is served on the cross-respondent before the date appointed for a directions hearing in the application in the original proceeding—before that date; or
- (b) in any other case—within 14 days after service of the cross-claim on the cross-respondent cross-respondent.

(7) Subject to this Order, the trial or hearing and all other steps in the proceeding on the cross-claim must as far as practicable be carried on together with the trial or hearing and similar steps in the proceeding on the originating process in respect of which the cross-claim is filed.

Directions

12. (1) A party to the proceeding may, at any time after the filing of a cross-claim, move for directions.

(2) On any directions hearing, or on the trial or hearing of the cross-claim, the Court may:

- (a) make any order or direction it may make under Order 10;
- (b) order that any claim, question or issue in or arising on the cross-claim be tried in such manner as the Court may direct;
- (c) give to a respondent to the cross-claim leave to defend the claim on the originating process or any other cross-claim in the proceeding, either alone or in addition to any other party;
- (d) give to a respondent to the cross-claim leave to appear at the trial or hearing of the claim on the originating process or on any other cross-claim in the proceeding and to take such part in the trial or hearing as the Court thinks fit;
- (e) dismiss the cross-claim;
- (f) determine the extent to which the cross-claimant and a respondent to the cross-claim shall be bound as between themselves by a judgment (including a judgment by consent or by default) or decision (including a decision by consent) on the claim on the originating process or any other cross-claim in the proceeding;
- (g) pronounce such judgment as the nature of the case may require;
- (h) give such directions as the Court thinks fit for having the rights and liabilities of the parties determined and enforced, including any order or direction which may be made or given under this Order.

(3) Order 10, rules 4 to 7 apply to a motion for directions under this rule.

Default of respondent to cross-claim

13. Where a respondent to a cross-claim does not enter an appearance or file a defence, if and as required by these Rules, or does not file a defence in accordance with an order to do so, a judgment (including a judgment by default or by consent) or decision (including a decision by consent) on any claim, question or issue in the proceeding on the originating process or on any other cross-claim in the proceeding shall, unless the Court otherwise orders, be binding as between the cross-claimant and the respondent to the cross-claim so far as the judgment or decision is relevant to any claim, question or issue in the proceeding on the cross-claim.

Setting aside default judgment

14. Where judgment on a cross-claim is pronounced and an order made in default of appearance or where applicable, in default of defence or in consequence of default in compliance with an order or direction of the Court, the Court may set aside or vary the judgment or order.

Separate prosecution

15. A cross-claim may proceed notwithstanding that judgment has been pronounced and an order made and entered on the originating process or any other cross-claim in the proceeding, or that the proceeding on the originating process or any other cross-claim is stayed, dismissed or discontinued.

Contribution or indemnity

16. Where a respondent makes a cross-claim for contribution or indemnity in respect of a claim against him or her in the proceeding:

- (a) an order on a judgment for the claimant on the cross-claim must not be entered except by direction of the Court;

- (b) judgment for the claimant on the cross-claim shall not, unless the Court otherwise orders, be enforced by execution until satisfaction of any judgment in the proceeding against the cross-claimant.

Offer of contribution

17. Where in any proceeding:

- (a) a party (in this rule called “**the first party**”) stands to be held liable to another party (in this rule called “**the second party**”) to contribute towards any debt or damages which may be recovered against the second party in the proceeding; and
- (b) the first party, at any time after entering an appearance, makes an offer to the second party to contribute to a specific extent to the debt or damages;

then, if the first party makes the offer without prejudice to his or her defence, the offer shall not be brought to the attention of the Court until all questions of liability or amount of debt or damages have been decided.

ORDER 6

PARTIES AND CAUSES OF ACTION

Multiple claims

1. Subject to rule 6, an applicant, whether claiming in the same or different capacities, may, in any proceeding, claim relief in respect of more than one cause of action.

Joinder of parties generally

2. Two or more persons may be joined as applicants or respondents in any proceeding:

- (a) where:

- (i) if a separate proceeding were brought by or against each of them, as the case may be, some common question of law or of fact would arise in all the proceedings; and
 - (ii) all rights to relief claimed in the proceeding (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or
- (b) where the Court gives leave so to do.

Joint right

3. (1) Where, in any proceeding, the applicant claims relief to which any other person is entitled jointly with the applicant:

- (a) all persons so entitled shall be parties to the proceeding; and
- (b) any of them who does not consent to being joined as an applicant shall be made a respondent.

(2) Subrule (1) applies subject to any Act and applies unless the Court gives leave to the contrary.

Leave under rule 2 and subrule 3 (2)

4. (1) The Court may grant leave under rule 2 or subrule 3 (2) before or after the non-joinder.

(2) An applicant may apply for leave under rule 2 or subrule 3 (2):

- (a) either before or after the filing of the originating process; and
- (b) without serving notice of the motion on any person on whom the application has not been served.

Common liability

5. (1) Where, in any proceeding, relief is claimed against a respondent who is jointly liable with some other person and also severally liable, that other person need not be made a respondent to the proceeding.

(2) Where persons may be jointly, but not severally, liable and relief is claimed against some but not all of those persons in a proceeding, the Court may stay the proceeding until the other persons so liable are added as respondents.

Inconvenient joinder

6. Where any joinder of parties or of causes of action may complicate or delay trial of the proceeding or is otherwise inconvenient, the Court may order separate trials or make such other order as the Court thinks fit.

Misjoinder and non-joinder of parties

7. (1) A proceeding shall not be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party.

(2) The Court may in any proceeding determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

Addition of parties

8. (1) Where a person who is not a party:

- (a) ought to have been joined as a party; or
- (b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined and adjudicated upon;

the Court, on application by that person or by any party, or of its own motion, may order that the person be added as a party and make orders for the further conduct of the proceeding.

(2) A person must not be added as an applicant without his or her consent.

Removal of parties

9. Where a party:

- (a) has been improperly or unnecessarily joined; or
- (b) has ceased to be a proper or necessary party;

the Court, on application by any party or of its own motion, may order that the first-named party cease to be a party and make orders for the further conduct of the proceeding.

Death, transmission etc.

10. (1) Where a party dies or becomes bankrupt but a cause of action in the proceeding survives, the proceeding shall not abate by reason of the death or bankruptcy.

(2) Where the interest or liability of a party passes, by assignment, transmission, devolution or otherwise to another person, the Court may make orders for the addition, removal or re-arrangement of parties and may make orders for the further conduct of the proceeding.

(3) The Court may act under subrule (2) on application by a party or by a person to whom the interest or liability passes, or of its own motion.

Further conduct of proceedings

11. (1) Without limiting the generality of the powers of the Court under rules 8, 9 and 10, orders under those rules for the further conduct of the proceeding may include orders relating to:

- (a) service of the order and other documents in the proceeding;
- (b) amendment;
- (c) appearance of added parties; and
- (d) substitution of one party for another party or former party.

(2) Where the Court orders that a party be substituted for another party or a former party, all things done in the proceeding before the making of the order, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but entry of appearance by the old party is not to dispense with entry of appearance by the new.

(3) Subject to subrule (2), where a party is added pursuant to an order under rule 8 or rule 10, the date of commencement of the proceeding so far as concerns that party, is:

- (a) the date of filing of the originating process, amended to add that person as a party; or
- (b) if an amended originating process is not filed—the date of the amendment adding that person as a party.

Failure to proceed after death of party

12. (1) Where:

- (a) a party dies but a cause of action in the proceeding survives; and

- (b) an order under rule 10 for the addition of a party in substitution for the deceased party is not made within 3 months after the death;

the Court may, on application by a party or by a person to whom liability on the cause of action survives on the death, order that, unless, within a specified time after service of the order in accordance with subrule (2), a party is added in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon, as the case may be, survives on the death.

(2) On making an order under subrule (1), the Court shall give such directions as it thinks fit for service of the order on the persons (whether parties or not) interested in continuing the proceeding.

Representation: concurrent interests

13. (1) Where numerous persons have the same interest in any proceeding the proceeding may be commenced, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all, or as representing all except one or more of them.

(2) At any stage of a proceeding under this rule, the Court, on the application of the applicant, may appoint any one or more of the respondents or other persons (as representing whom the respondents are sued) to represent all, or all except one or more, of those persons in the proceeding.

(3) Where, under subrule (2), the Court appoints a person who is not a respondent, the Court must make an order under rule 8 adding that person as a respondent.

(4) A judgment pronounced or an order made in a proceeding under this rule is binding on all the persons as representing whom the applicants sue or, as the case may be, the

respondents are sued, but must not be enforced against any person not a party to the proceeding except with the leave of the Court.

(5) An application for leave under subrule (4) may be made only by motion, notice of which must be served personally on the person against whom it is sought to enforce the judgment or order.

(6) Notwithstanding that a judgment or order to which an application under subrule (5) relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him or her on the ground that by reason of facts and matters particular to the case he or she is entitled to be exempted from the liability.

(7) This rule does not apply to a proceeding concerning property subject to a trust or included in a deceased estate.

Representation of beneficiaries by trustees

14. (1) A proceeding concerning property subject to a trust or included in a deceased estate may be brought by or against the trustees or personal representatives without joining a person having a beneficial interest in the trust or estate and unless the Court otherwise orders on the ground that the trustees or personal representatives could not or did not represent the interest of that person, an order granted or made in the proceedings is binding on that person.

(2) Subrule (1) does not limit the power of the Court to order a person having an interest to be made a party.

Deceased person

15. (1) Where in any proceeding it appears to the Court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceeding, and that the estate has no personal representative, the Court may, on the application of any party:

- (a) order that the proceeding continue in the absence of a person representing the estate; or
- (b) by order (with the consent of the person appointed) appoint a person to represent that estate for the purposes of the proceeding.

(2) An order under subrule (1), and any judgment or order subsequently pronounced or made in the proceeding, binds the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceeding.

(3) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

Conduct

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

ORDER 7**SERVICE****Originating process**

1. (1) Subject to the provisions of this Order, originating process must be served personally on each respondent.

(2) The copy for service shall be signed and sealed as mentioned in Order 4, rule 7.

(3) Where a respondent to any originating process files an unconditional appearance, the originating process shall be taken to have been served on the respondent personally on the date on which the respondent's notice of appearance is filed or on such earlier date as may be proved.

Personal service: how effected

- 2. (1)** Personal service of a document is effected on:
- (a) an individual—by leaving a copy of the document with him or her;
 - (b) a corporation—by leaving a copy of the document with some person apparently an officer of or in the service of the corporation and apparently of or above the age of sixteen years:
 - (i) at the registered office of the corporation; or
 - (ii) if there is no registered office, at the principal place of business or the principal office of the corporation; and

- (c) an unincorporated association—by leaving a copy of the document at the principal place of business or the principal office of the association with some person apparently an officer of or in the service of the association and apparently of or above the age of sixteen years; and
- (d) an organisation—by leaving a copy of the document with some person apparently an officer of or in the service of the organisation and apparently of or above the age of 16 years at the office of the organisation shown in the copy records of the organisation lodged in the Industrial Registry under section 268 of the Act;

or as the Court or a Judge may direct.

(2) If a person refuses to accept service of a document, personal service may be effected on the person by putting the document down in his or her presence and telling him or her the nature of it.

(3) It shall not be necessary in order to effect personal service that the original document be shown.

(4) In spite of subrule 2 (1), personal service may be effected:

- (a) on a company, as defined in section 9 of the Corporations Law of the Commonwealth or corresponding legislation of a State or Territory (“**the Corporations Law**”), in any manner permitted by section 220 of the Corporations Law; and
- (b) on the liquidator of a company, in the manner permitted by subsection 220 (5) of the Corporations Law; and
- (c) on an official manager of a company, in the manner permitted by subsection 220 (6) of the Corporations Law.

Mode of service

3. A document which is not an originating process and which is required or permitted to be served in any proceeding may be served personally, but unless personal service is expressly required, it need not be served personally.

Ordinary service: how effected

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

- (a) by leaving a copy of the document at the proper address of the person to be served between the hours of nine in the morning and five in the afternoon on any day on which the Registry in that State or Territory is open; or
- (b) by sending a copy of the document by pre-paid post addressed to the person to be served at the person's proper address; or
- (c) where any enactment of the Commonwealth or of the State or Territory in which service is to be effected provides for service of a document on a corporation or organisation by serving the document in accordance with such provision; or
- (d) where a person to be served has, under rule 7 of this Order, filed a notice for service at an exchange box of a solicitor or authorised representative, by leaving a copy of the document, addressed to that solicitor or authorised representative, in that exchange box; or
- (e) by facsimile transmission directed to the facsimile transmission number operated at, or in connection with, the proper address.

(2) For the purposes of subrule (1), the proper address of a person shall be the address for service of that person in the proceeding but if, at the time when the copy is left or posted pursuant to subrule (1), the person has no address for service in the proceeding, the person's usual or last known place of business or of abode shall be the proper address.

(3) The time of service of any document for the purpose of any proceeding shall, where the copy of the document:

- (a) is sent by pre-paid post in accordance with paragraph (1) (b)—be seven days after the copy is so sent; or
- (b) is left in an exchange box in accordance with paragraph (1) (d)—be two days after the copy is so left; or

- (c) if the copy of the document is sent by facsimile transmission in accordance with paragraph (1) (e)—be one day after the copy is transmitted excluding Saturdays, Sundays and public holidays.

Service on Principal Solicitor

4A. (1) Where personal service of a document is not required and the person to be served has a solicitor acting for him or her, which solicitor has another solicitor as agent whose address is that person's proper address, the document may be served:

- (a) by leaving a copy of the document at the address of the first-named solicitor;
- (b) by sending a copy of the document by pre-paid post addressed to the person to be served at the address of the first-named solicitor; or
- (c) where an appropriate notice has been given under rule 7 of this Order—by leaving a copy of the document addressed to the first-named solicitor at the exchange box of that solicitor.

(2) The time of service of any document for the purpose of any proceedings shall be:

- (a) if the copy of the document is sent by pre-paid post in accordance with paragraph (1) (b)—7 days after the copy is so sent; or
- (b) if the copy of the document is left in an exchange box in accordance with paragraph (1) (c)—2 days after the copy is so left.

Identity

5. For the purposes of the proof of service, evidence of a statement by a person concerning the identity of, or office held by, that person is evidence of the person's identity or that the person holds that office, as the case may be.

Address for service

6. (1) An address for service shall be the address of a place at which documents in the proceedings may, during ordinary business hours, be left for the person whose address for service it is and to which documents in the proceeding may be posted for that person.

(2) The address for service of a person represented by a solicitor or authorised representative shall be the office of the solicitor or authorised person or of the solicitor's agent.

(3) A person may change his or her address for service by filing a notice of the change showing a new address for service.

(4) A person who files a notice of change of address for service shall, on the date of filing, serve the notice on each party to the proceedings.

Document exchange—Form 12

7. (1) A person whose address for service is the office of a solicitor or authorised representative who uses the facilities of a document exchange may file a notice authorising service at the document exchange box of that solicitor or authorised representative in the prescribed form or add a notice to that effect to the person's originating process (other than a cross-claim) or notice of appearance.

(2) A person may change the particulars stated in his or her notice authorising service at a document exchange box by filing a notice showing the new particulars or cancel the notice authorising service at a document exchange box by filing a notice to that effect.

(3) A person who files a notice authorising service at a document exchange box (other than a notice added to an originating process or a notice of appearance), a notice of a change or a notice of cancellation shall, on the date of filing, serve the notice on each party to the proceeding.

(4) A change or cancellation of which notice is required to be served under this rule shall not be effective as between the person to be served and another party until the notice is filed and served on that other party.

Acceptance by solicitor or authorised representative

8. (1) This rule applies to:

- (a) any originating process; and
- (b) any document required or permitted to be served in any proceeding, but not required to be served personally.

(2) Where a solicitor or authorised representative makes on a copy of a document to which this rule applies a note that he or she accepts service of the document on behalf of any person, the document shall, unless that solicitor or authorised representative is shown not to have had authority to act for such person, be taken to have been duly served on that person on the date on which the solicitor or authorised representative makes the note or on such earlier date of service as may be proved.

Substituted service

9. (1) Where for any reason it is impractical to serve a document in the manner set out in the Rules, the Court may on an application made *ex parte* order that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served.

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

Informal service: confirmation

10. Where for any reason it is impractical to serve a document in the manner set out in the Rules, but steps have been

taken to bring the document to the notice of the person to be served, the Court may order that the document be taken to have been served on that person on a date specified in the order.

Service by filing

11. Where personal service is not required, and the person to be served is in default of appearance or has entered an appearance but has no address for service in the proceeding, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that person.

Notice etc. by the Court

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

Injunction: service

13. Where the Court grants an interlocutory injunction, the party may serve notice of the injunction, if desired:

- (a) by facsimile transmission or letter signed by or on behalf of the Registrar; or
- (b) by telephone call by or on behalf of the Registrar.

Service under contract

14. Where a respondent in any proceeding has, before or after the commencement of the proceeding, agreed that originating process or any other document in the proceeding may be served on the respondent or on some other person on behalf of the respondent in a manner or at a place (whether in or outside the Commonwealth)

specified in the agreement, service in accordance with the agreement shall be sufficient service on the respondent.

ORDER 8

SERVICE OUTSIDE THE JURISDICTION

Division 1—General

Cases for service of originating process

1. Subject to rule 2 and Division 2 and 3 of this Order, originating process may be served outside the Commonwealth in the following cases:

- (a) where the proceeding is founded on a cause of action arising in the Commonwealth;
- (aa) where the proceeding is founded on a breach in the Commonwealth of a contract, wherever made, whether or not the breach is preceded or accompanied by a breach, wherever occurring, that renders impossible the performance of any part of the contract which ought to be performed in the Commonwealth;
- (ab) where the proceeding:
 - (i) is for the enforcement, rescission, dissolution, rectification or annulment of a contract; or
 - (ii) otherwise affects a contract; or
 - (iii) is for damages or other relief in respect of the breach of a contract;and the contract:
 - (iv) is made in the Commonwealth; or
 - (v) is made on behalf of the person to be served by or through an agent carrying on business or residing in the Commonwealth; or

- (vi) is governed by the law of the Commonwealth or of a State or Territory;
- (ac) where the proceeding is founded on a tort committed in the Commonwealth;
- (ad) where the proceeding is founded on, or is for the recovery of, damage suffered wholly or partly in the Commonwealth caused by a tortious act or omission, wherever occurring;
- (ae) where the proceeding is for the construction, rectification, setting aside or enforcement of:
 - (i) a deed, will or other instrument; or
 - (ii) a contract, obligation or liability; affecting property in the Commonwealth;
- (af) where the proceeding is for:
 - (i) the execution of a trust that is governed by the law of the Commonwealth or of a State or Territory; or
 - (ii) relief that might be granted in a proceeding for the execution of that trust;
- (ag) where the proceeding affects the person to be served in respect of his or her membership of a corporation:
 - (i) carrying on business in the Commonwealth; or
 - (ii) registered in a State or Territory as a foreign company;
- (ah) where the proceeding relates to an arbitration held in the Commonwealth;

- (ai) where:
 - (i) the proceeding is for relief relating to the custody, guardianship, protection or welfare of a minor, whether or not the minor is in the Commonwealth; and
 - (ii) apart from service, the Court has jurisdiction to grant relief;
- (b) where the proceeding is founded on a breach of an Act, where the breach is committed in the Commonwealth;
- (c) where the proceeding is founded on a breach, wherever occurring, of an Act, and is brought in respect of, or for the recovery of, damage suffered wholly or partly in the Commonwealth;
- (d) where the proceeding is for contribution or indemnity in respect of a liability enforceable by a proceeding in the Court;
- (e) where the person to be served is domiciled, incorporated or ordinarily resident in the Commonwealth, or being a corporation carries on business in the Commonwealth or is registered in any State or Territory as a foreign company;
- (f) where the proceeding is a proceeding in respect of which the person to be served has submitted to the jurisdiction of the Court;
- (g) where the proceeding is properly brought against a person served or to be served in the Commonwealth and the person to be served outside the Commonwealth is properly joined as a party to the proceeding;
- (h) where the subject matter of the proceeding, so far as concerns the person to be served is property in the Commonwealth;
- (i) where the proceeding is for the perpetuation of testimony relating to property in the Commonwealth;
- (j) where the proceeding is for an injunction as to anything to be done in the Commonwealth or against the doing of any act in the Commonwealth, whether damages are also sought or not;

- (k) where the proceeding affects the person to be served in respect of that person's:
 - (i) membership of or office within a corporation incorporated or carrying on business within the Commonwealth;
 - (ii) membership of or office within an association or organisation formed or carrying on the whole or part of its affairs within the Commonwealth; or
 - (iii) conduct as a member or officer of such corporation, association or organisation;
- (l) where the proceeding concerns the construction, effect or enforcement of an Act or a regulation or other instrument having or purporting to have effect under an Act;
- (m) where the proceeding concerns the effect or enforcement of an executive, ministerial or administrative act done or purporting to be done under an Act or regulation or other instrument having or purporting to have effect under an Act;
- (n) where the proceeding, so far as concerns the person to be served, falls partly within one of the foregoing paragraphs and falls, as to the residue, within one or more of the others of the foregoing paragraphs.

Leave or confirmation

2. (1) Service outside the Commonwealth of originating process is not valid under this Order unless:

- (a) the service is in accordance with the prior leave of the Court given under subrule (2);
- (b) the Court confirms the service under subrule (4); or
- (c) the person served waives objection by entering an appearance.

(2) Where the Court is satisfied of the following matters:

- (a) that the proceeding is a proceeding in which the Court has jurisdiction;

- (b) that the proceeding is a proceeding to which rule 1 applies; and
- (c) that the applicant has a prima facie case for the relief sought;

the Court may, by order, grant leave to serve originating process outside the Commonwealth under this Order.

(3) The evidence on a motion for leave under subrule (2) must include evidence showing in what country or place the person to be served is, or probably may be found, and whether that country is a convention country or non-convention country.

(4) Where originating process has been served outside the Commonwealth without a prior motion for leave under subrule (2), and the Court is satisfied:

- (a) on the matters mentioned in subrule (2); and
- (b) that the failure to apply for leave is sufficiently explained;

the Court may by order confirm the service.

Other documents

3. Service outside Australia of a document other than originating process is valid if the service is in accordance with the prior leave of the Court or is confirmed by the Court.

Rules as to service generally

4. Subject to this Order and subject to any convention, the Rules apply to service outside Australia under this Order as they apply to service inside Australia.

Mode of service

5. A document which is to be served outside Australia need not be served personally on the person required to be served, so long

as it is served in accordance with the law of the country in which service is effected.

Division 2—Service in Convention Countries

Service under convention

6. This Division applies to service of judicial documents in a convention country.

Requisite documents

- 7.** A party seeking service under this Division must:
- (a) lodge with the Registrar:
 - (i) the document to be served;
 - (ii) unless English is an official language of the country concerned, a translation of the document in accordance with rule 8;
 - (iii) a copy of the document and of the translation;
 - (iv) such further copies of the document and of the translation as the Registrar may direct; and
 - (v) if any special or particular manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and
 - (b) file:
 - (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) a request and undertaking in accordance with rule 9.

Translation

8. A translation of a document lodged under rule 7 must:

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

Request and undertaking

9. A request and undertaking filed under rule 7 must contain:

- (a) a request by the applicant to the Registrar of the Court that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person;
- (b) a reference to the applicable convention; and
- (c) an undertaking by the applicant or the applicant's solicitor or authorised representative to pay to the Registrar of the Court an amount equal to the sum of all expenses incurred in consequence of the request for service.

Procedure on filing and lodgment

10. (1) When documents referred to in rule 7 are filed and lodged in a District Registry, they shall be transmitted to the Registrar of the Court.

(2) The Registrar of the Court must seal the documents lodged with the seal of the Court and send them to the Secretary to the Attorney-General's Department for transmission for service, together with such letter of request (if any) as may be necessary.

Evidence of service

11. Where the Registrar of the Court has sent documents to the Secretary to the Attorney-General's Department as mentioned in rule 10, and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country

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

Order for payment of expenses

12. Where a person has given an undertaking as mentioned in rules 7 and 9 and does not within 7 days after service on him or her of an account of expenses incurred in consequence of the request for service, pay to the Registrar of the Court the amount of the expenses, the Court may, on application by the Registrar of the Court:

- (a) order the applicant to pay the amount of the expenses to the Registrar of the Court; and
- (b) stay the proceeding until payment so far as concerns the whole or any part of any claim for relief by the applicant.

Division 3—Service in Non-Convention Countries

13. This Division applies to service of judicial documents in a non-convention country.

Required documents

14. (1) A party seeking service under this Division must file a request in accordance with Form 14A.

(2) A document to be served must be sealed with the seal of the Court used for sealing documents that are to be served outside Australia and must be passed to the Secretary of the Attorney-General's Department by the Registrar, together with:

- (a) a copy of the document translated into an official language of the country in which it is to be served; and
- (b) a request in accordance with Form 14B;

for transmission to the government of the country in respect of which leave has been given.

Proof of service

15. An official certificate or declaration (on oath or otherwise) transmitted to the Court through the diplomatic channel by the government or a court of a country to which this Division applies is sufficient proof of the service of a document if it certifies or declares that (or to the effect that) the document has been:

- (a) personally served; or
- (b) served in accordance with the law of the country;

and, when filed, is taken to be a record of the service and the equivalent of an affidavit of service under these Rules.

Substituted service

16. (1) If an official certificate or declaration (on oath or otherwise) transmitted to the Court through the diplomatic channel by the government or a court of a country to which this Division applies, certifies or declares that efforts to serve a document have been without effect, the Court or a Judge, on *ex parte* application by the applicant, may order in accordance with Form 14C that the applicant be permitted to request substituted service of the document.

(2) A request for substituted service may be made by the applicant at the Registry out of which the document to be served has been issued, by filing:

- (a) a request in accordance with Form 14A; and
- (b) the document.

(3) A copy of the order and of the document must be sealed in accordance with subrule 14(2) and must be passed to the Secretary of the Attorney-General's Department by the Registrar, together with:

- (a) a copy of the document translated into an official language of the country in which it is to be served; and
- (b) a request in accordance with Form 14B;

for transmission to the government of the country in respect of which leave has been given.

ORDER 9

APPEARANCE

Appearance by solicitor or authorised person or in person

1. (1) A respondent may enter an appearance and may defend a proceeding by a solicitor or authorised representative, by a person authorised to represent a party by or under section 469 of the Act or in person.

(2) Where a respondent is a person under disability subrule (1) has effect subject to Order 43.

(3) Except as is permitted under subrule (1) or any Act a corporation may not without the leave of the Court or a Judge enter an appearance or defend any proceeding except by a solicitor or authorised person.

(4) For the purposes of this Order “**respondent**” includes a person who is required to enter an appearance but is not named as a respondent.

Time for appearance

2. (1) Subject to these Rules, a respondent must enter an appearance before the date appointed for a directions hearing and before filing any document.

(2) Notwithstanding subrule (1), a respondent who has not entered an appearance by the date appointed for a directions hearing, may enter an appearance after that date without leave.

Mode of entry

3. (1) An appearance is entered by filing a notice of appearance.

(2) Two or more persons entering an appearance by the same solicitor or authorised representative or person on the same date may do so by a single notice of appearance.

(3) The date of entry of an appearance is the date when notice of the appearance is received in the Registry.

(4) The notice of appearance, and any copies, must be stamped in the Registry with the stamp of the Registry, with the addition of the words “appearance entered” and the date on which the stamp is affixed. The copies must then be returned to the person entering the appearance.

Notice of appearance

4. (1) A notice of appearance must show:

- (a) the name and address of the person entering the appearance; and
- (b) if the person entering the appearance appears by a solicitor or authorised representative, or person authorised to represent a party by or under section 469 of the Act, the name, address and telephone number of the solicitor or authorised representative or person; and
- (c) if the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent in the proceeding, the name, address and telephone number of the agent; and
- (d) an address for service.

(2) Where an address shown in a notice of appearance by which a respondent enters an appearance is not genuine, the applicant may, with the leave of the Court, continue the proceeding as if the appearance had not been entered.

Service of appearance

5. A respondent shall, upon receiving the copies of the notice of appearance stamped with the stamp of the Registry,

forthwith serve on the applicant at his or her place for service one of the copies so received.

Conditional appearance

6. (1) A respondent may enter a conditional appearance.

(2) A conditional appearance shall have effect for all purposes as an unconditional appearance, unless the Court otherwise orders or the respondent applies under and in accordance with rule 7 and the Court makes an order under that rule.

Setting aside originating process etc.

7. (1) The Court may, on application made by a respondent to any originating process on notice of motion filed within the time fixed by subrule (2), by order:

- (a) set aside the originating process;
- (b) set aside the service of the originating process on the respondent;
- (c) declare that the originating process has not been duly served on the respondent;
- (d) discharge any order giving leave to serve the originating process outside Australia or confirming service of the originating process outside Australia.

(2) Notice of a motion under subrule (1) may be filed by a respondent before entering an appearance or within fourteen days after the date of entry of a conditional appearance.

ORDER 10**DIRECTIONS HEARING****Directions Hearings**

1. (1) On a directions hearing the Court shall give such directions with respect to the conduct of the proceeding as it thinks proper.

(1A) In any proceeding which is to be heard by a Full Court, whether in the original or appellate jurisdiction, such directions as is thought proper with respect to the conduct of the proceeding may be given by the Court constituted by a single Judge.

(2) Without prejudice to the generality of subrule (1) or (1A), the Court may:

- (a) make orders with respect to:
 - (i) discovery and inspection of documents;
 - (ii) interrogatories;
 - (iii) inspections of real or personal property;
 - (iv) admissions of fact or of documents;
 - (v) the defining of the issues by pleadings or otherwise;
 - (vi) the standing of affidavits as pleadings;
 - (vii) the joinder of parties;
 - (viii) the mode and sufficiency of service;
 - (ix) amendments;
 - (x) cross-claims;
 - (xi) the filing of affidavits;
 - (xii) the giving of particulars;
 - (xiii) the place, time and mode of hearing;
 - (xiv) the giving of evidence at the hearing, including whether evidence of witnesses in chief shall be given orally or by affidavit, or both;
 - (xv) the disclosure of reports of experts;

- (xvi) costs;
- (xvii) the filing and exchange of signed statements of evidence of intended witnesses and their use in evidence at the hearing;
- (xviii) the taking of evidence and receipt of submissions by video link or telephone or such other means as the Court considers appropriate; and
- (xvix) the proportion in which the parties are to bear the costs (if any) of taking evidence or making submissions under a subparagraph (xviii) direction;
- (b) notwithstanding that the application is supported by a statement of claim, order that the proceeding continue on affidavits;
- (c) order that evidence of a particular fact or facts be given at the hearing:
 - (i) by statement on oath upon information and belief;
 - (ii) by production of documents or entries in books;
 - (iii) by copies of documents or entries; or
 - (iv) otherwise as the Court directs;
- (ca) order that an agreed bundle of documents be prepared by the parties;
- (d) order that no more than a specified number of expert witnesses may be called;
- (da) order that the reports of experts be exchanged;
- (e) appoint a court expert in accordance with Order 34, rule 2;
- (f) direct that the proceeding be transferred to a place at which there is a Registry other than the then proper place. Where the proceeding is so transferred, the Registrar at the proper place from which the proceeding is transferred shall transmit all documents in his or her charge relating to the proceeding to the Registrar at the proper place to which the proceeding is transferred;
- (g) order, under Order 72, that proceedings, part of proceedings or a matter arising out of proceedings be referred to a mediator or arbitrator;

- (h) order that the parties attend before a Registrar for a conference with a view to satisfying the Registrar that all reasonable steps to achieve a negotiated outcome of the proceedings have been taken, or otherwise clarifying the real issues in dispute so that appropriate directions may be made for the disposition of the matter, or otherwise to shorten the time taken in preparation for and at the trial;
 - (ha) order that the parties attend before a Judge, Judicial Registrar or Registrar for an informal mediation in an endeavour to settle the dispute by amicable agreement;
 - (i) in a case in which the Court considers it appropriate, direct the parties to attend a case management conference with a Judge, Judicial Registrar or Registrar to consider the most economic and efficient means of bringing the proceedings to trial and of conducting the trial, at which conference the Judge, Judicial Registrar or Registrar may give further directions;
 - (j) direct that an application to the Court pursuant to section 170EA of the Act be referred to the Australian Industrial Relations Commission for conciliation in accordance with section 170ED of the Act.
- (3) The Court may revoke or vary any order made under (1), (1A) or (2).
- (4) The powers of the Court prescribed for the purposes of subsection 466 (1) (h) of the Act are those referred to in this rule.

Fixing of date

2. On the directions hearing the Court may:
- (a) fix a date for a further directions hearing;
 - (b) fix a date for trial;
 - (c) direct the parties to arrange with the Registrar a date for trial; or
 - (d) fix a date after which either party may request a date for trial.

Despatch, orders and directions

3. (1) If the Court thinks fit and the parties agree, the Court may hear and determine the proceeding on a directions hearing.

(2) If no applicant appears before the Court on a directions hearing, the Court may dismiss the application or make any other order that it thinks proper.

(3) If no respondent appears before the Court on a directions hearing, the Court may give such directions as it thinks fit.

Summary disposal

4. (1) A party may move for an order under Order 20, rule 2 (summary disposal of proceedings) at the directions hearing, if notice of the motion is served on all other parties to the proceeding not less than 3 days before the directions hearing.

(2) The Court may dispense with service under subrule (1).

Interlocutory orders

5. On a directions hearing, each party must, so far as is practicable, apply for any interlocutory order or directions that he or she may require.

Motion on notice

6. A party may move, on notice, for any interlocutory order or direction not made at the directions hearing appointed in the application.

Procedure on Default

7. (1) If a party fails to comply with an order of the Court directing that party to take a step in the proceeding, any other party may move the Court, on notice:

- (a) if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant in the proceeding;
- (b) if the party in default is a respondent—for judgment or an order against the respondent; or
- (c) for an order that the step in the proceeding be taken within the time limited in that order.

(2) The Court may make an order of the kind mentioned in subrule (1) or any other order or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

(3) This rule does not limit the powers of the Court to punish for contempt.

ORDER 11**PLEADINGS***Division 1—General***Paragraphs—Form 7**

1. Where a pleading alleges or otherwise deals with several matters:

- (a) the pleading must be divided into paragraphs;
- (b) each matter must, so far as convenient, be put in a separate paragraph; and

- (c) the paragraphs must be numbered consecutively.

Facts not evidence

2. Subject to these Rules:

- (a) a pleading of a party must contain, and contain only, a statement in a summary form of the material facts on which the party relies, but not the evidence by which those facts are to be proved; and
- (b) paragraph (a) has effect subject to this Order and to Order 4 (commencement of proceedings) and to Order 12 (particulars).

Brevity

- 3.** A pleading must be as brief as the nature of the case admits.

Documents and spoken words

- 4.** Where any document or spoken words are referred to in a pleading, it is permissible to state the effect of the document or spoken words without setting out the precise terms thereof.

Presumed facts

- 5.** A party need not plead a fact if:
 - (a) the fact is presumed by law to be true; or
 - (b) the burden of disproving the fact lies on the other party;except so far as may be necessary to meet a specific denial of that fact by the other party in his or her pleading or failure to plead such fact is likely to cause the other party to be taken by surprise.

Conditions precedent

6. (1) It is not necessary, in any pleading, to make a general allegation of fulfilment of a condition precedent to a right of action.

(2) Any party wishing to deny the fulfilment of any such condition precedent must plead such denial.

New matter

7. A party may plead a new matter which has arisen since the commencement of the proceeding.

Departure

8. (1) A party must not, in any pleading, make an allegation of fact, or raise any ground or claim, inconsistent with a previous current pleading of that party.

(2) Subrule (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

Points of law

9. A party may, by a pleading, raise any point of law.

Matters for specific pleading

10. In a pleading subsequent to a statement of claim, a party must plead specifically any matter of fact or point of law that:

- (a) the party alleges makes a claim or defence of the opposite party not maintainable;
- (b) if not specifically pleaded, might take the other party by surprise; or
- (c) raises issues of fact not arising out of the preceding pleading.

Tender

11. Where, in any proceeding, a defence of tender before the commencement of the proceeding is pleaded, the respondent must bring into Court, in accordance with Order 23, the amount alleged to have been tendered. Unless the Court has dispensed with compliance with this rule, the tender is not available as a defence unless and until the amount has been brought into Court.

Set-off

12. Where a claim by a respondent to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by an applicant, it may be included in the defence and set off against the applicant's claim, whether or not the respondent also cross-claims for that sum of money.

Admissions and traverse

13. (1) Subject to subrule (3) and to Order 43, rule 7 (persons under disability), an allegation of fact made by a party in a pleading is deemed to be admitted by the opposite party unless:

- (a) it is traversed by that party in a pleading; or
- (b) a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a specific denial or by a statement of specific non-admission.

- (3) Subject to subrule (4):
- (a) every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit, must be specifically traversed in the party's defence or defence to counterclaim, as the case may be; and
 - (b) a general denial of such allegations, or a general statement on non-admission of them is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegations as to the amount of damages is deemed to be traversed unless specifically admitted.

Joinder of issue

14. (1) If there is no reply to a defence, there shall be an implied joinder of issue on that defence.

(2) Subject to subrule (3), a joinder of issue operates as a denial of every allegation of fact made in the pleading on which there is a joinder of issue.

(3) A party may admit or specifically plead to allegations of fact made in the pleading on which there is a joinder of issue, in which case the joinder shall operate as a denial of every other allegation of fact.

Close of pleadings

15. (1) The pleadings on a statement of claim shall, unless the Court otherwise orders, be closed, as between any applicant and any respondent, on the date of expiry of the last of the times fixed by or under these Rules for filing a defence or reply or other pleading between those parties.

(2) Subrule (1) shall have effect notwithstanding that, on the date mentioned in that subrule, a request or order for particulars has been made but has not been complied with.

Embarrassment etc.

16. Where a pleading:

- (a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading;
- (b) has a tendency to cause prejudice, embarrassment or delay in the proceeding; or
- (c) is otherwise an abuse of the process of the Court;

the Court may at any stage of the proceeding order that the whole or any part of the pleading be struck out.

General issue

17. A party must not plead the general issue.

Denial to be substantial answer

18. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively or generally, but must answer the point of substance, in accordance with rule 13 of this Order.

Division 2—Progress of Pleadings

Times for filing and service of pleadings

19. Where a proceeding commenced by application supported by statement of claim continues on pleadings after the directions hearing, or at the directions hearing it is ordered that the proceeding continue on pleadings, the times for filing and serving pleadings must, unless the Court otherwise directs, be in accordance with rules 20 to 23 of this Order.

Defence—Form 16

20. (1) Where the application was accompanied by a statement of claim, the defence must be filed in accordance with Form 16, within 7 days after the directions hearing.

(2) Where at the directions hearing it is ordered that the applicant file and serve a statement of claim or points of claim, the defence or points of defence must be filed and served within 14 days after service of the statement of claim or the points of claim.

Defence to cross-claim

21. Where a cross-claim is filed and served pursuant to Order 5, a cross-respondent must file and serve a defence to the cross-claim within 21 days after service on the cross-respondent of the cross-claim or within 7 days after the directions hearing appointed in the application, whichever is the later.

Reply—Form 17

22. (1) Where a respondent serves a defence on an applicant or a cross-respondent serves a defence to cross-claim on a cross-claimant, and a reply is needed for compliance with rule 10 of this Order, the applicant or cross-claimant as the case may be must file and serve the reply within 14 days after service on that person of the defence or defence to the cross-claim.

(2) An applicant who files both a reply and a defence to a cross-claim must put them in one document.

Procedure on Default

23. (1) Where a party is in default in filing and serving any pleading as required by this Order, any other party may move the Court on notice:

- (a)** if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or

any part of the relief claimed by the applicant in the proceeding;

- (b) if the party in default is a respondent—for judgment or an order against the respondent; or
- (c) for an order that pleadings be filed and served within the time limited in the order.

(2) The Court may make an order of the kind mentioned in subrule (1) or any other order or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

(3) This rule does not limit the powers of the Court to punish for contempt.

ORDER 12

PARTICULARS

General

1. (1) A party pleading shall state in the pleading or in a document filed and served with it the necessary particulars of any claim, defence or other matter pleaded by the party.

(2) Rules 2 to 4 do not affect the generality of subrule (1).

Fraud etc.

2. A party pleading shall give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which the party relies.

Conditions of mind

3. (1) A party pleading any condition of mind shall give particulars of the facts on which the party relies.

(2) In subrule (1) “**condition of mind**” includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

Damages

4. (1) A party who claims damages which include moneys which the party has paid or is liable to pay must give particulars of those moneys.

(2) A party who claims exemplary damages must give particulars of the facts and matters relied upon to establish that claim.

Order for particulars

5. (1) The Court may order a party to file and serve on any other party:

- (a) particulars of any claim, defence or other matter stated in a pleading, or in any affidavit ordered to stand as a pleading;
- (b) a statement of the nature of the case on which the party relies; or
- (c) particulars relating to general or other damages claimed by the party.

(2) Without limiting the generality of subrule (1), where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may order that party to file and serve on any other party:

- (a) where the party alleges knowledge, particulars of the facts relied upon; and
- (b) where the party alleges notice, particulars of the notice.

(3) The Court shall not make an order under this rule before the filing of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the respondent to plead or for some other special reason.

ORDER 13

AMENDMENT

Application of Order

1. This Order does not apply to the amendment of a judgment or order or draft thereof.

General

2. (1) The Court may, at any stage of any proceeding, on application by any party or of its own motion, order that any document in the proceeding be amended, or that any party have leave to amend any document in the proceeding, in either case in such manner as the Court thinks fit.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceeding, or of correcting any defect or error in any proceeding, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, subrule (1) applies to the person intended to be made a party as if he or she were a party.

Amendment of pleading without leave

3. (1) A party may, without leave, amend any pleading once at any time before the pleadings are closed.

(2) A party may further amend any pleading before the pleadings are closed and without the leave of the Court if the party obtains the consent of all other parties.

Consequential amendment of defence or reply

4. (1) Where an applicant amends a statement of claim:

- (a) if the respondent has filed a defence, the respondent may amend the defence; and
- (b) the time for filing the defence or amended defence, as the case may be, is either the time fixed by these Rules for filing a defence or 14 days after service on the respondent under rule 10, whichever expires later.

(2) Where a respondent amends a defence:

- (a) if the applicant has filed a reply, the applicant may amend the reply; and
- (b) the time for filing the reply or amended reply, as the case may be, is either the time fixed by these Rules for filing the reply or 14 days after service on the applicant under rule 10, whichever expires later.

(3) The rights to amend under paragraph (1)(a) and paragraph (2) (a) are in addition to the right to amend under rule 3.

(4) Where the following is the order of events:

- (a) a party (in this rule called **“the first party”**) files a pleading (in this rule called **“the first pleading”**);
- (b) an opposite party files a pleading (in this rule called **“the second pleading”**) in answer (whether by way of defence, reply or otherwise) to the first pleading;
- (c) the first party amends the first pleading;
- (d) the opposite party does not amend the second pleading within the time allowed by this rule;

then:

- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and

- (f) Order 11, subrule 14 (1) does not apply but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

Disallowance of amendment

5. (1) Where a party amends a pleading under subrule 3 (1), the Court, on application by an opposite party, may, subject to subrule (3), by order disallow the amendment.

(2) Where a party amends a pleading under subrule 3 (2) but without obtaining the consent of a party, the Court, on application by that party, may, subject to subrule (3), by order disallow the amendment.

(3) Notice of a motion under subrule (1) or (2) shall be filed and served within 14 days after the date of service on the applicant under rule 10 of this Order.

(4) Where, on the hearing of an application under subrule (1), the Court is satisfied that, if an application for leave to make the amendment had been made under subrule 2 (1) on the date on which the amendment was made under subrule 3 (1) or (2), the Court would not have given leave to make the whole or some part of the amendment, the Court shall disallow the amendment or that part, as the case may be.

Duration of leave

6. Subject to Order 3, rule 3 (which relates to the extension and abridgment of time), where the Court makes an order under this Order giving a party leave to amend a document, then, if the party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, before the expiration of 14 days after the date on which the order is made, the order shall cease to have effect.

Mode of amendment—Directions

7. (1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment.

(2) Rules 8, 9 and 10 have effect subject to subrule (1).

Mode of amendment—simple amendment—Form 19

8. (1) Where the amendments authorised under this Order to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the document difficult or inconvenient to read, the amendments may be made by:

- (a) filing a notice, in accordance with Form 19, specifying the amendments and the matters mentioned in subrule (2); and
- (b) where the document to be amended has been filed, writing the alterations in the document.

(2) A filed document amended under this rule must be marked with a statement specifying the date of the amendment and also, if made under an order, the date of the order or, if not made under an order, a reference to the rule authorising the amendment.

Mode of amendment—fresh document

9. Subject to subrule 8 (1), amendments authorised under this Order to a filed document must be made by filing a fresh document, amended as so authorised, and bearing a statement specifying the matters mentioned in subrule 8 (2).

Service after amendment

10. Where a document has been served and is afterwards amended, the party making the amendment must, on the day on

which the amendment is made, serve on the parties on whom the document was served:

- (a) if the amendment is made under rule 8—the notice mentioned in subrule 8 (1); or
- (b) if the amendment is made under rule 9—the fresh document.

ORDER 14

AFFIDAVITS

Time for swearing

1. An affidavit for use in any proceeding may be sworn before or after the commencement of the proceeding.

Form of affidavit—Form 20

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

(2) The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he or she must certify in or below the jurat that:

- (a) the affidavit was read in his or her presence to the deponent; and
- (b) the deponent seemed to understand the affidavit.

(4) Where it appears to the person before whom an affidavit is sworn that the deponent is by reason of physical incapacity incapable of signing the same he or she must certify in or below the jurat that:

- (a) the affidavit was read in his or her presence to the deponent;
- (b) the deponent seemed to understand the affidavit; and
- (c) the deponent signified he or she swore the affidavit.

(5) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (3) or subrule (4) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that the deponent seemed to understand it.

(6) Each page of an affidavit must be signed by the deponent and by the person before whom it is sworn, except that it is not necessary for a deponent who is physically incapable of signing the affidavit to do so.

Alteration

3. Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit:

- (a) the affidavit may nevertheless be filed, unless the Court otherwise orders; but
- (b) the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

Exhibits and annexures

4. (1) Any original document to be used in conjunction with an affidavit must be exhibited and not annexed to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

(3) Copies of all documents exhibited or annexed to an affidavit must be served with the affidavit.

Irregularity

5. (1) An affidavit may be filed, unless the Court otherwise orders, notwithstanding any irregularity in form.

(2) An affidavit may be used, with the leave of the Court, notwithstanding any irregularity in form.

Filing

6. An affidavit may not be used without leave of the Court unless it has been filed.

Service

7. (1) A party intending to use an affidavit must serve it on each other interested party not later than a reasonable time before the occasion for using it arises.

(2) The Court may give directions concerning the service of affidavits.

Scandal etc.

8. Where there is scandalous or oppressive matter in an affidavit, the Court may order that the affidavit be taken off the file.

Cross-examination

9. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under subrule (1) must be made to the party filing or proposing to use the affidavit.

(3) Where the attendance of a person is required under subrule (1) and the person does not attend, that person's affidavit must not be used without the leave of the Court.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine the person.

ORDER 15

DISCOVERY AND INSPECTION OF DOCUMENTS

Division 1—Discovery

Notice for discovery—Form 21

1. After a directions hearing pursuant to Order 10 and within any period limited by the Court for this purpose, any party may, unless the Court otherwise orders, by notice of discovery filed and served on any other party, require any other party to give discovery of documents.

Discovery on notice

2. (1) A party required to give discovery must do so within such time, not being less than 14 days after service of the notice of discovery on that party, as may be specified in the notice of discovery.

(2) A party, subject to rule 3, gives discovery by filing and serving on the party giving the notice of discovery:

- (a) a list in accordance with rule 6 of documents relating to any matter in question between him or her and the party giving the notice of discovery; and
- (b) an affidavit verifying the list.

Limitation of discovery on notice

3. (1) The Court may, before or after any party has been required under rule 1 to give discovery, order that discovery under rule 2 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceeding, as may be specified in the order.

(2) The Court shall, on application, make such orders under subrule (1) as are necessary to prevent unnecessary discovery.

Co-respondents

4. Where an applicant claims relief against two or more respondents, and requires any respondent to give discovery under rule 2, that respondent must serve his or her list of documents and affidavit not only on the applicant but also on each other respondent who has filed a defence.

Order for general discovery

5. The Court may, at any stage of the proceeding, order any party to give discovery in accordance with rule 2.

Contents of list—Form 22

6. (1) A list of documents required by or under this Order must be in accordance with Form 22 and, unless the Court otherwise orders, conform to the requirements of this rule.

(2) A list of documents shall enumerate the documents which are or have been in the possession, custody or power of the party making the list.

(3) A list of documents shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

(4) A party making a list of documents who claims that any document in the party's possession, custody or power is privileged from production shall, in the list, sufficiently state the grounds of the privilege.

(5) A list of documents shall distinguish those documents which are in the possession, custody or power of the party making the list from those that have been but are no longer in the party's possession, custody or power.

(6) A list of documents shall, as to any document which has been but is not then in the possession, custody or power of the party making the list, state when the party parted with the document and what has become of it.

(7) A list of documents shall appoint a time within 7 days after service of the list when, and a place where, the documents in the list may be inspected.

(8) Where a party making a list of documents has a solicitor or authorised representative in the proceeding, the solicitor or authorised representative shall certify on the list that, according to his or her instructions, the list and the statements in the list are correct.

Discovery of Documents

6A. A party required to give discovery who has or has had in his or her possession, custody or power more than one copy, however made, of a particular document is not required to give discovery of additional copies by reason only of the fact that the original or any other copy is discoverable.

Absence of privilege

7. (1) Except with the leave of the Court, a party to any proceeding in the Court may not claim privilege from production of any document on the ground that it relates solely to and does not tend

to impeach the party's own case and does not relate to or tend to support the case of any opposing party.

(2) Leave under subrule (1) shall not be granted except for special cause.

(3) Any application to the Court for leave under subrule (1) may be made without serving notice of the motion.

(4) The Court may, at any stage of the proceeding, order a party to produce a document to any other party notwithstanding that leave under subrule (1) has been granted and privilege claimed in respect of that document.

Supplementary discovery

7A. Where a party has been required, or ordered to give discovery, that party shall be under a continuing obligation to discover any document not previously discovered and which would otherwise be necessary to comply with the requirement or order.

Order for particular discovery

8. Where, at any stage of the proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any matter in question in the proceeding may be or may have been in the possession, custody or power of a party, the Court may order that party:

- (a) to file any affidavit stating whether that document or any document of that class is or has been in his or her possession, custody or power and, if it has been but is not then in his or her possession, custody or power, when he or she parted with it and what has become of it; and
- (b) to serve the affidavit on any other party.

Deponent

9. (1) Subject to subrule (2), an affidavit verifying a list of documents of a party or an affidavit to be filed by a party pursuant to an order under rule 8 may be made as follows:

- (a) by the party;
- (b) where the party is a person under disability, by the party's tutor;
- (c) where the party is a corporation or organisation by a member or officer of the corporation or organisation;
- (d) where the party is a body or persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;
- (e) where the party is the Crown or an officer of the Crown suing or being sued in an official capacity, by an officer of the Crown.

(2) Where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies and the affidavit is to be filed and served pursuant to an order, the Court may:

- (a) specify by name or otherwise the person to make the affidavit; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

Division 2—Inspection

Document referred to in pleading or affidavit

10. (1) Where a pleading or affidavit filed by a party refers to a document, any other party may, by notice to produce served on that party, require the party to produce the document for inspection.

(2) Where a notice to produce a document is served on a party under subrule (1), the party shall, within 4 days after that service, serve on the party requiring production a notice:

- (a) appointing a time within 7 days after service of the notice under this subrule when, and a place where, the document may be inspected;
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in the party's possession, custody or power and stating to the best of the party's knowledge information and belief where the document is and in whose possession, custody or power it is.

Order for production

11. (1) Where:

- (a) it appears from a list of documents filed by a party under this Order that any document is in the party's possession, custody or power;
- (b) a pleading or affidavit filed by a party refers to any document; or
- (c) it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that any document relating to any matter in question in the proceeding is in the possession, custody or power of a party;

the Court may, subject to any question of privilege which may arise, order the party:

- (d) to produce the document for inspection by any other party at a time and place specified in the order; or

- (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

(2) An affidavit made pursuant to an order under paragraph (1) (e) shall, unless the Court otherwise orders, state whether there are in the document copied any and, if so, what erasures, interlineations or alterations.

Copying of documents produced for inspection

12. A party to whom a document is produced for inspection under this Order may, at his or her own expense, make copies, including photocopies, of the document subject to any reasonable conditions which may be imposed by the party producing the document.

Production to the Court

13. (1) The Court may, at any stage of any proceeding, order any party to produce to the Court any document in the party's possession, custody or power relating to any matter in question in the proceeding.

(2) Upon production of a document to the Court pursuant to an order under subrule (1), the Court may deal with the document in such manner as the Court thinks fit.

Inspection to decide objection

14. Where an application is made for an order under rule 11 for the production of any document for inspection by another party or for an order under rule 13 for the production of any document to the Court and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

Division 3—General

Order only if necessary

15. The Court shall not make an order under this Order for the filing or service of any list of documents or affidavit or other document or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

Procedure on Default

16. (1) Where a party does not file or serve a list of documents or affidavit or other document or does not produce any document as required by or under this Order, any other party may move the Court on notice:

- (a) if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant in the proceeding;
- (b) if the party in default is a respondent—for judgment or an order against the respondent; or
- (c) for an order that such document, affidavit or list of documents be filed, served or produced within the time limited in the order.

(2) The Court may make an order of the kind mentioned in subrule (1) or any other order or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

(3) This rule does not limit the powers of the Court to punish for contempt.

Public interest

17. This Order does not affect any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

Use of documents

18. Any order or undertaking, whether express or implied, not to use a document for any purpose other than those of the proceedings in which it is disclosed shall cease to apply to such a document after it has been read to or by the Court or referred to, in open Court, in such terms as to disclose its contents unless the Court otherwise orders on the application of a party, or of a person to whom the document belongs.

ORDER 15A**PRELIMINARY DISCOVERY AND DISCOVERY FROM
NON-PARTY****Interpretation**

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

“**applicant**” means applicant for an order under this Order;

“**description**” includes the name, and (as applicable) the place of residence, registered office, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding, and also whether that person is an individual or a corporation;

“**possession**” means possession, custody or power.

Privilege

2. An order made under this Order does not operate to require the person against whom the order is made to produce any document which, on the ground of privilege, the person could not be required to produce:

- (a) in the case of an order under rule 3 or rule 6, if the applicant had commenced a proceeding against the person; or

- (b) in the case of an order under rule 5 or rule 7, if the applicant had made the person a party to the proceeding; or
- (c) in the case of an order made under rule 8, if the person had been served with a subpoena for production of the document at the trial of the proceeding.

Discovery to identify a respondent

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

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

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

(3) Where the Court makes an order under paragraph (2) (a), it may:

- (a) order that the person or corporation against whom or which the order is made shall produce to the Court on the examination any document or thing in the person’s or its possession relating to the description of the person concerned; and
- (b) direct that the examination be held before a Registrar.

Conduct Money

4. Order 27 rule 3 as to conduct money applies in relation to an order under paragraph 3 (2) as it applies in relation to a subpoena.

Party an applicant

5. Rule 3 applies, with any necessary modification, where the applicant is a party to a proceeding and wishes to make in the proceeding against a person who is not a party a claim which could properly have been made in the proceeding had the person been a party.

Discovery from prospective respondent

6. Where:

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

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

Party an applicant

7. Rule 6 applies, with any necessary modification, where the applicant is a party to a proceeding and there is reasonable cause to believe that the applicant has or may have the right to obtain

against a person who is not a party relief which the applicant could properly have claimed in the proceeding had the person been a party.

Discovery from non-party

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

Procedure

9. (1) An application under rule 3 shall, unless a Judge otherwise orders, be served personally on the person concerned.

(2) An application under rule 6 shall, unless a Judge otherwise orders, be served personally on the person mentioned in paragraph (a) of that rule.

(3) An application under any rule of this order shall be supported by an affidavit:

- (a)** stating the facts upon which the applicant relies; and
- (b)** specifying or describing the documents or any class of documents in respect of which an order is sought.

(4) A copy of the supporting affidavit shall be served on every person upon whom the notice of motion is served.

Inspection of documents

10. Division 2 of Order 15 applies, with any necessary modification, to the inspection of the documents referred to in a list of documents made and served in accordance with this Order as if the list were a list of documents as mentioned in Order 15 rule 2.

Costs

11. (1) Subject to section 347 of the Act, on an application under this Order the Court may make an order for the costs and expenses of the applicant, of the person against whom the order is made or sought and of any party to the proceeding, including the costs of making and serving any list of documents, of producing any document for inspection in accordance with rule 10 or of complying with any order made under Division 2 of Order 15 including such expense or compensation as would have been allowable under Order 27 rule 4A.

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

Power to order inspection, preservation etc. of property

12. On an application under this Order the Court may also make an order providing for any one or more of the following matters:

- (a) the inspection, measurement, photocopying, preservation, custody and detention of property:
 - (i) that relates to the subject matter of the proceedings; or
 - (ii) as to which any question arises in the proceedings; and
- (b) in respect of that property:
 - (i) taking of samples;
 - (ii) observation;
 - (iii) carrying out of any experiment;
 - (iv) making, playing or screening of tape recordings and films and other means of recording sight or sound;
 - (v) making and reproducing or displaying other instrumental recordings and tracings;

with respect to any such property mentioned in paragraph (a).

ORDER 16

INTERROGATORIES

Interrogatories by Notice—Form 23

1. (1) The Court may, in its discretion, give leave to any party to file and serve upon any other party, within the period limited by the Court for this purpose, a notice requiring the party served to answer interrogatories relating to any matter in question between the interrogating party and the party served.

(2) The notice to answer interrogatories must be made in accordance with Form 23.

Answers pursuant to notice

2. (1) A party required to answer interrogatories must do so within such time, not being less than 14 days after service on the party of the notice under rule 1, as may be specified in the notice.

(2) Subject to rule 3, a party answers interrogatories by filing and serving on the party requiring the answers:

- (a) a statement in accordance with rule 6; and
- (b) an affidavit verifying that statement.

Limitation of interrogatories by notice

3. (1) The Court may, before or after any party has been required under rule 1 to answer interrogatories, order that answers to interrogatories under rule 2 by any party shall not be required, or shall be limited to such interrogatories or classes of interrogatories, or to such of the matters in question in the proceeding, as may be specified in the order.

(2) Where any party has been required under rule 1 to answer any interrogatory, the Court may, on application by the party,

order that an answer to that interrogatory shall not be required or may limit the extent to which an answer shall be required.

(3) The Court shall, on application, make such orders under subrules (1) and (2) as are necessary to prevent unnecessary interrogatories or unnecessary answers to interrogatories.

Co-respondents

4. Where an applicant claims relief against two or more respondents, and requires any respondent to answer interrogatories under rule 2, that respondent shall serve his or her statement in answer and affidavit not only on the applicant but also on each other respondent who has entered an appearance.

Order to answer

5. The Court may, at any stage of the proceeding, order any party to answer interrogatories either in accordance with rule 2 or in accordance with such directions as the Court may give.

Contents of statement—Form 24

6. (1) A statement in answer to interrogatories required by or under this Order must be in accordance with Form 24 and, unless the Court otherwise orders, conform to the requirements of this rule.

(2) A statement in answer to interrogatories shall deal with each interrogatory specifically either:

- (a) by answering the substance of the interrogatory without evasion; or
- (b) by objecting to answer the interrogatory on one or more of the grounds mentioned in subrule (3) and briefly stating the facts on which the objection is based.

(3) Subject to subrule (4), a party may object to answering any interrogatory on the following grounds but no other:

- (a) where the answering is not required by an order, that the interrogatory does not relate to any matter in question between that party and the party requiring the answer;
- (b) that the interrogatory is vexatious or oppressive; and
- (c) privilege.

(4) On an application under subrule 3 (2) or rule 5 in respect of any interrogatory, the Court may require the applicant to specify on what grounds he or she objects to answering that interrogatory and may determine the sufficiency of the objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answering that interrogatory in a statement in answer to interrogatories.

Deponent—Form 24

7. (1) Subject to subrule (2), an affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

- (a) by the party;
- (b) where the party is a person under disability, by the party's tutor;
- (c) where the party is a corporation or organisation, by a member or officer of the corporation or organisation;
- (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;
- (e) where the party is the Crown or an officer of the Crown suing or being sued in an official capacity, by an officer of the Crown.

(2) Where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies and the affidavit is to be filed and served pursuant to an order, the Court may, in relation to any or all of the interrogatories:

- (a) specify by name or otherwise the person to make the affidavit; or

- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies, the party shall, in relation to each interrogatory, choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

Insufficient answer

8. (1) Where a party fails to answer an interrogatory sufficiently, the Court may:

- (a) if the party has made an insufficient answer, order the party to make a further answer verified by affidavit in accordance with rule 7; or
- (b) order the party or any of the persons mentioned in paragraphs 7 (1) (b) to (d) as the nature of the case requires, to attend to be orally examined.

(2) Subrule (1) does not limit the powers of the Court under rule 9.

Procedure on Default

9. (1) Where a party does not comply with an order under rule 5 or rule 8 to file or serve a statement or affidavit, any other party may move the Court on notice:

- (a) if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant in the proceeding;
- (b) if the party in default is a respondent—for judgment or an order against the respondent; or
- (c) for an order that the statement or affidavit be filed or served within the time limited in that order.

(2) The Court may make an order of the kind mentioned in subrule (1) or any other order or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

(3) This rule does not limit the powers of the Court to punish for contempt.

Answers as evidence

10. (1) A party may tender as evidence:

- (a) one or more answers to interrogatories without tendering the others; or
- (b) part of an answer to an interrogatory without tendering the whole of the answer.

(2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may:

- (a) look at the whole of the answers; and
- (b) if it appears to the Court that any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

Public interest

11. This order does not affect any rule of law which authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

ORDER 17**INSPECTION OF PROPERTY****Inspection of property**

1. (1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceeding, make orders for:

- (a) the inspection of any property;
- (b) the taking of samples of any property;
- (c) the making of any observation of any property;
- (d) the trying of any experiment on or with any property;
- (e) the observation of any process; or
- (f) the copying of any document or the copying, transcribing or production of any material, data or information stored or recorded by mechanical or electronic means.

(2) Any order under subrule (1) may authorise any person to enter any land or to do any other thing for the purpose of getting access to the property.

(3) In this rule “**property**” includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

Application and service

2. An order referred to in rule 1 shall not be made against a party or a person not being a party to the proceeding unless an application for such order is served upon that person or the Court or a Judge orders that such service be dispensed with.

View

3. The Court may inspect, or, at a trial, may authorise a jury to inspect, any place, process or thing with respect to which any question arises in the proceedings.

ORDER 18

ADMISSIONS

Voluntary admission

1. (1) A party to a proceeding may, by notice served on another party, admit, in favour of the other party but for the purpose of the proceeding only, the facts specified in the notice.

(2) A party may, with the leave of the Court, withdraw an admission under subrule (1).

Notice to admit facts—Form 25

2. (1) A party to a proceeding may require another party, by notice in accordance with Form 25 served on the other party to admit, for the purpose of the proceeding only, the facts or documents specified in the notice.

Form 26

(2) If, as to any fact or document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit facts or documents, a notice in accordance with Form 26 disputing that fact or document, that fact or document shall, for the purpose of the proceeding, be admitted by the party on whom the notice to admit facts or documents is served in favour of the party serving the notice.

(3) A party may, with the leave of the Court, withdraw an admission under subrule (2).

(4) Where a party serves a notice disputing a fact or a document under subrule (2), and afterwards that fact or the authenticity of the document is proved in the proceeding, the party shall, if the Court so orders, pay the cost of proof.

Admission of documents discovered

3. (1) Where a list of documents is served on a party under Order 15 (which relates to discovery and inspection of documents), and inspection of any document specified in the list is permitted to that party under that Order, then, subject to subrule (2), the following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders:

- (a) that the document, if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party:

- (a) has by a pleading or affidavit denied the authenticity of a document; or
- (b) within 14 days after the time limited under Order 15 for inspection of a document, serves on the party giving inspection a notice of dispute about the authenticity of the document;

subrule (1) does not work an admission by the first-mentioned party as to that document.

(3) Subrules (1) and (2) apply in relation to an affidavit made in compliance with an order under Order 15, rule 8 (which relates to discovery of particular documents) as they apply in relation to a list of documents served under that Order.

Judgment on admissions

4. (1) Where admissions are made by a party, whether by pleading or otherwise, the Court may, on the application of any other party, pronounce any judgment or make any order to which the applicant is entitled on the admissions.

(2) The Court may exercise its powers under subrule (1) notwithstanding that other questions in the proceeding have not been determined.

ORDER 19

MOTIONS

Application

1. (1) Any interlocutory or other application in any proceeding which has already been commenced in accordance with these Rules shall be made by motion.

(2) The motion shall be supported by affidavit setting forth the facts relied upon.

(3) Such application may be made to the Court or a Judge.

Notice of motion—Form 27

2. (1) Subject to subrule (2), a person shall not move the Court or a Judge for any order unless before moving the party has filed notice of the motion and has served the notice on each interested party who has an address for service in the proceeding.

(2) A person may move the Court or a Judge without previously filing or serving notice of the motion:

- (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant;
 - (b) where each party interested, other than the applicant, consents to the order;
 - (c) where under these Rules the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion; or
 - (d) where the Court or a Judge dispenses with the requirements of subrule (1).
- (3) Notice of a motion shall:**
- (a) state the date and time when, and the place where, the motion is to be made;
 - (b) where the Court or a Judge makes an order under rule 3, bear a note of the order made;
 - (c) state concisely the nature of the order which is sought; and
 - (d) name each party affected by the order which is sought.

Time for service of notice

3. Where a notice of motion is required to be served, it shall, unless the Court or a Judge otherwise orders, be served not less than three days before the date fixed for the motion.

Service

4. Where notice of a motion is to be served on a person who has not entered an appearance, the notice shall, unless the Court or a Judge otherwise orders, be served personally.

Absence of party

5. The Court or a Judge may hear and dispose of a motion in the absence of any party:

- (a) where service of notice of the motion on the absent party is not required by the Rules or by an order; or
- (b) where notice of the motion has been duly served on the absent party.

Further hearing

6. (1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day:

- (a) the Court or a Judge may hear and dispose of the motion on any later day fixed by the Court or Judge; and
- (b) subject to subrule (2), filing or service of further notice of motion shall not be required.

(2) Paragraph (1) (b) does not have effect:

- (a) where the Court or a Judge directs the filing or service of a further notice of motion; or
- (b) where service is required on a party on whom notice of the motion has not previously been served.

ORDER 20

SUMMARY DISPOSAL AND STAY OF PROCEEDINGS

Summary Judgment

1. (1) Where, in relation to the whole or any part of the applicant's claim for relief, there is evidence of the facts on which the claim or part is based, and:

- (a) there is evidence given by the applicant or by some responsible person that, in the belief of the person giving the evidence, the respondent has no defence to the claim or part; or
- (b) the respondent's defence discloses no answer to the applicant's claim or part;

the applicant may move on notice for such judgment for the applicant on that claim or part and the Court may pronounce such judgment and make such orders as the nature of the case requires.

(2) Where the Court pronounces judgment against a party under this rule, and that party claims relief against the party obtaining the judgment, the Court may stay execution on, or other enforcement of, the judgment until determination of the claim by the party against whom the judgment is directed to be entered.

(3) The Court in any application under this rule may give such directions, whether for amendment of the pleadings or otherwise, as may be thought fit.

Frivolity

2. (1) Where in any proceeding it appears to the Court that in relation to the proceeding generally or in relation to any claim for relief in the proceeding:

- (a) no reasonable cause of action is disclosed;
- (b) the proceeding is frivolous or vexatious; or
- (c) the proceeding is an abuse of the process of the Court;

the Court may order that the proceeding be stayed or dismissed generally or in relation to any claim for relief in the proceeding.

(2) The Court may receive evidence on the hearing of an application for an order under subrule (1).

No demurrer

3. No proceeding by way of demurrer shall be brought on any pleading, but a party seeking to challenge the adequacy in whole or in part of any pleading, may apply for an order under paragraph 1 (1) (b) or paragraph 2 (1) (a) of this Order or under Order 11, rule 16.

Residue of proceedings

4. (1) Where in any proceeding:

(a) a party applies under this Order for:

(i) judgment under rule 1; or

(ii) an order for stay or dismissal under rule 2; and

(b) the proceeding is not wholly disposed of by judgment or dismissal or the proceeding is not wholly stayed;

the proceeding may be continued as regards any claim or part of a claim not disposed of by judgment or dismissal and not stayed.

(2) On the hearing of an application to which subrule (1) applies, the Court may give directions for the further conduct of the proceeding.

Application by motion

5. A party applying for an order that a proceeding be stayed or dismissed or for judgment in his or her favour under any provision of these Rules, shall make the application by motion upon notice.

ORDER 21**VEXATIOUS LITIGANTS****Vexatious litigant**

1. Upon the application of:

- (a) the Attorney-General or Solicitor-General of the Commonwealth or of a State;
- (b) the Australian Government Solicitor or the Crown Solicitor of a State; or
- (c) the Registrar of the Court;

where any person (in this rule called the vexatious litigant) habitually and persistently and without any reasonable ground institutes a vexatious proceeding in the Court, and whether against the same person or against different persons, the Court may order that the vexatious litigant shall not, without leave of the Court, institute any proceeding in the Court and that any proceeding instituted by the vexatious litigant in the Court before the making of the order shall not continue without leave of the Court.

Vexatious proceeding against a person

2. Where any person (in this rule called the vexatious litigant) habitually and persistently and without any reasonable ground institutes a vexatious proceeding against any person (in this rule called the person aggrieved) in the Court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without leave of the Court, institute any proceeding against the person aggrieved in the Court and that any proceeding instituted by the vexatious litigant against the person aggrieved in the Court before the making of the order shall not continue without leave of the Court.

Application

3. A person seeking an order under rule 1 or rule 2 shall proceed by application.

Rescission or variation of order

4. The Court may from time to time rescind or vary any order made by it under rule 1 or 2.

Leave to continue proceeding

5. Where the Court has made an order under rule 1 or rule 2 against any person, the Court shall not give the person leave to institute or continue any proceeding unless the Court is satisfied that the proceeding is not an abuse of process and that there is prima facie ground for the proceeding.

ORDER 22

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance—Form 28

1. A party who has entered an appearance may withdraw the appearance at any time with the leave of the Court.

Discontinuance—Form 29

2. (1) Subject to subrule (2), a party making a claim for relief may discontinue a proceeding so far as concerns the whole or any part of that claim for relief:

- (a) at any time before the directions hearing appointed in the application—in accordance with Form 29, without the leave of the Court or the consent of any other party;

- (b) if after the directions hearing, the proceeding continues on pleadings but the pleadings are not closed—without the leave of the Court or the consent of any other party;
- (c) if judgment has not been entered—with the consent of all the parties; and
- (d) at any time—with the leave of the Court.

(2) A party who represents any other person in the proceeding must not discontinue a claim for relief under subrule (1) without the leave of the Court.

Costs

3. (1) Notwithstanding the filing of a notice of discontinuance pursuant to rule 2, application may be made to the Court on motion for an order for payment of costs.

(2) The Court may determine the application and, subject to section 347 of the Act, make such order as it considers appropriate.

Withdrawal of defence reply etc.—Form 30

4. (1) A party raising any matter in a defence or subsequent pleading may withdraw that matter at any time in accordance with Form 30.

(2) Subrule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party.

Mode of discontinuance or withdrawal

5. (1) A discontinuance or withdrawal under rule 2, 3 or 4 must be made by filing a notice stating the extent of the discontinuance or withdrawal.

(2) Where the discontinuance or withdrawal is by consent, the notice under subrule (1) must bear the consent of each consenting party.

Service

6. A party filing a notice under rule 5 must, on the day of filing, serve the notice on each other party.

Effect of discontinuance

7. A discontinuance under this Order as to any cause of action shall not, subject to the terms of any leave to discontinue, be a defence to a proceeding for the same, or substantially the same, cause of action.

Stay to secure costs

8. Where:

- (a) a party discontinues proceedings so far as concerns the whole or any part of any claim for relief;
- (b) the party is liable to pay the costs of another party occasioned by the proceedings; and
- (c) before payment of the costs, the party brings against that other party a further proceeding on the same or substantially the same cause of action as that on which the discontinued proceeding was brought;

the Court may stay the further proceeding until those costs are paid.

ORDER 23**PAYMENT INTO COURT****Interpretation**

1. In this Order, unless the context or subject matter otherwise indicates or requires:

“**cause of action**” means a cause of action for the recovery of debt or damages; and

“**trial**” includes the hearing of a motion for judgment.

Bringing money into Court

2. (1) A respondent may from time to time:

- (a) bring money into Court in answer to any one or more causes of action on which an applicant claims; and
- (b) bring money into Court in addition to money previously brought in under this rule.

(2) A respondent may bring money into Court under this Order by paying the money into Court or by filing a security in accordance with rule 15.

Respondent to cross-claim

3. A respondent to a cross-claim may not bring money into Court in answer to a cause of action in respect of which the respondent may, before the trial, make an offer of contribution as mentioned in Order 5, rule 17.

Payment into Court not an admission

4. Payment of money into Court shall not be deemed an admission of liability.

Where tender before action pleaded

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

Notice of deposit—Form 31

6. (1) On bringing money into Court under this Order, the respondent must file a notice of deposit in accordance with Form 31.

(2) Where an applicant claims on two or more causes of action and a respondent brings money into Court under this Order, the respondent must, in the notice of deposit:

- (a) specify the cause or causes of action in answer to which the money is brought in; and
- (b) if the respondent allots part of the money to any cause or causes of action—specify the amount of that part and the cause or causes of action to which he or she allots that part.

Order to allot

7. Where, before the beginning of the trial, a respondent brings money into Court or allots money under this Order in answer to two or more causes of action, the Court may order the respondent specifically to allot the money amongst the various causes of action and to file an amended notice of deposit accordingly.

Abandonments of cross-claim

8. Where a respondent:

- (a) cross-claims against an applicant on any cause of action;
- (b) brings money into Court under this Order; and
- (c) in bringing the money into Court takes into account a cause of action against the applicant on the cross-claim with a view to its abandonment in case the applicant accepts the money;

the respondent shall, in the notice of deposit, specify the cause of action on the cross-claim thus taken into account.

Withdrawal by respondent—Form 32

9. (1) Subject to subrule (2), where:

- (a) money brought into Court by a respondent is not accepted in accordance with rule 10; and
- (b) leave of the Court is obtained;

the respondent may withdraw the whole or any part of money paid into Court or any security filed by the respondent in accordance with Form 32.

(2) A respondent may not make a withdrawal of any money after the money has been accepted by the applicant.

(3) A withdrawal under subrule (1) shall be made by filing a notice of withdrawal of deposit.

(4) On the filing of a notice of withdrawal of deposit under subrule (1) the respondent shall be entitled to receive payment of the money or delivery of the security as the case may be.

Acceptance by applicant—Forms 33 and 34

10. (1) An applicant may, within the time fixed by subrules (2), (3) and (4), accept money brought into Court in satisfaction of the cause of action in answer to which the money is brought in, as against the respondent bringing the money into Court.

(2) Where the notice of deposit or last notice of deposit, in answer to a cause of action is filed before the beginning of the trial, the applicant may accept the money in satisfaction of the cause of action within 14 days after service on him or her of the notice of deposit, or last notice of deposit, but before the beginning of the trial, by filing a notice of acceptance in accordance with Form 33.

(3) Where the notice of deposit, or last notice of deposit in answer to a cause of action is filed after the beginning of the trial, or

a respondent, by notice, in accordance with Form 34, served on the applicant after the trial begins, confirms a notice of deposit, the applicant may, subject to subrule (4), accept the money in satisfaction of the cause of action within two days after service on him or her of the notice or the last notice, by announcement to the Court during the trial or by filing a notice of acceptance in accordance with Form 33.

(4) An applicant shall not accept money in a case to which subrule (3) applies:

- (a) where the trial is before a jury—after the Judge begins to sum up to the jury; or
- (b) in any other case—after the Judge gives his or her decision or begins to give his or her reasons for decision.

(5) A respondent who serves notice of confirmation under subrule (3) shall file the notice on the day of service.

(6) An applicant who accepts money by announcement to the Court under subrule (3) shall file a notice of acceptance in the prescribed form on the day of the announcement.

(7) Where an applicant who claims on more than one cause of action accepts money brought into Court in answer to some one or more but not all of the causes of action, he or she may, by filing a notice (which may be combined with a notice of acceptance), abandon all causes of action other than the cause of action to which the acceptance relates.

(8) Where an applicant who claims against two or more respondents on a cause of action against them jointly accepts money brought into Court by one or more but not all of those respondents in answer to that cause of action, he or she may, by filing a notice (which may be combined with a notice of acceptance), abandon any cause or causes of action against the other or all the others of those respondents.

(9) An applicant who accepts money under this rule shall, subject to rule 13, be entitled to receive payment of the money without any order.

Effect of acceptance

11. (1) On an applicant accepting money under rule 10 in satisfaction of a cause of action as against any respondent bringing money into Court, the proceeding shall be stayed in relation to:

- (a) that cause of action, against that respondent;
- (b) any alternative cause of action against that or any other respondent;
- (c) any cause of action abandoned under subrule 10 (7) or subrule 10 (8); and
- (d) where the respondent, in bringing the money into Court, has taken into account a cause of action on a cross-claim as mentioned in rule 8, that cause of action on the cross-claim as against the applicant.

(2) Where a respondent brings money into Court in answer to a cause of action, and the applicant accepts the money in satisfaction of the cause of action as against that respondent, the liability of any other person (whether a party to the proceeding or not) jointly with that respondent on the cause of action:

- (a) shall be satisfied in the amount of the money accepted; but
- (b) shall not be discharged by the acceptance except to the extent of that satisfaction.

Withdrawal of acceptance—Form 35

12. (1) An applicant may, by filing a notice in accordance with Form 35, withdraw his or her acceptance of money brought into Court:

- (a) where all or any of the money has been brought into Court by the filing of a security and the money accepted is not paid into Court within 7 days after service of

notice of the acceptance on the respondent filing the security; or

(b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceeding taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may:

- (a) give directions under subrule (2);
- (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
- (c) give directions for the further conduct of the proceeding.

Order for payment out after acceptance

13. Where an applicant accepts money in satisfaction of a cause of action, the money shall not be paid out except by order of the Court in the following cases:

- (a) if the applicant claims on the cause of action against two or more respondents and any of those respondents does not join in bringing the money into Court and does not consent to the payment out;
- (b) if the applicant claims on an alternative cause of action against a respondent who does not join in bringing the money into Court and does not consent to the payment out;
- (c) if the money is brought into Court in answer to a cause of action to which the respondent bringing the money into Court pleads or otherwise properly raises a defence of tender before the commencement of the proceeding;
- (d) if the applicant accepts the money after the beginning of the trial;
- (e) if the applicant represents other persons pursuant to Order 6, rule 13; or
- (f) if the applicant is a person under disability.

Non-disclosure

14. (1) Subject to subrules (2) and (3), the fact that money has been brought into Court must not:

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

(2) Subrule (1) does not apply where the money has been brought into Court in answer to a cause of action to which the respondent pleads or otherwise properly raises a defence of tender before commencement of the proceeding.

(3) Paragraph (1) (b) does not apply:

- (a) where the applicant accepts the money pursuant to rule 10; or
- (b) where the disclosure is necessary for the purpose of an application under this Order.

Security—Form 36

15. (1) A security filed for the purpose of bringing money into Court under this Order must be an instrument, in accordance with Form 36 and approved by the Registrar, by which an authorised person (whether a party to the proceeding or not):

- (a) promises to observe the requirements of this Order with respect to a specified sum of money (in this rule called **“the money secured”**); and
- (b) gives an address for service.

(2) A person who is a licensed or authorised insurer under legislation of any State or Territory providing for workers' compensation or the insurance of motor vehicles against third party claims, shall, unless the Court otherwise orders, be an authorised person for the purposes of this rule.

(3) A person approved by the Court shall be an authorised person for the purposes of this rule.

(4) A person giving security under this rule may pay the money secured into Court and thereupon:

- (a) subject to any order or judgment for interest under this rule the person shall have no further liability on the security in the proceeding; and
- (b) the money paid in shall, unless the Court otherwise orders, be dealt with as if brought into Court in place of the security by the party filing the security.

(5) Where a security has been filed, the Court may order the person giving the security to pay, within a time specified in the order, the whole or any part of the money secured into Court or to such person as the Court may direct.

(6) If a person giving a security fails to comply with an order under subrule (5), the Court may:

- (a) order the person giving the security to pay into Court, or pay to such person as the Court may direct, interest on the money unpaid until payment at such rate not exceeding 10 per cent yearly as the Court may determine;
- (b) in addition to any order as to costs which the court may make, order the person giving the security to pay the costs of any party incurred or thrown away by reason of failure to comply with the order under subrule (5).

(7) The Court may pronounce such judgment as the nature of the case may require in favour of any party against the person giving the security for the whole or any part of any money secured or interest or costs the subject of an order under subrule (5) or subrule (6) or for costs.

(8) A party moving for an order or direction under any of subrules (5), (6) and (7) must serve notice of the motion on the person giving the security.

(9) A party filing a security must, on the day of filing, serve a copy of it on each party interested.

Service

16. A party filing a notice under this Order must, on the day of filing, serve the notice on each other party on whom the notice has not previously been served.

ORDER 24

EVIDENCE TAKEN IN AUSTRALIA OR ABROAD OR EVIDENCE TAKEN UNDER PART IIIB OF THE EVIDENCE ACT 1905

Order for examination of witness—Forms 37, 38 and 39

1. The Court may, for the purpose of proceedings in the Court, make orders:

- (a) for the examination of any person on oath before a Judge or before such other person as the Court may appoint as examiner at any place whether in or out of Australia; or
- (b) for the sending of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.

1A. The Court may in its discretion take evidence from a witness by telephone or video link or other similar means in accordance with such procedures as the Court directs.

Letter of Request

2. (1) Upon the making of an order under paragraph 1 (b) or under paragraph 7V (1) (c) of the *Evidence Act 1905* for the sending of a letter of request, the party obtaining the order must:

- (a) lodge with the Registrar:

- (i) a form of the appropriate letter of request;
 - (ii) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letters of request; and
 - (iii) where English is not an official language of the country to whose judicial authorities the letter of request is to be sent, a translation of each of the documents mentioned in subparagraph (i) and (ii) in an official language of that country appropriate to the place where the evidence is to be taken; and
- (b) file:
- (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) an undertaking by the party obtaining the order or the party's solicitor or authorised representative to be responsible for all expenses incurred by the Court or by any person at the request of the Court in respect of the letter of request and, on being given notice of the amount of any such expenses, to pay the amount to the Registrar.

(2) A translation lodged under subparagraph (1) (a) (iii) must be certified by the person making it to be a correct translation, and the certificate must state the translator's full name and address and qualifications for making the translation.

Procedure where orders are made under paragraph 7V (1) (a) or (b) of the Evidence Act 1905

2A. Where an order is made pursuant to paragraph 7V (1) (a) or (b) of the *Evidence Act 1905*, rules 3—11 apply, *mutatis mutandis*, subject to any directions which may be given by the Court under subsection 7V (3) of that Act.

Documents for Examiner

3. (1) The party obtaining an order for examination before an examiner under paragraph 1 (a) or under paragraph 7V (1) (a) or (b) of the *Evidence Act 1905* shall furnish the examiner with copies of such of the documents in the proceeding as are necessary to inform the examiner of the questions to which the examination is to relate.

(2) Where the documents in the proceeding are not sufficient to inform the examiner of the questions to which the examination is to relate the Court shall, in the order for examination or in a later order, state the question to which the examination is to relate.

Appointment for examination

4. (1) Unless otherwise ordered by the Court, the examiner must appoint a place and time for the examination.

(2) A time appointed by an examiner under subrule (1) shall, having regard to the convenience of the person to be examined and to the circumstances, be as soon as practicable after the making of the order.

(3) An examiner who appoints a time under subrule (1) must give notice of the appointment to the party obtaining the order and that party shall, not less than 3 days before the time appointed, give notice of the appointment to each other party.

Conduct of examination

5. (1) The examiner shall permit each party and each party's counsel and solicitor to attend the examination.

(2) Subject to this Order, the proceeding before the examiner shall be in accordance with the procedure of the Court.

(3) A person examined before an examiner may, unless the Court otherwise orders, be cross-examined and re-examined.

(4) The examination, cross-examination and re-examination of a person before an examiner shall, unless the Court otherwise orders, be conducted in like manner as at a trial.

(5) The examiner may put any question to a person examined before him or her as to:

- (a) the meaning of any answer made by that person; or
- (b) any matter arising in the course of the examination.

(6) The examiner may adjourn the examination from time to time or from place to place.

Examination of additional persons

6. The examiner may, with the consent in writing of each party to the proceeding, take the examination of any person in addition to the person named or provided for in the order for examination. If the examiner does so, he or she shall annex to the deposition of that person the consent of each of the parties.

Objection

7. If any person being examined before the examiner objects to answering any question or producing any document or thing:

- (a) the examiner shall state to the parties his or her opinion on, but shall not decide, the validity of the ground for the objection;
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) must be set out in the deposition of that person or in a statement attached to the deposition; and
- (c) the Court may, on motion by the person taking the objection or by any party, decide the validity of the ground for the objection.

Taking of depositions

8. (1) The deposition of a person examined before an examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner.

(2) The deposition must contain as nearly as may be the statement of the person examined.

(3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.

(4) Subject to subrules (2) and (3) and subject to paragraph 7 (b) the deposition need not set out every question and answer.

Authentication and filing

9. (1) The deposition of a person examined (or the shorthand notes of his or her examination) must be read to or by the person.

(2) The examiner must, if any party so requests, ask the person examined to sign his or her deposition.

(3) The examiner must authenticate the deposition by signing it.

(4) The examiner shall make on, or attach to, the deposition a note of the time occupied in the examination and the fees received by him or her in respect of the examination.

(5) The examiner must send the deposition to the Registrar and the Registrar shall file it in the proceeding.

(6) The examiner must, unless the Court otherwise orders, send the exhibits to the Registrar and the Registrar shall deal with the exhibits in such manner as the Court may direct.

Special report

10. (1) The examiner may make to the Court a special report with regard to an examination and with regard to the absence of any person from, or the conduct of any person at, the examination.

(2) The Court may direct such proceedings to be taken, or make such order, on the report as the Court thinks fit.

Default of witness

11. (1) If a person who has been required by subpoena to attend before an examiner, and refuses to be sworn for the purposes of the examination or to answer any lawful question, or to produce any document or thing, the examiner must, at the request of any party, give to that party a certificate, signed by the examiner, of the refusal.

(2) The Court may, upon the certificate being filed, and on motion by any party:

- (a)** order that person to be sworn, or to answer the question or to produce the document or thing as the case may be; and
- (b)** order that person to pay any costs occasioned by his or her refusal.

Order for payment of expenses

12. Where a party has given an undertaking as mentioned in subparagraph 2 (1) (b) (ii) and does not, within 7 days after service on the party of notice of the amount of the expenses concerned, pay the amount of the expenses to the Registrar, the Court may, on application by the Registrar:

- (a)** order the party to pay the amount of the expenses to the Registrar; and
- (b)** stay the proceeding until payment so far as concerns the whole or any part of any claim for relief by that party.

Perpetuation of testimony

13. (1) Witnesses shall not be examined to perpetuate testimony unless a proceeding has been commenced for the purpose.

(2) Any person who would, in the circumstances alleged by that person to exist, become entitled, upon the happening of any future event, to any property, the right or claim to which cannot be tried before the happening of the future event, may commence a proceeding to perpetuate any testimony which may be material for establishing the right or claim.

(3) A proceeding to perpetuate the testimony of witnesses shall not be set down for trial.

(4) Where a proceeding to perpetuate testimony touches any matter or thing in which the Crown may have an interest, the Attorney-General may be made a respondent.

(5) Where, pursuant to subrule (4), the Attorney-General is made a respondent to a proceeding to perpetuate testimony, a deposition taken in that proceeding shall not be inadmissible in other proceedings by reason that the Crown was not a party to the proceeding to perpetuate testimony.

(6) Subrule (2) does not affect the right of any person to commence a proceeding to perpetuate testimony in cases to which that subrule does not apply.

Exclusion of Evidence in Criminal Proceedings

14. This order does not affect the power of the Court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against a defendant.

ORDER 25

INTERIM ORDERS

Order before commencement of proceeding

1. In an urgent case, the Court or a Judge may, on the application of a person who intends to commence a proceeding:

- (a) grant an injunction;
- (b) appoint a receiver; or
- (c) make an order under rule 2;

to the same extent as if the applicant had commenced the proceeding and the application were made in the proceeding and whether or not the party against whom relief is sought has been given notice of the application.

Preservation of property

2. (1) In a proceeding concerning any property, or in a proceeding in which any question may arise as to any property, the Court or a Judge may make orders for the detention, custody, preservation or inspection of the property.

(2) An order under subrule (1) may authorise any person to enter any land or to do any other thing for the purpose of giving effect to the order.

(3) In a proceeding concerning the right of any party to a fund, the Court or a Judge may order that the fund be paid into Court or otherwise secured.

Disposal of personal property

3. Where, in a proceeding concerning any property (other than land) or in a proceeding in which any question may arise as to any property (other than land), it appears to the Court or a Judge that:

- (a) the property is of a perishable nature or is likely to deteriorate; or
- (b) for any other reason it is desirable that the property should be sold or otherwise disposed of;

the Court or the Judge may make an order for the sale or other disposal of the whole or any part of the property by such person, in such manner, and upon such terms (if any) as the Court or the Judge may direct.

Interim distribution

4. Where, in a proceeding concerning property, it appears to the Court or a Judge that the property is more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court or the Judge may allow any part of the property to be conveyed, transferred or delivered to any person having an interest in the property.

Interim income

5. Where, in a proceeding concerning property, it appears to the Court or a Judge that the whole or any part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceeding, the Court or a Judge may allow that income or part to be paid during such period as the Court may determine, to all or any of the persons having an interest in the income.

Payment before ascertainment of all persons interested

6. Where two or more persons are entitled to share in a fund, the Court or a Judge may order or allow immediate payment to any of those persons of that person's share without reserving any part of that share to meet the subsequent costs of ascertaining any other of those persons.

Terms: time for order

7. The Court or a Judge may make orders under this Order at any stage of the proceeding.

ORDER 26

RECEIVERS

Receiver and manager

1. (1) A party applying for an order for the appointment of a receiver under any Act, shall move the Court or a Judge for the order on notice, but in urgent cases may move *ex parte*.

(2) Unless the Court otherwise orders, a person appointed by the Court as a receiver shall have the powers of a receiver and manager.

Address for service

2. A receiver must, within 7 days after appointment, file a notice specifying an address for service.

Security—Form 40

3. (1) Where the Court appoints a receiver, the Court may give directions for the filing by the receiver of security in accordance with this rule.

(2) Where the Court directs the appointment of a receiver, then, unless the Court otherwise orders, a person must not be appointed receiver pursuant to the direction until the person has filed a security in accordance with this rule.

(3) A security to be filed in accordance with this rule must be a security approved by the Court, that the receiver will account for

what he or she receives as receiver and will deal with it as the Court may direct.

(4) Where a security has been filed under this rule, the Court may make orders for the vacation of the security.

Remuneration

4. A receiver shall be allowed such remuneration, if any, as may be fixed by the Court.

Accounts

5. (1) A receiver shall file accounts at such intervals or on such dates as the court may direct.

(2) The receiver must, on the day on which he or she files an account, obtain an appointment to pass the account and serve the account, with a note of the appointment, on each party interested who has an address for service in the proceeding.

(3) The receiver must, unless the Court otherwise orders, attend on the appointment to pass the account.

Default

6. (1) Where a receiver:

- (a) is required by these Rules or by an order or direction of the Court:
 - (i) to file any account or affidavit;
 - (ii) to attend on an appointment to pass his or her account; or
 - (iii) to do any other thing; and
- (b) does not carry out the requirement;

the Court may make such orders and give such directions as the Court thinks fit, including orders and directions for:

- (c) the discharge of the receiver;

- (d) the appointment of another receiver; and
- (e) the payment of costs.

(2) Without limiting subrule (1), where a receiver who is required by these rules or by an order or direction of the Court to pay into Court any sum shown by his or her account as due from him or her, does not carry out the requirement, the Court may charge the receiver with interest at the rate of 10 per cent yearly on that sum while in the receiver's possession.

(3) This rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

Powers

7. (1) The Court may authorise a receiver to do (either in the receiver's own name or in the name of the parties or any of them and either generally or in any particular instance) any act or thing which the parties or any of them might do if of full age and capacity.

(2) Subrule (1) has effect notwithstanding that the parties or any of them are not of full age and capacity.

(3) This rule does not limit the powers of the Court apart from this rule to authorise a receiver to do any act or thing.

Account on death

8. (1) Where a receiver in any proceeding dies, the Court may on motion in the proceeding, make such orders as the Court thinks fit for the filing and passing of accounts by the representatives of the deceased receiver or by any other person who has or has had possession or control of any property being subject to the receivership for the payment into Court of any amount shown to be due or for the delivery of any property being subject to the receivership.

(2) The Court shall not make any order under subrule (1) unless notice of the motion has been served on the representatives or any other person.

(3) Notice of a motion under this rule may be served in any manner in which a statement of claim may be served.

ORDER 27

SUBPOENAS

Interpretation

1. In this Order, unless the contrary intention appears:
“**person named**” means, in relation to a subpoena, the person to whom the subpoena is addressed;
“**subpoena for production**” means an order in writing requiring the person named to attend as directed by the order and produce a document or thing for the purpose of evidence;
“**subpoena to give evidence**” means an order in writing requiring the person named to attend as directed by the order for the purpose of giving evidence.

Power to issue

2. The Court may, in any proceeding, issue a subpoena to give evidence, or a subpoena for production, or a subpoena both to give evidence and for production in the prescribed form or in such other form as the Court may direct for the attendance of the person named before the Court or before any Judge, Judicial Registrar, officer, examiner or other person having authority to take evidence.

Conduct money

3. A person named shall be excused from complying with a subpoena requiring him or her to attend or produce any document or thing on any day on which his or her attendance is required unless a

sum sufficient to meet the person's reasonable expenses of complying with the subpoena in relation to that day is paid or tendered to him or her at the time of service of the subpoena or not later than a reasonable time before that day.

Production by non-party

4. (1) Where the person named in the subpoena for production of any document or thing, being a subpoena requiring attendance before the Court or a Judge, Judicial Registrar or officer of the Court, is not a party to the proceeding, the subpoena shall, unless the Court otherwise orders, permit the person to produce the document or thing to the Registrar at the Registry from which the subpoena was issued not later than the day before the first date on which his or her attendance is required, instead of attending and producing the document or thing as required by the subpoena.

(2) Where a document or thing is produced to the Registrar pursuant to subrule (1), the Registrar shall:

- (a)** give a receipt to the person producing the document or thing; and
- (b)** produce the document or thing as the nature of the case requires or as the Court may direct.

(3) This rule does not apply to so much of a subpoena as requires the person named to attend to testify in any proceeding.

Costs of Complying with Subpoena

4A. (1) Where a person named in a subpoena who is not a party to the proceeding incurs substantial expense or loss in complying with the subpoena the Court or a Judge may order that the party who requested the issue of the subpoena pay to that person, in addition to any amount which the person served with the subpoena is entitled to be paid pursuant to rule 3, an amount to compensate the person for such expense or loss as is reasonably incurred or lost by that person in complying with the subpoena.

(2) Where an order is made under subrule (1) the Court or a Judge shall either fix the amount or direct that the amount shall be fixed by the taxing officer.

(3) The provisions of Order 62 shall apply *mutatis mutandis* to any taxation under this rule.

Banker's books

5. (1) Where, in any proceeding, the person named in the subpoena is an officer of a bank, and the bank is not a party to the proceeding, and the subpoena requires the officer to produce any banker's book, the contents of which can be proved under an enactment of the State or Territory in which the proceeding is pending by means other than the production of the book, the subpoena shall, unless the Court otherwise orders, expressly permit the officer to produce proof of the relevant entries in accordance with that enactment, instead of producing the banker's book.

(2) The Registrar issuing a subpoena shall not be concerned to enquire whether subrule (1) applies to the subpoena but the Court may set aside as irregular a subpoena which does not comply with subrule (1).

Issue of Subpoena

6. (1) On request by a party, the Registrar shall, unless the Court otherwise orders, issue a subpoena to give evidence or a subpoena for production or a subpoena for both testimony and production.

(2) A subpoena shall be issued under seal.

(3) A party requesting the issue of a subpoena shall file a copy of the subpoena.

(4) Subpoenas must be in accordance with Form 41, 42 or 43.

(5) Subrule (1) applies whether or not the proceedings were commenced in or transferred to the Registry to which the request is directed.

(6) If the Registrar is of the opinion that the issue of a subpoena may be an abuse of the process of the Court or be frivolous or vexatious, he or she may refer the request to a Judge for directions.

Document or thing in custody of a court

7. (1) The Registrar must not issue a subpoena for production of any document or thing in the custody of the Court or another court.

(2) A party desiring the production of a document or thing in the custody of another court must request the Registrar to proceed under subrule (3).

(3) On the receipt of a request under subrule (2), the Registrar must request the court holding the document or thing to send it to the Registrar.

(4) The Registrar must produce the document or thing as the nature of the case requires or as the Court may direct.

Service

8. (1) Service of a subpoena must be effected in accordance with this rule and not otherwise.

(2) Service of a subpoena may be effected by handing it to the person named.

(3) If, on tender of a subpoena to the person named, the person refuses to accept it, the subpoena may be served by putting it down in his or her presence after he or she has been told of the nature of the subpoena.

(4) Where the person named in a subpoena is a party and has a solicitor or authorised representative in the proceeding, the subpoena may, with the consent of the solicitor or authorised representative, be served on the person named by leaving it at the person's address for service.

(5) A subpoena shall not be enforced pursuant to Order 37 unless service of it has been effected in accordance with this rule.

Setting aside

9. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part.

(2) Notice of a motion under subrule (1) must be filed and must be served on the party on whose request the subpoena was issued.

ORDER 28

SECURITY FOR COSTS

Interpretation

1. In this Order:

- (a) references to an applicant extend to any person who makes a claim for relief in any proceedings; and
- (b) references to a respondent extend to any person against whom a claim for relief is made in any proceeding.

Application

2. (1) An application that an applicant shall provide security for costs must be made by motion upon notice.

(2) The notice of motion must be supported by an affidavit stating the material facts and the grounds upon which security for costs is sought.

Cases for security

3. Where, in any proceeding, it appears to the Court on the application of a respondent that a proceeding may have been instituted vexatiously or without reasonable cause and:

- (a) that an applicant is ordinarily resident outside Australia;
- (b) that an applicant is suing, not for the applicant's own benefit, but for the benefit of some other person and there is reason to believe that the applicant will be unable to pay the costs of the respondent if ordered to do so;
- (c) subject to subrule (2), that the address of an applicant is not stated or is mis-stated in his or her originating process; or
- (d) that an applicant has changed address after the commencement of the proceeding with a view to avoiding the consequences of the proceeding;

the Court may order that applicant to give such security as the Court thinks fit for the costs of the respondent of and incidental to the proceeding.

Manner of giving security

4. Where the Court orders an applicant to give security for costs, the security must be given in such manner, at such time, and in such terms (if any), as the Court may by order direct.

Stay or dismissal

5. (1) Where the court orders that the applicant provide security for costs, it may order:

- (a) that the proceeding on any claims by the applicant for relief be stayed until security is provided; or
- (b) that if the applicant fails to comply with the order to provide security within the time limited in the order, the proceeding be thereafter stayed or dismissed.

(2) Subject to subrule (1), the Court may set aside or vary any order made under this Order.

(3) Where a proceeding stands dismissed pursuant to an order under this Order, that order shall not be set aside or varied except in special circumstances.

Saving

6. This Order does not affect the provisions of any Act of the Commonwealth or of a State or Territory under which the Court may require security for costs to be given.

ORDER 29

SEPARATE DECISION OF QUESTIONS: CONSOLIDATION

Division 1—Separate Decision of Questions

Interpretation

1. In this Order, “**question**” includes any question or issue in any proceeding, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties or otherwise.

Order for decision

2. The Court may make orders for:
 - (a) the decision of any question separately from any other question, whether before, at or after any trial or further trial in the proceedings; and
 - (b) the statement of a case and the question for decision.

Orders, directions upon decision

3. Where any question is decided under this Order, the Court shall, subject to rule 4, make such order, grant such relief or give such directions as the nature of the case requires.

Disposal of proceedings

4. Where the decision of a question under this Order:

- (a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or
- (b) renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding;

the Court may, as the nature of the case requires:

- (c) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or
- (d) pronounce any judgment; or
- (e) make any other order.

Division 2—Consolidation

Consolidation etc.

5. Where several proceedings are pending then, if it appears to the Court:

- (a) that some common question of law or fact arises in both or all of them;
- (b) that the rights to relief claimed therein are in respect of, or arise out of, the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule;

the Court may order those proceedings to be consolidated or may order them to be tried at the same time or one immediately after

another or may order them to be stayed until after the determination of any of them.

ORDER 30

SETTING DOWN

Interpretation

- 1.** In this Order:
 - (a) a reference to the trial of a proceeding includes any interlocutory hearing for which a date for trial is required to be fixed in the proceeding; and
 - (b) the rules apply, with any necessary modification, to proceedings commenced by way of cross-claim.

Request to fix date for trial (Form 44)

2. (1) If the time provided for taking any step in a proceeding has ceased to run, and no date has been fixed for the trial of the proceeding, a party who is not in default may request the Registrar to fix a date for the trial by filing a notice in accordance with Form 44.

(2) The party filing notice must serve a copy of the notice on all other parties to the proceeding within 3 days after filing it.

Fixing date for trial

3. Where the Court or the Registrar is satisfied that a proceeding is ready for trial and fixes a date for trial, the Registrar must notify the date and place of the trial to all parties to the proceeding as soon as practicable after the date is fixed.

Want of prosecution

5. (1) If, before or after the date for trial of a proceeding is fixed, a party has not done any act required to be done by or under these Rules or has not prosecuted the proceeding with due diligence, the Court may:

- (a) if the party in default is the applicant—order that the proceeding be stayed, or dismissed, as to the whole or any part of the relief claimed by the applicant in the proceeding; or
- (b) if the party in default is a respondent—order that judgment be entered or an order be made against the respondent; or
- (c) make any other order or give any directions that the Court thinks just, and specify such consequences for non-compliance with the order or the directions as the Court thinks just.

(2) An order or direction under subrule (1) may be given:

- (a) when a party not in default moves on notice for an order or direction; or
- (b) after notice of default has been given by the Registrar to the party in default—of the Court's own motion.

Place of trial

6. (1) Subject to subrule (2), the place of trial of a proceeding is to be the proper place.

(2) On the application of a party or of its own motion, the Court may direct that the trial, or part of the trial, of a proceeding be held at a place other than the proper place.

Vacating date for trial

7. A date for trial fixed by the Court may be vacated only by order of the Court.

ORDER 31**JURIES****Notice of motion for jury trial**

1. (1) A party applying for an order that the trial of a suit or of an issue of fact be heard by a Judge and jury must file and serve a notice of motion not later than 21 days before the date appointed for the trial.

(2) A notice of motion under subrule (1) must be supported by an affidavit stating the particular facts and grounds upon which the application is based.

ORDER 32**TRIAL****Interpretation**

1. For the purposes of this Order:
 - (a) where the burden of proof on any issue lies on the applicant, the applicant shall begin; and
 - (b) where the burden of proof on all the issue lies on the respondent, the respondent shall begin.

Absence of party

2. (1) If, when a proceeding is called on for trial, any party is absent, the Court may:

- (a) adjourn the trial;
- (b) if the party absent is an applicant or cross-claimant dismiss the action or the cross-claim; or

- (c) proceed with the trial generally or so far as concerns any claim for relief in the proceeding.

(2) Where the Court proceeds with a trial in the absence of a party, and at or at the conclusion of the trial an order is made, the Court, on motion by that party, may set aside or vary the order, and may give directions for the further conduct of the proceeding.

(3) Subrule (2) does not enable the Court to vary the verdict, finding or assessment of a jury at a trial except with the consent of each interested party present at the trial.

Default of appearance of both parties

3. (1) If, when a proceeding is called on for trial, no party appears, the Court may:

- (a) adjourn the trial;
- (b) order that the proceeding be struck out.

(2) Where an order is made under paragraph (1) (b) the proceeding shall thereupon, unless the Court otherwise orders, be wholly discontinued, and neither party shall be entitled to costs.

Conduct of the trial

4. (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.

- (2) Subject to subrule (1):
 - (a) where the only parties are the applicant and persons in the same interest and the respondent and persons in the same interest, and there is no cross-claim, the order of evidence and addresses shall be as provided by the following subrules of this rule; and
 - (b) in any other case, the order of evidence and addresses shall be as provided by the following subrules of this rule, subject to such modifications as the nature of the case may require.

(3) The party to begin may make an opening address and then adduce evidence.

(4) Where, at the conclusion of the evidence for the party to begin, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.

(5) If, pursuant to subrule (4), the opposite party elects not to adduce evidence, the party to begin may make a closing address and then the opposite party may make an address.

(6) If, pursuant to subrule (4), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing evidence and, after adducing evidence, may make a closing address and thereupon the party to begin may make a closing address.

Record

5. (1) The associate, or other proper officer present at the trial, shall be clerk at the trial and shall maintain and complete a record of the trial.

(2) The associate or other proper officer shall:

- (a) take charge of every document or object put in as an exhibit during the trial or hearing of a proceeding;
- (b) mark or label every exhibit so as to indicate the party by whom the exhibit was put in, and so that all exhibits put in by a party are lettered or numbered consecutively; and
- (c) make a list of the exhibits.

(3) The list of exhibits when completed shall form part of the record of the proceeding.

Death before judgment

6. (1) Where a party dies after the verdict or finding on the issues of fact, the Court may pronounce judgment, and the order of the judgment may be entered, notwithstanding the death.

(2) Subrule (1) does not affect the power of the Court to make orders under Order 6, rule 10 (which relates to change of parties by reason of death, etc.).

ORDER 33

EVIDENCE: GENERAL

Witnesses at a trial

1. Unless the Court otherwise orders or the parties otherwise agree, the evidence of a witness at the trial of a cause shall be given orally.

Hearsay and copies

2. (1) This rule applies only to evidence other than evidence on an issue at a trial and only where the circumstances are such that undue delay or inconvenience would otherwise be caused.

(2) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of the information, the Court or Judge may admit such statement notwithstanding that it is hearsay.

(3) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the Court or Judge may admit the document as evidence of the contents of the original notwithstanding that the original is not produced.

Dispensing with rules of evidence

3. The Court may at any stage of the proceedings:
- (a) dispense with compliance with the rules of evidence for proving any matter which is not bona fide in dispute; or
 - (b) dispense with compliance with the rules of evidence where such compliance might occasion or involve unnecessary or unreasonable expense or delay, including, but without limiting the generality of this power, compliance with the rules relating to proof of handwriting or of documents and the proof of the identity of parties or of authority.

Depositions

4. (1) A deposition taken in the proceedings pursuant to Order 24, is admissible as evidence, but the Court may direct that the deposition be not admissible unless the party tendering it produces the deponent for cross-examination.

(2) This rule does not apply to evidence taken pursuant to an order made under subsection 7V (1) of the *Evidence Act 1905* or a record of that evidence.

Evidence in other proceedings

5. (1) A party may, with the leave of the Court, but saving all just exceptions, read evidence taken, or an affidavit filed, in other proceedings.

(2) Subrule (1) does not enable evidence taken, or an affidavit filed, in other proceedings to be read as evidence on any issue at a trial, except in relation to the proof of particular facts.

Plans, photographs and models

6. (1) A party who intends to tender any plan, photograph or model at a trial or hearing must, not less than 7 days before the

commencement of the trial or hearing, give the other parties an opportunity to inspect it and to agree to its admission without proof.

(2) Non-compliance with subrule (1) does not affect the admissibility of a plan, photograph or model.

Proof of court documents

7. (1) A document purporting to be marked with a seal of the Court is admissible in evidence without further proof.

(2) An office copy of a document filed in or issued out of the Court is admissible in evidence in all proceedings and between all parties to the same extent as the original document would be admissible.

(3) A document purporting to be marked with a seal of the Court and to be a copy of a document filed in or issued out of the Registry is admissible as an office copy of the latter document without further proof.

Production of court documents

8. Where, for the purpose of any proceedings, a person, by request in writing, requires a Registrar to produce to the Court, a Judge, a Judicial Registrar or an officer of the Court any document in the custody of the Registrar, the Registrar shall, unless the Court otherwise orders, produce the document in accordance with the request.

Consent of trustee etc.

9. (1) A document purporting to contain the written consent of a person to act as tutor of a person under disability, to act as trustee, to act as receiver, or to act in any other office on appointment by the Court, and purporting to be executed and authenticated in accordance with subrule (2), is evidence of the consent.

(2) A document is sufficiently executed and authenticated for the purposes of subrule (1):

- (a) where the consenting person is not a corporation, if the document is signed by the consenting person and the signature is verified by some other person; or
- (b) where the consenting person is a corporation, if the seal of the corporation is affixed to the document in the presence of and attested by its clerk, secretary or other permanent officer or his or her deputy, and a member of the board of directors, council or other governing body of the corporation.

Leading questions to witness

10. Where a person is examined in relation to an investigation, inspection or report made by him or her in the course of carrying out public or official duties, the party calling the person may, unless the Court otherwise directs, examine that person by asking leading questions.

Privilege

11. (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel production of that document or thing except production to the Court for the purpose of ruling on the objection.

(2) Where a question is put to a person in the course of examination, and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the Court shall not compel an answer to the question.

(3) Subrule (1) applies where an order is made for production to, and subrule (2) applies where a question is put to a person in the course of examination before the Court or any officer

of the Court, or any examiner, or other person authorised to receive evidence, whether on a trial or hearing or on any other occasion.

(4) This rule does not affect any rule of law which authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.

Production on notice—Form 45

12. (1) Where a party to any proceedings serves on another party notice, in accordance with Form 45, requiring the party served to produce at any trial or hearing in the proceedings, or before any Judge, Judicial Registrar, officer, examiner or other person having authority to take evidence in the proceedings any document or thing for the purpose of evidence and the document or thing is in the possession, custody or power of the party served, the party served shall, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for any subpoena for production.

(2) Where the document or thing required to be produced in accordance with subrule (1) is not produced, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing.

Attendance and production

13. (1) The Court may make orders for:

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

(2) An order under subrule (1) may be made for the attendance of any person before, and production by the person to, the

Court, a Judicial Registrar or any other officer of the Court, examiner, or other person authorised to take evidence, on any trial, hearing or other occasion.

(3) Subrules (1) and (2) apply whether or not the person for whose attendance the order is made has been required to attend by subpoena.

Attendance of prisoner in proceedings before Court or examiner

14. (1) A party requiring the production of a prisoner from lawful custody to give evidence in proceedings whether before the Court or before an examiner pursuant to Order 24, shall move for an order to that effect.

(2) A motion under subrule (1) may be made *ex parte* and shall be supported by an affidavit showing:

- (a) the person in whose custody the prisoner is held; and
- (b) the reasons for which the prisoner's evidence and attendance are required.

(3) An order under subrule (1) shall be in accordance with Form 46.

Parties in lawful custody

15. (1) Where a party to a proceeding before the Court is in lawful custody, the Court may on the request of that party, or of any other party, or of its own motion make an order requiring production of that party and may make such order in relation to the continuing custody of that party as may in the opinion of the Court be appropriate.

(2) An order made under subrule (1) may if the Court thinks it appropriate be in accordance with Form 46B.

ORDER 34

COURT EXPERT

Application

1. This Part does not apply to a question or matter to be tried before a jury.

Appointment

2. (1) Where a question for an expert witness arises in any proceedings the Court may, at any stage of the proceedings, on its own motion or on application by a party or the Registrar:

- (a) appoint an expert as court expert to inquire into and report upon the question;
- (b) authorise the court expert to inquire into and report upon the question and the facts relevant to it;
- (c) direct the court expert to make a further or supplemental report or inquiry and report; and
- (d) give such instructions as the Court thinks fit relating to any inquiry or report of the court expert.

(2) In subrule (1), “**expert**”, in relation to any question, means a person who has such knowledge or experience of, or in connection with, that question, or questions of the character of that question, that his or her opinion on that question would be admissible in evidence.

(3) Instructions pursuant to paragraph (1) (d) may include provision concerning any experiment or test for the purposes of any inquiry or report of a court expert.

Report

3. (1) The court expert must send his or her report to the Registrar, together with so many copies of the report as the Court may direct.

(2) The Registrar must send a copy of the report to each party interested in the question.

(3) Unless the Court otherwise orders, the report is admissible in evidence on the question on which it is made, but is not binding on any party except to the extent to which that party agrees to be bound by it.

Cross-examination

4. Upon application made by any party within 14 days after receiving a copy of a court expert's report, the Court shall make an order for the cross-examination of the court expert by all the parties, either:

- (a) before the Court, at the trial or at some other time; or
- (b) before an examiner.

Remuneration

5. (1) The remuneration of the court expert shall be fixed by the Court and shall include:

- (a) a report fee; and
- (b) a proper sum for each day during which the expert is required to attend before the Court or before an examiner.

(2) Unless the Court otherwise orders, the parties shall be jointly and severally liable to the court expert to pay the remuneration fixed by the Court.

(3) The Court may, on application by any party or by the court expert, make orders in the proceedings for payment in or towards discharge of the liability of any party under subrule (2).

Further expert evidence

6. Where, pursuant to this Order, a court expert has made a report on any question:

- (a) any party may adduce evidence of one other expert on the same question, but only if that party has, at a reasonable time before the commencement of the trial, hearing or examination at which the party adduces the evidence, given to the other interested parties notice of intention to do so; but
- (b) subject to paragraph (a), a party shall not adduce evidence of any other expert on the same question, except with the leave of the Court.

ORDER 35

JUDGMENTS AND ORDERS

General relief

1. The Court may, at any stage of any proceedings, on the application of any party, pronounce such judgment or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that order in any originating process.

Written reasons

2. The reasons of the Court for any order may, if in written form, be published by being delivered in open Court to an associate or other proper officer.

Date of effect

3. A judgment or order shall take effect on the date on which it is pronounced or made, unless the Court orders that it take effect at an earlier or later date.

Time for compliance

4. (1) Subject to subrules (3) and (4), an order which requires a person to do an act shall specify the time within which the person is required to do the act.

(2) The time shall, unless the Court otherwise orders, be 14 days after the date of service of the order on the person required to do the act.

(3) Subrules (1) and (2) apply to an order which requires a person to pay money into Court, but otherwise do not apply to so much of an order as requires a person to pay money.

(4) Where an order requires a person to do an act within a specified time, the Court may, by further order, vary that time.

(5) Where an order requires a person to do an act but does not specify a time, the Court may, by order, require the person to do the act within a specified time.

Fine

5. (1) Where the Court imposes a fine, the Court shall order that the person on whom the fine is imposed pay the fine to the Registrar within a specified time.

(2) Subject to the Act, the Registrar shall pay into the Consolidated Revenue Fund all moneys paid to him or her on account of any fine imposed by the Court.

Dismissal

6. (1) Where the Court makes an order for the dismissal of proceedings or for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief, the Court may order that such dismissal shall be without prejudice to any right of the applicant or claimant to bring fresh proceedings or to claim the same relief in fresh proceedings.

(2) Where:

- (a) the Court makes an order for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief by any party;
- (b) the Court orders that party to pay any costs; and
- (c) before payment of the costs, that party brings against a party to whom the costs are payable further proceedings on the same or substantially the same cause of action or for the same or substantially the same relief;

the Court may stay the further proceedings until those costs are paid.

Setting aside

7. (1) The Court may vary or set aside a judgment or order before it has been entered.

(2) The Court, where it is not exercising its appellate or related jurisdiction under Division 5 of Part XIV of the Act, may if it thinks fit vary or set aside a judgment or order after the order has been entered where:

- (a) the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default and whether or not the absent party had notice of the motion for the order;
- (b) the order was obtained by fraud;
- (c) the order is interlocutory;
- (d) the order is an injunction or for the appointment of a receiver;
- (e) the order does not reflect the intention of the Court; or

(f) the party in whose favour the order was made consents.

(3) A clerical mistake in a judgment or order, or an error arising in a judgment order from an accidental slip or omission, may at any time be corrected by the Court.

(4) Subrule (2) shall not affect the power of the Court to vary or terminate the operation of an order by a supplementary order.

Interest

8. A judgment debt carries interest at the rate of 12% per annum unless, in a particular case, the Court determines that justice requires that a lower rate should be applicable.

Judicial notice of order

9. (1) In any proceedings, the Court may take judicial notice of any order of the Court in the proceedings.

(2) In any proceedings, the Court may be informed of an order of the Court in the proceedings by (amongst other things) reference to a note made by the Judge, Judicial Registrar or Registrar making the order or by an associate or other proper officer.

Consent orders

10. (1) A written consent of the parties to a proceeding, or their solicitors or authorised representatives, to the making of an order in the proceeding may be filed in the Registry at the proper place.

(2) Notwithstanding anything contained in these Rules, upon the written consent being so filed, the Registrar must bring the matter before a Judge who, if he or she thinks fit, may, without any other application being made, direct the Registrar to draw up, sign and seal an order in accordance with the terms of the consent.

(3) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Judge.

Undertakings

11. (1) Where:

- (a) a person (whether a party or not) gives an undertaking to the Court to do or refrain from doing any act or to pay any sum of money; and
- (b) the person fails to fulfil the undertaking;

any party may move on notice for a judgment or order requiring that person to do or refrain from doing the act in question, or to pay the sum of money in question.

(2) The Court, on being satisfied that the undertaking was binding on the person, shall make the order referred to in subrule (1).

(3) The Court may be informed of an undertaking to the Court in the proceedings by (amongst other things) reference to a note made by the Judge, Judicial Registrar or Registrar before whom the undertaking was given or by an associate or other proper officer.

(4) This rule does not affect the powers of the Court to punish a person for contempt.

ORDER 36**JUDGMENTS AND ORDERS: ENTRY****Lodgment—Form 47**

1. A party desiring to enter an order shall lodge a draft of the order, in accordance with Form 47, with the Registrar.

Settlement

2. The Registrar may:
- (a) settle the draft without an appointment for the attendance of the parties; or
 - (b) appoint a time and place for attendance of the parties to settle the draft.

Appointment for settlement

3. (1) Where the Registrar makes an appointment for settlement under paragraph 2 (b), the Registrar must notify the appointment to the party lodging the draft order.

(2) The party lodging the draft must serve notice of the appointment on all other parties, not less than 2 days before the appointed date.

Procedure on appointment

4. (1) Where a party has been served with notice of an appointment to settle a draft of an order, but does not attend on the appointment, or where the party lodging the draft does not attend on the appointment, the Registrar may settle the draft in the absence of that party.

(2) The Registrar shall, on or after the appointment, settle the draft.

Settlement without lodgment

5. (1) Where the entry of an order is authorised by the Rules or by a direction of the Court, the Registrar may, subject to subrule (3), draw and settle the order.

(2) The Registrar may exercise power under subrule (1):

- (a) notwithstanding that no party has lodged a draft order; and
- (b) without appointing any time or place for attendance of the parties on settlement.

(3) The Registrar must not exercise power under subrule (1) unless:

- (a) the Court so directs, or
- (b) a party so requests.

Signature

6. The Registrar must on settling a draft of an order, sign the draft or a fair copy of it.

Review

7. Where the Registrar has signed a draft of an order, but the order has not been entered, the Court may review the draft and give such directions as it thinks fit for varying the form and content of the draft.

Order: where entry required

8. (1) Unless the Court otherwise orders, a party may enter an order at any time.

(2) An order must be entered in the following cases:

- (a) where the order only takes effect on the signing of the order;
- (b) where the order is to be served;

- (c) where the order is to be enforced;
- (d) where an appeal from the order has been instituted, or an application for leave to appeal from the order has been made;
- (e) where the Court so directs.

(3) Subject to subrule (4), an order must, unless the Court otherwise directs, be entered where some step is to be taken under the order.

(4) Subrule (3) does not apply to an order which (in addition to any provision as to costs) merely:

- (a) makes an extension or abridgment of time; or
- (b) grants leave or makes a direction:
 - (i) to amend any document other than an order;
 - (ii) to file any document; or
 - (iii) to do any act to be done by an officer of the Court other than a solicitor; or
- (c) gives directions concerning the conduct of proceedings, or which refers a matter to the Australian Industrial Relations Commission for conciliation in accordance with section 170ED of the Act.

Manner of Entry

9. (1) A party may enter an order by filing it in the form in which it has been settled by the Registrar.

(2) The Registrar may enter an order under subrule (1) on the direction of the Court or the request of a party.

(3) Unless the Court otherwise orders, the entry of an order shall bear the date on which it is pronounced or made.

Sealing

10. Upon its being entered, the Registrar shall seal the order with the seal of the Court.

Copies

11. (1) The Registrar shall, upon the request of any party, furnish that party with a certified or office copy of the order entered in the proceeding.

(2) The Registrar may, upon payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in the order entered in any proceeding, a certified or office copy of the order.

(3) The Registrar must provide a certificate, in accordance with Form 47A, setting forth the particulars of the judgment, on the request of a judgment creditor.

Service

12. An order need not be served unless the Rules require service or the Court directs service.

ORDER 37

JUDGMENTS AND ORDERS: ENFORCEMENT

Attendance

1. (1) Where the Court by subpoena or otherwise, makes an order in any proceedings for the attendance of a person:

- (a) for the purpose of giving evidence;
- (b) for the production of any document or thing;
- (c) to answer a charge of contempt; or
- (d) for any other purpose;

and the person defaults in attendance in accordance with the order, the Court may, on application by a party or of its own motion:

- (e) issue, or make an order for the issue of, a warrant to the Sheriff or such other person as the Court may appoint for the arrest of the person in default and for the production of the person in default before the Court or before an examiner or other person for the purpose of the proceedings and for the person's detention in custody in the meantime; and
 - (f) order the person in default to pay any costs occasioned by the default.
- (2) Subrule (1) does not affect:
- (a) the powers of the Court to punish for the contempt; or
 - (b) the provisions of Order 40 (which relates to contempt).

Service before committal or sequestration

2. (1) Subject to the Rules, an order shall not be enforced by committal or sequestration unless:

- (a) the order or a certified or office copy thereof is served personally on the person bound; and
- (b) if the order requires the person bound to do an act within a specified time, the order or a certified or office copy thereof is so served before that time expires.

(2) Subject to the Rules, where the person bound by an order is a corporation or organisation the order shall not be enforced by committal of an officer of the person bound or by sequestration of the property of an officer of the person bound unless, in addition to service under subrule (1) on the person bound:

- (a) the order or a certified or office copy thereof is served personally on the officer; and
- (b) if the order requires the person bound to do an act within a specified time, the order or a certified or office copy thereof is so served before that time expires.

(3) An order or a certified or office copy thereof served under this rule must bear a notice (naming the persons concerned) that the person served is liable to imprisonment or to sequestration of property if:

- (a) where the order requires the person bound to do an act within a specified time, the person bound refuses or neglects to do the act within that time; or
- (b) where the order requires the person bound to abstain from doing an act, the person bound disobeys the order.

(4) Subject to the Rules, where:

- (a) an order requires the person bound to do an act; and
- (b) another order specifies the time in which the act is required to be done;

each order or a certified or office copy thereof shall be served on the person bound before the expiry of that time as so abridged or extended.

(5) Where a person liable to committal or sequestration of his or her property by way of enforcement of a judgment or order has notice of the judgment or order:

- (a) by being present when the judgment is pronounced or when the order is made; or
- (b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise;

the judgment or order may be enforced by committal of that person or by sequestration of his or her property notwithstanding that service has not been effected in accordance with this rule.

(6) The Court may dispense with service under this rule.

Substituted performance

3. (1) Where a judgment or order requires the person bound to do an act and the person bound does not do the act, the Court may:

- (a) direct that the act be done by a person appointed by the Court; and
- (b) order the person bound to pay the costs incurred pursuant to the direction.

(2) Subrule (1) does not affect any other mode of enforcement of the judgment or order, or the powers of the Court to punish for contempt.

Enforcements by or against non-party

4. (1) Where, in any proceeding, a person who is not a party obtains an order, or an order is made in favour of a person who is not a party, that person may enforce the order by the same means as if the person were a party.

(2) Where, in any proceeding, obedience to a judgment may be enforced against a person who is not a party, the judgment may be enforced against the person by the same means as if the person were a party.

(3) Where, in any proceeding, obedience to a judgment may be enforced against a corporation or organisation which is not a party, an officer of the corporation or organisation shall be liable to the same process of enforcement as if the corporation or organisation were a party.

Non-performance of condition

5. Where a person is entitled under a judgment subject to the fulfilment of a condition, and there is a failure to fulfil the condition, then, unless the Court otherwise orders:

- (a) the person shall lose the benefit of the judgment; and
- (b) any other person interested may take any steps which:
 - (i) are warranted by the judgment; or
 - (ii) might have been taken if the judgment had not been pronounced or the order had not been made.

Matters occurring after judgment

6. (1) A person bound by a judgment may move the Court for a stay of execution of the judgment, or for some other order, on the ground of matters occurring after the date on which the judgment takes effect and the Court may make such order as the nature of the case requires.

(2) Subrule (1) does not affect the powers of the Court to stay execution under rule 10.

Enforcement as in State and Territory Supreme Courts

7. (1) Subject to the Rules, and without limiting any other means of enforcement which may be available, the Court may, in order to enforce a judgment or order of the Court, make any order, issue any writ or take any other step that could be made, issued or taken, by the Supreme Court of the State or Territory in which the judgment or order is to be enforced if the judgment or order had been made by that Supreme Court.

(2) The modes of procedure and forms of process of the Supreme Court of the State or Territory in which the judgment or order is sought to be enforced shall be available and followed in the Court so far as is practicable *mutatis mutandis* for the enforcement of orders of the Court.

(3) The Sheriff when executing the orders of the Court, shall be authorised to act in the same manner and to the same extent as the Sheriff, or like officer of the Supreme Court of the State or Territory in which the order is being executed, is entitled to act.

(4) Where it is desired to enforce an order in more than one State or Territory:

- (a) it shall not be necessary to adopt different modes of procedure and forms of process in each State or Territory; and
- (b) it shall be sufficient to adopt the mode of procedure and form of process of the Supreme Court of one of the

States or Territories in which execution is to be made, and to execute the order in like manner in the other States and Territories.

Ex parte application

8. A party interested in the execution or enforcement of an order may apply to the Court *ex parte* for directions as to its execution or enforcement.

Committal—Form 49

9. A person shall not be committed except by or under an order of the Court, in accordance with Form 49, stating why the person is being committed.

Stay of execution

10. The Court may stay execution of a judgment or order.

ORDER 38

ASSESSMENT OF DAMAGES

Ascertainment of damages where a matter of calculation

1. (1) Where:

- (a) a respondent admits liability on an applicant's claim, but denies liability to the extent of the damages claimed; or
- (b) the Court finds that a party is liable to pay damages;

the Court, if it considers that the amount of damages to be recovered is substantially a matter of calculation, may direct that the amount which the party liable shall be ordered to pay be ascertained by the Registrar at the proper place.

(2) The attendance of witnesses and the production of documents before the Registrar may be compelled by subpoena.

(3) The Registrar may adjourn the inquiry from time to time.

Certificate of Registrar

2. (1) The Registrar shall certify the amount of damages ascertained pursuant to rule 1, and shall deliver a copy of the certificate to each party and, unless within 7 days of the delivery thereof any party objects, the Registrar shall deliver the certificate to a Judge, who, without the attendance of any party, may make an order that the person liable pay the amount of damages so ascertained.

(2) On an order being made under subrule (1), the Registrar must deliver a copy of the order to each party.

(3) Where an objection is made under subrule (1), the Registrar shall give notice of the objection to the other party and list the matter for hearing before the Court and deliver his or her certificate to the Court.

(4) On a hearing under subrule (3) it shall be a matter for the Court as to what weight should, in the circumstances of the case, be given to the certificate of the Registrar.

Damages in respect of continuing cause of action

3. Where damages are assessed in respect of a continuing cause of action, they shall be assessed down to the time of assessment.

ORDER 39

ACCOUNTS AND INQUIRIES

Account: summary order

1. (1) Subject to subrule (2), where a party claims an account or makes a claim which involves taking an account, the Court may, on application by that party at any stage of the proceedings:

- (a) order that an account be taken; and
- (b) order that any amount certified on taking the account to be due to any party be paid to that party.

(2) The Court shall not make an order under subrule (1):

- (a) as against a respondent who has not filed an appearance and is not in default of appearance; or
- (b) if it appears there is some preliminary question to be determined.

Account or inquiry at any stage

2. The Court may, on application by a party at any stage of proceedings, make orders for the taking of any account or the making of any inquiry.

Account: directions

3. Where the Court makes an order for the taking of an account, the Court, by the same or subsequent order:

- (a) may give directions concerning the manner of taking or vouching the account; and
- (b) without limiting paragraph (a), may direct that in taking the account the relevant books of account shall be evidence of the matters contained in them.

Account: form and verification

4. (1) The items on each side of an account shall be numbered consecutively.

(2) An accounting party shall, unless the Court otherwise orders, verify his or her account by affidavit and the account shall be made an exhibit to the affidavit.

Account: filing and service

5. An accounting party shall, unless the Court otherwise orders:

- (a) file his or her account and verifying affidavit; and
- (b) serve the account and affidavit on each other party on the date of filing.

Account: notice of charge or error

6. (1) A party who seeks to charge an accounting party with an amount beyond that of which the accounting party admits receipt shall give to the accounting party notice of the charge, stating the amount which the party seeks to charge, with brief particulars.

(2) A party who alleges that any item in the account of an accounting party is erroneous in amount or otherwise shall give to the accounting party notice of the allegation, stating the grounds for alleging the error.

Account: allowances

7. In taking an account under a judgment or order, all just allowances shall be made.

Delay

8. Where it appears to the Court that there is delay in the prosecution of any account, inquiry or other matter under a judgment or order, the Court may make such orders as it thinks fit for staying or expediting the proceedings or for the conduct of the proceedings.

Account: taken before Registrar

9. The Court may order any account or inquiry under this Order to be taken before or held by the Registrar.

Certificate of Registrar

10. (1) The Registrar shall certify the results of the account or inquiry taken or held pursuant to rule 9, and shall deliver a copy of the certificate to each party and, unless within 7 days of the delivery thereof any party objects, the Registrar shall deliver the certificate to a Judge, who, without the attendance of any party, may make an order that the person liable pay the amount so certified to be due to any party.

(2) Upon an order being made pursuant to subrule (1), the Registrar shall deliver a copy of the order to each party.

(3) Where an objection is made under subrule (1), the Registrar shall give notice of the objection to the other party and list the matter for hearing before the Court and deliver his or her certificate to the Court.

(4) Upon a hearing pursuant to subrule (3) it shall be a matter for the Court as to what weight should, in the circumstances of the case, be given to the certificate of the Registrar.

ORDER 40

CONTEMPT

Division 1—Contempt in the face or hearing of the Court

Arrest

1. Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court, committed in the face of the Court or in the hearing of the Court, the Court may:

- (a) by oral order direct that the person be brought before the Court; or
- (b) issue a warrant for the person's arrest.

Charge, defence and determination

2. Where the accused person is brought before the Court, the Court shall:

- (a) cause the person to be informed orally of the contempt with which he or she is charged;
- (b) require the person to make his or her defence to the charge;
- (c) after hearing the person, determine the matter of the charge; and
- (d) make an order for the person's punishment or discharge.

Interim custody

3. (1) The Court may, pending disposal of the charge:

- (a) direct that the accused person be kept in such custody as the Court may determine; or
- (b) direct that the person be released.

(2) The Court may make a direction under subrule (1) which may include a requirement that the accused person give security, in such sum as the Court directs, for his or her appearance in person to answer the charge.

Division 2—Motion or proceedings for punishment

Application

4. This Division does not apply to a case in which the Court proceeds under Division 1.

Procedure generally

5. (1) Where it is alleged that a contempt has been committed in connection with a proceeding in the Court, an application for punishment for the alleged contempt must be made by motion on notice in the proceeding, but if a separate proceeding for punishment of the alleged contempt is commenced, the proceeding so commenced may be continued unless the Court otherwise orders.

(2) Where it is alleged that a contempt has been committed, but not in connection with the proceeding in the Court, the proceeding for punishment of the alleged contempt must be commenced as a substantive proceeding but, if an application for punishment of the alleged contempt is made by motion on notice in any proceeding, the application may be heard and disposed of in the latter proceeding, unless the Court otherwise orders.

Statement of charge

6. A statement of charge, that is, a statement specifying the contempt of which the accused person is alleged to be guilty, shall be subscribed to, or filed with, the notice of motion or application.

Evidence

7. (1) Subject to subrule (2), the evidence in support of the charge shall be by affidavit.

(2) The Court may permit evidence in support of the charge to be given otherwise than by affidavit.

Service

8. The notice of motion or application, the statement of charge, and the affidavits shall be served personally on the accused person.

Arrest—Form 48

9. Where:

- (a) notice of a motion for punishment of a contempt has been filed or a proceeding has been commenced for punishment of a contempt; and
- (b) it appears to the Court that the accused person is likely to abscond or otherwise withdraw from the jurisdiction of the Court;

the Court may issue a warrant for the arrest of the accused person and his or her detention in custody until he or she is brought before the Court to answer the charge, unless the accused person, in the meantime, gives security in such manner and in such sum as the Court directs, for his or her appearance in person to answer the charge and to be dealt with in accordance with any order of the Court.

Motion or proceedings by the Registrar

10. (1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court, the Court may, by order, direct the Registrar to apply by motion for, or to commence a proceeding for, punishment of the contempt.

(2) Subrule (1) does not affect such right as any person other than the Registrar may have to apply by motion for, or to commence a proceeding for, punishment of contempt.

Division 3—General

Warrant—Form 48

11. A warrant for the arrest or detention under this Order of an accused person shall be addressed to the Sheriff and may be issued under the hand of the Judge presiding in the Court directing the arrest or detention.

Discharge

12. Where an accused person is committed to prison for a term, the Court may order the person's discharge before the expiry of the term.

ORDER 41

DOCUMENTS

First page of a document—Form 1

1. (1) A document in any proceeding must be headed in the manner indicated in Form 1, that is to say with a reference to:

- (a) the District Registry in which the document is filed; and
- (b) the serial number of the proceeding.

(2) A document in any proceeding between parties must be entitled between the parties.

Form 3

(3) A document in any proceeding in which there is no respondent must be entitled “The application of” together with the name of the applicant, in accordance with Form 3.

Form 2

- (4) Except in the case of:
- (a) an originating process;
 - (b) a document to be served on a person not a party to a proceeding; or
 - (c) a final order;

a document may bear an abbreviation of the title of the proceeding sufficient to identify the proceeding, in accordance with Form 2.

Documents

2. (1) This rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

(2) A document must be on paper of durable quality, capable of receiving ink writing, and measuring about 295 millimetres long and 210 millimetres wide provided that the Chief Justice may direct that documents of different dimensions be accepted in the case of any particular Registry.

(3) The writing on a document must be on one face of the paper only and a margin of not less than 25 millimetres must be kept clear on the left hand side.

(4) There must be a space of not less than 3 millimetres between the lines of writing.

(5) The writing must be clear, sharp, legible and permanent.

(6) A carbon copy must not be filed.

(7) A document must not be filed if it bears any blotting, erasure, or such alteration as to cause material disfigurement.

(8) There must be a space of not less than 20 mm between the last line of writing and the end of each page of a document.

Details to be shown on first page of a document

3. (1) A document prepared by a party for use in the Court must have a horizontal line drawn at the foot of the first page below which shall be shown:

- (a) the party on whose behalf the document is filed, the name, address, telephone number and, if applicable, the number of the facsimile receiver of the solicitor or authorised representative for the party, and, if a solicitor acts in the proceedings by an agent, the name, address, telephone number and, if applicable, the number of the facsimile receiver of the agent; and
- (b) where a notice for service at a document exchange is filed under Order 7, rule 7, the exchange box number.

(2) Where a party preparing a document for use in the Court is not represented by a solicitor or authorised representative, paragraph (1) (a) does not apply but instead the name and address for service of the party, and his or her telephone number, if any, must be shown.

Numbers

4. Dates, sums and other numbers must be expressed in figures and not in words.

Scandal etc.

5. The Court may order to be struck out of any document any matter which is scandalous, vexatious or oppressive.

Signing documents—Form 4

6. Any document filed other than an affidavit, annexure or exhibit attached to another document must be signed by the party filing it or by his or her solicitor or authorised representative unless the nature of the document is such that the signature is inappropriate.

ORDER 42

PARTNERSHIPS AND BUSINESS NAMES

Division 1—Partnerships

Interpretation

1. In this Division, “**partnership name**” means a name under which two or more persons carry on business in partnership within Australia, whether or not the name consists of the names of one or more of those persons.

Action in partnership name

2. (1) An action by or against two or more persons claiming as partners or against two or more persons claimed to be liable as partners and who carry on business in partnership within Australia may be brought in the partnership name.

(2) The partnership name must be that obtaining at the time the cause of action arose.

(3) Where the proceeding is commenced pursuant to subrule (1), unless the Court otherwise orders, it must continue in the partnership name, and not in the names of the individual partners.

Disclosure of names etc. of partners

3. (1) At any stage of a proceeding any party may, by notice in writing, require the partnership to furnish it with the names and places of residence of the persons who were partners of the partnership at the time the cause of action arose.

(2) If the partnership fails to furnish the information pursuant to subrule (1), the party making the requirement may move on notice:

- (a) for an order requiring the partnership to furnish the information; and
- (b) if the partnership is an applicant—for an order that the action be stayed until the information is provided.

Service

4. (1) Subject to subrule (3), where persons are sued as partners in the partnership name pursuant to rule 2, the originating process must be served personally:

- (a) on any one or more of the partners; or
- (b) by leaving a copy of the process at the place where the business is carried on with some person apparently engaged (as an employee or otherwise) in the business and apparently of or above the age of 16 years.

(2) Where service is effected under subrule (1), it is taken to be served upon all the partners of the partnership, including any partner outside the jurisdiction at the time of the issue of the originating process.

(3) An applicant who is aware that the partnership has been dissolved prior to the commencement of the proceedings shall, in addition to effecting service under subrule (1), effect service on any partner sought to be made liable who has ceased to be a partner of the partnership at the time of the commencement of the proceedings.

Appearance of partners

5. (1) A person who is served pursuant to rule 4 must enter an appearance in his or her own name.

(2) Notwithstanding subrule (1), the proceeding shall continue in the name of the partnership.

Appearance under protest of person served as partner

6. (1) A person served under rule 4 who denies that he or she is a partner of the partnership, or was a partner of the partnership at the time the cause of action arose, shall file an affidavit making that denial before the directions hearing appointed in the application.

(2) The affidavit shall state the material facts in support of that person's contention.

Defence

7. Where the proceeding is commenced against partners in the partnership name under rule 2, a partner is not entitled to file a personal defence, or file affidavits in defence as if the proceeding were brought against him personally but any partner may file a defence or an affidavit in defence in the partnership name.

Entry of order

8. Where a proceeding has been commenced under this Order, an order in favour of or against the partnership shall be entered in the partnership name and not in the name of an individual partner.

Execution of judgment against a partnership

9. (1) Where a judgment or order is against partners in the name of the partnership, the judgment or order may be executed:

(a) against any property of the partnership within Australia;

- (b) against any partner who has entered an appearance;
- (c) against any person who has admitted that he or she is, or who has been adjudged to be, a partner; and
- (d) against any partner who has been individually served with the originating process.

(2) Execution may be had against any partnership property within Australia, notwithstanding that any partner may be resident abroad.

Judgment against individual partner

10. (1) A party who has obtained judgment against partners in the partnership name and desires to issue execution against an individual partner who is not subject to execution under rule 9 may move on notice to the individual partner for leave to execute the judgment against him or her.

(2) On the hearing of the motion, if it appears that the person was a partner when the liability giving rise to the judgment arose, the Court may give leave to execute the judgment against that person.

Division 2—Individuals trading under a Business Name

Interpretation

11. In this Division, “**business name**” means a name, style, title or designation under which a person carries on a business not being a name consisting of the name of that person and the name of each other person, if any, in association with whom that person carried on business, without any addition.

Proceedings in business name

12. (1) Where a claim is made against any person in respect of anything done or omitted or suffered in the course of, or

otherwise relating to, a business carried on within Australia by that person under a business name:

- (a) if the business name is registered in a register in the State or Territory in which the business is carried on, which register discloses the name and residential address of the person—a proceeding shall only be commenced against that person in that person's own name or pursuant to Division 1; and
- (b) if the business name is not registered in a register referred to in paragraph (a)—a proceeding may be commenced against that person in that business name.

(2) Where a proceeding is commenced against a person in a business name under paragraph (1) (b):

- (a) that business name shall, for the purpose of the proceeding, be a sufficient designation of that person in any process; and
- (b) any judgment or order made in the proceeding may be enforced against that person.

Application of rules

13. The succeeding rules of this Order apply where a proceeding is commenced against a person, under paragraph 12 (1) (b), in a business name.

Service

14. Personal service of any document on the person may be made:

- (a) by leaving a copy of the document with the person; or
- (b) by leaving a copy of the document at the place where the business is carried on, with some person apparently engaged (as an employee or otherwise) in the business and apparently of or above the age of 16 years.

Appearance

15. (1) A person sued in a business name shall not enter an appearance except in the person's own name.

(2) A person who enters an appearance in a proceeding in which he or she is sued in a business name shall file and serve with the notice of appearance a statement of the names and places of residence of all the persons carrying on business under that business name on the date of commencement of the proceeding.

(3) Where a person fails to comply with subrule (2), the court may order that the appearance be struck out.

Proceeding under either Division

16. Where an appearance filed under subrule 15 (2) discloses the names of other persons who carry on or who carried on business under that business name, a party may proceed in accordance with Division 1 or under this Division, both on the date of commencement of the proceeding and on the date (if any) specified in the application as the date on which the cause of action arose.

Amendment as to parties

17. (1) Where a proceeding is commenced against a person in a business name, the applicant shall, as soon as practicable, take all reasonable steps (whether by way of discovery of documents, interrogatories or otherwise) for the purpose of ascertaining the name of the respondent and shall, so far as practicable, make amendments so that the proceedings are continued in the person's own name and not in the business name.

(2) Where an amendment is made under this rule, the mode of amendment and service after amendment shall be in accordance with Order 13, rules 8, 9 and 10.

(3) A party may make an amendment pursuant to Order 13, rule 4 notwithstanding he or she has made an amendment under this rule.

Execution

18. (1) A judgment or order against a person in a business name may be enforced by execution against any property of the business carried on under that name and, where the judgment or order is against partners in the partnership name it may be executed in accordance with rule 9.

(2) In subrule (1), the expression “**property of the business**”, in relation to a judgment or order against a person in a business name, means all property and rights and interests in property, originally brought into the business carried on under that name or acquired, whether by purchase or otherwise, on account of the business, or for the purposes and in the course of the business, being property, rights or interest of that person.

Variation of judgment or order

19. (1) Notwithstanding rule 18, the Court may vary a judgment or order against a person in a business name so as to make it a judgment or order against that person in the person’s own name, and when so varied, the judgment or order may be enforced accordingly.

(2) Notice of a motion for a variation of a judgment or order under subrule (1) shall be served personally on the person against whom the judgment was given or the order was made, and paragraph 14 (b) shall not apply to that service.

Discovery in aid of rules 17 and 19

20. (1) Where it appears to the Court that some person has or may have knowledge of facts, or has or may have in his or her possession, custody or power any document or thing, tending to

assist in the ascertainment of the identity or description, of a respondent sued in a business name, the Court may, for the purpose of enabling amendments to be made under rule 17 or a variation of a judgment or order to be made under rule 19:

- (a) order that person to attend before the Court or an officer of the Court and be orally examined on any matter relating to the identity or description of the respondent;
- (b) order that person to produce any document or thing in his possession, custody or power relating to the identity or description of the respondent; and
- (c) if that person is a corporation or organisation order the corporation or organisation or any officer of the corporation or organisation to produce any document or thing in the possession, custody or power of the corporation or organisation relating to the identity or description of the respondent.

(2) In subrule (1), “**description**”, in relation to a respondent, includes the name, place of residence, place of business, occupation and sex of the respondent.

ORDER 43

DISABILITY

Proceeding by or against person under disability

1. (1) A minor may sue by a next friend.
- (2) A minor may defend in a proceeding by a guardian appointed for that purpose.
- (3) A mentally disabled person may sue in a proceeding by the committee if any, of his or her person or estate as the case may be, or where there is no such committee, by a next friend.

(4) A mentally disabled person may defend by a committee if any, or where there is no such committee, by a guardian appointed for that purpose.

Appointment of tutor by the court

2. (1) The Court may, on motion by a party to a proceeding or any other person, appoint a tutor for a person under disability for the purpose of the proceeding.

(2) A person moving for an appointment under this rule shall, unless the Court otherwise orders, serve notice of the motion on the person under disability.

Removal of tutor

3. (1) The Court may, on motion by a party to a proceeding or by any other person or of its own motion:

- (a) remove a tutor; and
- (b) stay the proceeding until appointment of a tutor in place of the tutor removed.

(2) A person moving for an order under this rule shall, unless the Court otherwise orders, serve notice of the motion on the tutor whose removal is sought and on the person under disability.

Appointment of tutor generally

4. (1) Subject to these Rules, an order appointing a tutor is not necessary.

- (2) Any person may be a tutor except:
- (a) a person under disability;
 - (b) a corporation or organisation unless the corporation or organisation is any of the following:
 - (i) the Public Trustee of New South Wales;
 - (ii) the Public Trustee of Victoria;

- (iii) the Public Curator of Queensland;
- (iv) the Public Trustee of South Australia;
- (v) the Public Trustee of Western Australia;
- (vi) the Public Trustee of Tasmania;
- (vii) the Public Trustee for the Australian Capital Territory;
- (viii) the Public Trustee of the Northern Territory;
- (ix) a trustee company which has by Statute or Ordinance of a State or Territory of Australia been given a right to act as trustee, executor or administrator.

(3) A person may not be a tutor of a person under disability in any proceeding in which he or she has an interest adverse to the interest of the person under disability.

(4) A person shall not be made a tutor without the person's consent.

(5) Where a person has been or is tutor for a person under disability in any proceeding, no other person may, except on appointment by the Court, act as tutor for the person under disability in that proceeding.

(6) A person shall not take any step in any proceeding as tutor for a person under disability unless beforehand there have been filed:

- (a) the person's consent to act; and
- (b) a certificate by the tutor's solicitor that the tutor has no interest in the proceeding adverse to that of the person under disability.

Conduct of proceedings by tutor

5. (1) Subject to the Rules, where a person under disability is a party to any proceedings, anything which would, if he or she were not a person under disability, be required or authorised

by these Rules to be done by the person shall or may be done by the tutor.

(2) A tutor must act by a solicitor.

Cross-claim

6. A tutor defending any proceeding for a person under disability may bring a cross-claim under Order 5.

No imputed admission on pleadings

7. Order 11, subrule 13 (1) does not apply to an opposite party who is a person under disability.

Discovery and interrogatories

8. Orders 15 and 16 apply to a person under disability and to the person's tutor.

Compromise etc. of matter in suit

9. (1) Where a proceeding has been commenced, and afterwards an agreement is made by the tutor in the proceeding of a person under disability, for the compromise or settlement of any matter in dispute in the proceeding, the tutor shall apply to the Court for approval of the agreement and the Court may approve or disapprove the agreement.

(2) An agreement approved by the Court under subrule (1) is as binding on the person under disability as if the person under disability were not a person under disability and the person's tutor were his or her agent to make the agreement.

(3) An agreement disapproved by the Court under subrule (1) is not binding on the person under disability.

Payment into Court

10. A tutor shall not, except by leave of the Court, bring money into Court under Order 23 or accept money brought into Court under that Order.

Compromise etc. before suit

11. (1) Where a claim enforceable by a proceeding in the Court is made by or on behalf of, or against a person under disability and, before the proceeding is commenced to enforce the claim, an agreement is made by or on behalf of the person under disability for the compromise or settlement of the claim, the Court may approve or disapprove the agreement.

(2) An agreement approved by the Court under subrule (1) is as binding on the person under disability by or on whose behalf it is made as if the person under disability were not a person under disability and, where the agreement is made by another person on behalf of the person under disability, as if that other person were the person's agent to make the agreement.

(3) An agreement disapproved by the Court under subrule (1) is not binding on a person under disability by or on whose behalf it is made.

(4) A person may, by application, commence a proceeding for approval of an agreement under this rule, and may, by the application, seek enforcement of the claim in case the Court does not approve the agreement.

(5) Where, in a proceeding under this rule, the Court does not approve an agreement but the applicant seeks to enforce the claim, the Court may give directions for the further conduct of the proceeding.

Terms of approval

12. (1) The Court may give its approval under rule 10 or rule 12 on terms.

(2) Without affecting the generality of subrule (1), the Court:

- (a)** may, as a term of its approval, require that any money or other property payable or applicable to or for the benefit of a person under disability be dealt with by way of settlement or otherwise as the Court thinks fit for the benefit of the person under disability; and
- (b)** may make such orders as it thinks fit for the carrying out of its requirements under paragraph (a).

Service

13. (1) This rule applies where, in any proceeding, a document is required to be served personally on a person under disability.

(2) Personal service on a person under disability shall not be effected otherwise than in accordance with this rule.

(3) Where the person under disability has a tutor in the proceeding, the document may be served on the tutor.

(4) The document may be served on any person (including the person under disability) whom the Court may, before or after service, approve.

(5) Where the person to be served is a minor and has no tutor in the proceeding, the document may be served:

- (a)** if the person is aged 16 years or upward, on the person;
- (b)** on the person's parent or guardian; or
- (c)** if the person has no parent or guardian, on a person with whom the person resides or in whose care the person is.

(6) Where the person to be served is a mentally disabled person and has no tutor in the proceeding, the document may be served:

- (a) if a committee is appointed of the person's person or estate, or the person has a guardian, on the committee or guardian; or
- (b) if there is no committee or guardian, on a person with whom the person resides or in whose care the person is.

(7) A document served pursuant to any of subrules (3) to (6) must be served in the manner required by the Rules with respect to the document.

(8) A judgment or order requiring a person under disability to do, or refrain from doing, any act, a notice of motion for the committal of a person under disability, and a subpoena against a person under disability, must, in addition to any other service required by these Rules, and notwithstanding anything in subrules (3) to (6), be served personally on the person under disability.

(9) Subrule (8) does not apply to an order for interrogatories or for discovery or inspection of documents.

ORDER 44

INTERPLEADER

Division 1—Preliminary

Interpretation

1. In this Order, unless the context or subject matter otherwise indicates or requires:

“**claimant**” means a person making a claim to property in dispute;

“**execution creditor**” means a person on whose behalf process is issued;

“process” means process for execution issued by or under the authority of the Court;

“property in dispute” means any debt or property which is the subject of proceedings under this Order.

Division 2—Stakeholder’s Interpleader

Case for relief

2. Where a person under a liability (otherwise than as a Sheriff) in respect of a debt or other personal property is sued, or expects to be sued, in the Court, for or in respect of the debt or property by two or more persons making adverse claims to the debt or property the Court may, on application by such person (in this Order referred to as a **“stakeholder”**), grant relief by way of interpleader.

Application in a pending proceeding

3. (1) Where a stakeholder has, in a proceeding in the Court, been sued for or in respect of the property in dispute, the application shall be by motion in the proceeding.

(2) A stakeholder applying pursuant to subrule (1):

(a) must serve notice of the motion on each party to the proceeding who claims any interest in the property in dispute; and

(b) must serve notice of the motion personally on each claimant who is not a party to the proceeding.

(3) In a case to which subrule (1) does not apply, a stakeholder applying for relief by way of interpleader must commence the proceeding by application, joining each claimant as a respondent.

Division 3—Sheriff's Interpleader**Notice of claim—Form 50**

4. (1) Where a Sheriff takes or intends to take any personal property in execution under process, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice of claim to the Sheriff, in accordance with Form 50.

(2) A notice of claim given under this rule shall:

- (a) specify the claim;
- (b) state the name and place of abode of the claimant;
- (c) state an address for service; and
- (d) be accompanied by a copy of the notice.

(3) Where a person who is entitled to give notice under this rule does not, within a reasonable time after having knowledge of the facts, give notice under this rule, the Court may, on application by the Sheriff, restrain the commencement or stay the continuance by that person of the proceeding in the Court or restrain the commencement or the continuance by that person of a proceeding in any other court against the Sheriff for or in respect of anything done by the Sheriff in execution of the process after the time when that person might reasonably have given notice under this rule.

(4) Subject to subrule (5), a Sheriff may apply for an order under subrule (3) by motion in the proceeding in which the process is issued. Notice of the motion shall be served personally on the person against whom the order is sought.

(5) If a proceeding to which subrule (3) applies is brought in the Court against a Sheriff, an application for an order under that subrule restraining the continuance of that proceeding must be made by motion in that proceeding.

Notice to execution creditor

5. (1) A Sheriff must, on being given notice of claim under rule 4, serve the notice on the execution creditor.

(2) The execution creditor may serve on the Sheriff notice that he or she admits the claim.

Admission of claim

6. (1) Where an execution creditor admits a claim by notice under rule 5:

- (a) the execution creditor shall not be liable to the Sheriff for any fees or expenses incurred by the Sheriff under the process after the notice under rule 5 is given;
- (b) the Sheriff shall withdraw from possession of the property claimed; and
- (c) the Court may, on application by the Sheriff, restrain the commencement or stay or restrain the continuance by the person whose claim is admitted of a proceeding in any court against the Sheriff for or in respect of anything done by the Sheriff in execution of the process.

(2) If a proceeding to which paragraph (1) (c) applies is brought in the Court against the Sheriff, an application by the Sheriff for an order under that paragraph restraining the continuance of that proceeding shall be made by motion in that proceeding.

(3) Subject to subrule (2), a Sheriff may apply for an order under paragraph (1) (c) by motion in the proceeding in which the process is issued.

Interpleader motion

7. (1) Where a Sheriff has, under rule 5, served a notice of claim on the execution creditor and the execution creditor does not, within 4 days after service of the notice, under rule 5, serve on the Sheriff notice that he or she admits the claim, and the claim has not

been withdrawn, the Court may, on application by the Sheriff, grant relief by way of interpleader.

(2) An application of the Sheriff under this rule must be by motion in the proceeding in which the process is issued.

(3) A Sheriff moving pursuant to this rule must serve notice of the motion on each party to the proceeding who claims any interest in the property in dispute and on each claimant.

Division 3A—Payment pursuant to Statutory Entitlement

Payment pursuant to statutory entitlement

7A. A person who wishes to make a payment into Court pursuant to a specific entitlement to do so contained in any Act of the Commonwealth may, at the time of making such payment, apply to the Court for such order and directions as are considered necessary.

Division 4—General

Powers generally

8. On application for relief by way of interpleader:
- (a) the Court may make such orders and directions as it thinks fit for the hearing and determination of all matters in dispute; and
 - (b) without limiting the generality of paragraph (a), the Court may:
 - (i) where a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute, order that any claimant be added as a respondent in that proceeding in addition to or in substitution for the

applicant, or order that that proceeding be stayed or dismissed;

- (ii) order the applicant to pay or transfer any or all of the property in dispute into Court or otherwise to dispose of any or all of the property in dispute;
- (iii) where a claimant claims to be entitled by way of security for debt to any or all of the property in dispute, make orders for the sale of any or all of the property in dispute and for the application of the proceeds of sale;
- (iv) on request by any party, summarily determine any or all questions of fact or law in which the requesting party is interested arising on the application;
- (v) make orders for the settlement and trial of issues; and
- (vi) make such order, or pronounce such judgment, as the nature of the case requires.

Default by claimant

9. (1) Where:

- (a) a claimant has been given due notice of the hearing of an application for relief by way of interpleader and does not appear at the hearing; or
- (b) a claimant does not comply with an order made in the proceeding on such an application;

the Court may, subject to subrule (2), order that the claimant and those claiming under him or her be barred from prosecuting the claim against the applicant and those claiming under him or her.

(2) An order under subrule (1) shall not affect the rights of the claimants amongst themselves.

Neutrality of applicant

10. (1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or pronounce judgment against the applicant unless the Court is satisfied on the following matters:

- (a) that the applicant claims no interests in the property in dispute except for charges or costs;
- (b) that the applicant does not collude with any claimant.

(2) Where a Sheriff applies for relief by way of interpleader, the Court may require the Sheriff to satisfy the Court on the matters mentioned in subrule (1) and the Court may, if not satisfied on those matters, dismiss the application.

(3) Nothing in this rule affects the power of the Court in other cases to dismiss the application or to pronounce judgment against the applicant.

Order in several proceedings

11. (1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any or all of the property in dispute, the Court may make an order in any two or more of those several proceedings.

(2) An order made pursuant to subrule (1) shall be entitled in all the proceedings in which it is made and the order shall be binding on all the parties to them.

Disposal

12. The Court before which an issue is tried under this order may pronounce such judgment, or may make such order, as the nature of the case requires, including a judgment or order finally disposing of all questions arising in the proceedings.

ORDER 45

SOLICITORS

Power to act by solicitor or authorised representative

1. (1) Every matter or thing which under the Act or the Rules or otherwise by law is required or allowed to be done by a party may be done by his or her solicitor or authorised representative.

(2) Subrule (1) does not apply where the context or subject matter otherwise indicates or requires.

Adverse parties

2. Where a solicitor or authorised person or the solicitor's partner acts as solicitor or authorised representative for any party to any proceeding, or is a party to any proceeding, that solicitor or authorised representative shall not, without the leave of the Court, act for any other party to the proceedings not in the same interest.

Change of solicitor or authorised representative

3. A party may change the solicitor or authorised representative acting for him or her in any proceedings by filing a notice of change and serving the notice on the other parties and, where practicable, the former solicitor or authorised representative.

Change of agent

4. Where a solicitor (in this rule called "**the principal solicitor**") acts for a party in any proceeding and another solicitor acts as agent for the principal solicitor in the proceeding and the principal solicitor changes the solicitor acting as agent, the party must file notice of the change and serve the notice on the other parties and on the former agent solicitor.

Appointment of solicitor or authorised representative

5. Where a party acts for himself or herself in any proceeding and afterwards appoints a solicitor or authorised representative to act for him or her in the proceeding, the party must file notice of the change and serve the notice on the other parties.

Removal of solicitor or authorised representative

6. Where a solicitor or authorised representative acts for a party in any proceeding and afterwards the party determines the authority of the solicitor or authorised representative to act for him or her in the proceeding:

- (a) the party must file notice of the change and serve the notice on the other parties and on the former solicitor or authorised representative; and
- (b) the former solicitor or authorised representative may file notice of the change and serve the notice on the parties.

Withdrawal of solicitor or authorised representative

7. (1) Where a solicitor or authorised representative acts for a party to any proceeding and afterwards ceases to act, the solicitor or authorised representative may, subject to subrule (2), file notice of the change and serve the notice on the parties.

(2) A solicitor or authorised representative must not file or serve notice of a change under subrule (1) without leave of the Court unless he or she has, not less than 7 days before doing so, served on the former client notice of his or her intention to file and serve the notice of change.

(3) A solicitor or authorised representative filing a notice of change under subrule (1) must, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with subrule (2).

(4) A solicitor or authorised representative may serve a notice under this rule on the former client by posting it to the former

client at the residential or business address of the former client last known to the solicitor or authorised representative.

Effect of change

8. A change of which notice is required or permitted to be filed under any of rules, 3, 4, 5, 6 and 7 shall not have effect as between a party or solicitor or authorised representative to which the change relates on the one hand and the Court or any other party on the other hand until notice of the change is filed and, as regards any other party, is served on that other party.

Signature for solicitor

9. (1) Where any signature by a solicitor is required or permitted for the purpose of any proceeding, the signature for the solicitor by any of the following persons shall be sufficient:

- (a) a partner of the solicitor;
- (b) a solicitor who is agent of the solicitor for the purpose of the proceeding;
- (c) a partner of the agent;
- (d) a solicitor employed by the solicitor or by the agent.

(2) A signature made pursuant to this rule shall be accompanied by a statement of the capacity in which the signature is made.

ORDER 46

REGISTRIES

Taking of oaths and affidavits

1. A Registrar has, by virtue of his or her office, authority to administer oaths and affirmations for the purposes of the Court and proceedings in the Court.

Seal of Court

2. (1) The seal of the Court as determined pursuant to subsection 467 (1) of the Act is in the form represented hereunder.

(SEAL TO BE INSERTED HERE)

(2) The seal of the Court shall be kept at the Principal Registry in such custody as the Chief Justice directs.

(3) The Registrar shall have in custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Court with the addition of the words "Principal Registry".

(4) The District Registrar in respect of each District Registry shall have in custody a stamp the design of which shall as nearly as practicable be the same as the design of the seal of the Court, with the addition of such words as the Chief Justice directs for the purpose of relating the stamp to that District Registry.

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

Use of Seal

3. The seal of the Court must be affixed to:
 - (a) Rules of Court;
 - (b) commissions issued by authority of the Court;
 - (c) documents issued by the Court for use outside Australia, not being documents for service on a party to the proceeding; and
 - (d) such other documents as the Court or a Judge directs or as the law requires.

Stamp of Court

4. The stamp of the Court must be affixed to all process filed in the Court and orders entered and to all such other documents as the Court directs.

Custody of documents

5. (1) Each Registrar has charge of documents in proceedings in the Registry and of the records of the Registry.

(2) Subject to subrule (2A), documents must not be taken out of a Registry except:

- (a) for the purpose of transmission between Registries; or
- (b) with the permission of the Court or a Judge.

(2A) Subject to any conditions specified by a Registrar, a Registrar may permit a party to proceedings to take documents out of a Registry for the purpose of preparing appeal papers, unless the Court or a Judge orders otherwise.

(3) The Registrar must ensure that the records of the Registry are properly kept.

Inspection of documents

6. (1) Except with the leave of the Court or a Judge a person who is not a party to the proceeding may not search in the Registry for or inspect:

- (a) any judgment, order, transcript of a proceeding, or other document which the Court has ordered remain confidential;
- (b) any affidavit;
- (c) interrogatories or answers to interrogatories;
- (d) lists of documents given on discovery;
- (e) admissions;
- (f) evidence taken on deposition;
- (g) any subpoena or any documents lodged with the Registrar in answer to a subpoena for production of documents; or
- (h) any other document which the Registrar considers ought to remain confidential to the parties.

(2) Except with the leave of the Court or a Judge a party may not search in the Registry for or inspect any document filed to support an application that any document, evidence or thing be kept confidential or that any document or thing be privileged from production.

Operation of Registries

7. (1) Subject to these Rules and the direction of the Court or a Judge, the Registrar of the Court may give a direction as to the operation of any Registry.

(2) A person may apply to the Court *ex parte* for a direction that a Registrar do any act which he or she is bound or entitled to do and has refused to do.

Abuse of process

7A. If a document presented to a Registry in any proceeding, including any document which is or will if issued become an originating document, appears to a Registrar on its face to be an abuse of the process of the Court or to be frivolous or vexatious, the Registrar may refuse to accept or issue it or may seek the direction of a Judge who may direct the Registrar:

- (a) to accept or issue it; or
- (b) to refuse to accept or issue it.

Prescribed time—subsection 466 (5) of the Act

7B. (1) For the purposes of subsection 466 (5) of the Act, the prescribed time is the period of 21 days after the day on which the Registrar has exercised any of the powers of the Court pursuant to subsection 466 (1) of the Act.

(2) Where a party to a proceeding referred to in subsection 466 (5) of the Act has not applied to the Court to review the exercise of a power of the Court under subsection 466 (1) of the Act within the time prescribed under subrule (1), further time for making such an application may be allowed by the Court or a Judge upon such terms as the Court or a Judge thinks fit.

(3) The Court or a Judge may allow further time for making an application referred to in subrule (2) whether or not, when a decision to allow that further time is made, the prescribed time referred to in subrule (1) has expired.

(4) In this Rule, “**Registrar**” has the same meaning as in subsection 466 (8) of the Act.

Temporary venue

8. (1) When any party to any proceeding desires to make an application therein to the Court or a Judge, and no Judge of the Court is available there to take the application, the party may lodge

with the Registrar at the proper place a request that the application be heard and disposed of at another place.

(2) Where a party makes a request under subrule (1), the Registrar at the proper place shall thereupon transmit the request to the Registrar at such other place (in this rule referred to as the “**temporary venue**”) as that Registrar may determine together with such documents as are necessary for the purpose of hearing and disposing of the application.

(3) The application may then be heard and disposed of at that temporary venue and, as soon as it has been disposed of, all documents relating to it shall be re-transmitted to the Registrar at the proper place.

(4) In any of the cases mentioned in this rule, if the application is to be made upon notice to any person, the notice shall specify that the application will be made before the Court or a Judge at the temporary venue on a day on which it is fixed to be heard.

Transmission of documents

9. (1) In any such case as is mentioned in rule 8, any party desiring to make an immediate application to the Court or a Judge may, instead of requesting that the application be heard and disposed of at another place require the Registrar at the proper place to transmit by telegraph to the Registry at another place the contents of all such documents filed in the Registry at the proper place as are necessary for the purpose of hearing and disposing of the application, and the Registrar at the proper place shall, on payment by such party of the expense of transmission, transmit them accordingly to such other place (in this rule referred to as the “**temporary venue**”) as that Registrar may determine.

(2) The copy so received by telegraph shall be filed in the Registry at the temporary venue and shall be receivable in evidence for the purpose of the application to the same extent as the original documents would be admissible.

(3) If the application is to be made upon notice to any person, the notice shall state that the documents will be transmitted by telegraph to the Registry at the temporary venue.

(4) If any person to whom notice is given under subrule (3) requires any other documents to be transmitted by telegraph to the Registry at the temporary venue, they shall be transmitted accordingly and shall be receivable in evidence in like manner.

(5) Evidence of service of the notice may also be so transmitted.

Transmission of order

10. When in any of the cases mentioned in rules 8 and 9 an order has been made by the Court or a Judge at a temporary venue, the Registrar at the temporary venue shall at the request and expense of either party and without payment of any further fee inform the Registrar at the proper place by telegraph of the effect of the order, and thereupon and without waiting for the receipt of the order, full effect shall be given to the order.

Summary of order

11. In any of the cases aforesaid a Registrar may, by consent of the parties, instead of transmitting by telegraph the full contents of any document transmit a summary thereof certified by the Registrar to be complete and correct, and the summary may be received and acted upon by the Court or Judge as if it were a copy of the original document.

Facsimile

12. Documents transmitted by use of facsimile transmitting equipment shall be deemed documents transmitted by telegraph for the purposes of this Order.

ORDER 47**SHERIFF***Division 1—General***Interpretation**

1. In this Order, unless the context or subject matter otherwise indicates or requires:

“**bill**” means bill of fees of the Sheriff;

“**fees**” includes charges and poundage;

“**person interested**” in relation to the fees of the Sheriff in respect of the service or execution of any process, means:

- (a) a party who lodges the process with the Sheriff for service or execution;
- (b) a solicitor or authorised representative who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or
- (c) in the case of a writ of execution authorising the Sheriff to levy the fees on any property, the person upon whose property the levy is authorised.

Suspension of execution

2. (1) The Sheriff shall not suspend the execution of any process, except upon an absolute instruction in writing to that effect lodged with him or her by the party by whom the process is lodged.

(2) A party who has lodged an instruction to suspend the execution of any process may withdraw the instruction by lodging with the Sheriff an instruction to execute the process.

Default

3. Where the Sheriff defaults by not executing any process according to its tenor, application may be made for an order directing him or her to execute the same.

Execution: Motion for directions

4. The Sheriff may move the Court or a Judge *ex parte* or on notice for directions as to whether process should be executed, and the manner in which execution should be made.

Division 2—Fees

Security

5. (1) Where a party to any proceeding lodges any process with the Sheriff for service or execution, the Sheriff may, upon lodgment and from time to time after lodgment:

- (a) require the party to deposit money in a specified amount to be applied in or towards satisfaction of Sheriff's fees; or
- (b) as to the whole or any part of the fees, take an undertaking by the party's solicitor or authorised representative to pay them instead of requiring a deposit.

(2) Where a party required to make a deposit under subrule (1) objects to the amount specified by the Sheriff, the Court, on motion by the party, may, by order, fix the amount to be deposited.

(3) The Sheriff may defer service or execution of any process until a deposit is made or an undertaking is given in accordance with this rule.

(4) Where it appears that the amount deposited under this rule exceeds the fees of the Sheriff, the Sheriff shall repay the excess

to the party depositing the money or to the party's solicitor or authorised representative.

Liability of solicitor

6. Where a party, by a solicitor or authorised representative, lodges with the Sheriff any process for service or execution the solicitor or authorised representative shall be liable for the fees of the Sheriff, whether or not the solicitor or authorised representative has given an undertaking pursuant to paragraph 5 (1) (b).

Bill

7. (1) The Sheriff shall, on the request of a person interested, furnish him with a bill.

(2) The Sheriff may serve a bill on any person interested.

Taxation

8. (1) Subject to subrule (2), the Court may, on motion by a person interested, order that fees be taxed.

(2) Where the Court orders that fees be taxed, an application to proceed with the taxation shall be made by the Sheriff to a taxing officer by motion in the proceeding.

Determination

9. (1) Where a bill is served on or furnished to a person interested by the Sheriff, the amount of fees shown in the Bill shall, unless the Court otherwise orders, be binding as between the Sheriff and the person interested unless the person interested obtains an order for taxation under rule 8.

(2) Where the fees are taxed pursuant to an application by a person interested under rule 8, the amount fixed on taxation shall,

subject to any alteration on reconsideration review or appeal, be binding as between the Sheriff and the person interested.

Default by solicitor

10. Where in any proceeding a solicitor has given an undertaking to pay, or is otherwise liable to pay, any fees of the Sheriff, and the solicitor does not pay the fees within 7 days after the amount has become binding under rule 9 as between the solicitor and the Sheriff, the Court may, on motion in the proceeding by the Sheriff, order the solicitor to pay the fees to the Sheriff.

ORDER 48

INQUIRIES UNDER THE ACT 1988

Interpretation

1. In this order:

“**ballot**” means a ballot referred to in Division 7 of Part IX of the Act;

“**inquiry**” means an inquiry into the election for an office in an organisation or in a branch of an organisation, under section 218 of the Act or an inquiry into a ballot, under section 253M of the Act.

Commencement of a Proceeding

2. (1) An application under section 218 of the Act for an inquiry into an election must be in accordance with the form prescribed by regulation 62 of the Industrial Relations Regulations and must be accompanied by a statutory declaration made by the applicant verifying the facts set out in the application.

(2) An application under section 253M of the Act for an inquiry into a ballot must be in accordance with the form prescribed by regulation 98 of the Industrial Relations Regulations and must be accompanied by a statutory declaration verifying the facts set out in the application.

(3) Upon the receipt of the application and the statutory declaration referred to in subrules (1) or (2), as the case may be, the District Registrar must:

- (a) sign and seal the application with the seal of the Court; and
- (b) forward a sealed copy of the application and the statutory declaration to the applicant with a note endorsed on the application of:
 - (i) the time and place on which the matter is listed for a directions hearing; and
 - (ii) the names and addresses of the persons (if any) to whom the Court or a Judge has directed that advice of the application be given.

Service

3. (1) Not later than two days before the date appointed for a directions hearing, the applicant must serve a sealed copy of the application and the statutory declaration on all other proper parties in the inquiry.

(2) The copy of the application for service under subrule (1) must bear a note:

- (a) of the time and place for a directions hearing; and
- (b) that if there is no appearance by the party served or his or her counsel or solicitor or authorised representative at the directions hearing, the proceeding may be heard and orders made in his or her absence.

Directions

4. At the directions hearing the Court shall give such directions as are required to be given by section 219 of the Act or regulation 98A of the Industrial Relations Regulations (as the case may be), and all other directions necessary for the further conduct of the inquiry.

Court Directions to Issue Subpoenas

5. (1) Where the Court is conducting an inquiry and is of the opinion that the inquiry will be assisted by production of any document or thing or the calling of a witness the Court may direct the Registrar to issue subpoenas for production or attendance.

(2) The Registrar must arrange for service of such subpoenas and the payment of attendance money and witnesses' expenses in connection therewith.

Application under section 221 of the Act

6. Where an inquiry has been instituted any person may make an application under section 221 of the Act or regulation 97 of the Industrial Relations Regulations (as the case may be) *ex parte* or on notice as the Court or a Judge may direct.

ORDER 49

PROCEEDINGS FOR AN OFFENCE

Prosecutions

1. (1) A prosecution for an offence is commenced by summons upon information.

(2) The person bringing the prosecution is called a prosecutor, and the person against whom the prosecution is brought is called a defendant.

Form of summons, Forms 51, 52

2. (1) A summons must:

- (a) state the offence with which the defendant is charged;
- and

- (b) give particulars of the act or omission of the defendant to which the prosecution relates.

(2) A summons and an information must be in accordance with Forms 51 and 52 respectively.

Summons in paragraphs

3. (1) A summons must not be prolix and must be divided into paragraphs numbered consecutively.

(2) So far as convenient, each paragraph must deal only with one matter.

Appointment of date

4. (1) The summons must appoint a date on which the defendant is to appear before the Court to answer the charge.

(2) Except where the defendant enters a plea of guilty or the Court otherwise orders, on the day appointed under subrule (1), the charge shall not be heard, but the Court shall:

- (a) give any necessary directions as to the conduct of the prosecution and defence; and
- (b) fix a date for hearing or further directions.

Form 48

(3) If the defendant does not appear on the date appointed pursuant to subrule (1), the Court may issue a warrant for the defendant's arrest.

(4) The warrant shall be in accordance with Form 48.

Affidavits as to fine or penalty

5. (1) Unless the Court otherwise directs, where the Court is empowered to impose a fine or penalty under any Act, the prosecutor must, and the defendant may, file such affidavit evidence as each considers necessary having regard to the terms of the relevant Act to assist the Court to determine the appropriate fine or penalty.

(2) The provisions of Order 14 relating to affidavits including requirement for cross-examination apply in relation to affidavits filed in accordance with subrule (1).

(3) This rule applies in a case where there has been a plea of guilty or where after a finding of guilty the matter has been adjourned to enable evidence as to the appropriate fine or penalty or where the defendant proposes to plead guilty or not to deny the charge alleged in the summons and has so advised the prosecutor at the directions hearing or within the time then appointed.

ORDER 50

CASE STATED AND QUESTIONS RESERVED

Application

1. (1) A case stated, or a question referred for the consideration of the Court:

- (a) under section 46, section 82, paragraph 416 (1) (a), subsection 423 (5) or section 424 of the Act;
- (b) under any other Act;

must be in the form of a special case.

(2) The special case must:

- (a) be divided into paragraphs numbered consecutively;
- (b) state concisely such facts; and

- (c) annex such documents as are necessary to enable the Court to decide the questions raised by the special case.

(3) The Court may draw from the facts stated and the documents annexed in the special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

Special case to be prepared etc.

2. Unless the person or body stating the case or referring the question otherwise directs, the special case must be:

- (a) prepared in draft by the party having the carriage of the proceeding after consultation with the other parties concerned and shall contain an address for service of each of the parties concerned;
- (b) settled by the person or body, stating the case or referring the question; and
- (c) transmitted by that person or body with four additional copies, to the Registry at the proper place.

Setting down for hearing

3. Where a case has been stated or a question referred, the Registrar must:

- (a) set down the proceeding for hearing; and
- (b) notify each party of the date appointed for hearing.

Question referred under section 82 of the Act

4. Where a question is referred to the Court by the Industrial Registrar pursuant to section 82 of the Act, the District Registrar of the Court must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the parties interested in the question and the Industrial Registrar of the date so appointed.

ORDER 51

JUDICIARY ACT 1903—SECTION 78B

Notice of a constitutional matter—Form 53

1. (1) Where a proceeding pending in the Court involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*, the party whose case raises the matter must file a notice of a constitutional matter in the Registry at the proper place.

(2) Notice of a constitutional matter must state:

- (a) specifically the nature of the matter; and
- (b) the facts showing that the matter is one to which subrule (1) applies.

(3) The notice of a constitutional matter must be in accordance with Form 53.

Notices of a Constitutional Matter

2. The party whose case raises the constitutional matter, or such other party as the Court may direct, must file notice of a constitutional matter and serve a copy thereof on every other party and on the Attorney-General of the Commonwealth and of each State and Territory:

- (a) if the matter arises before the directions hearing—not later than 2 days before the date of the directions hearing;
- (b) if the matter arises at the directions hearing—within such time as the Court or a Judge directs; or
- (c) otherwise if the matter arises before the date fixed for trial—not later than 10 days before that date.

Affidavit of service

3. The party whose case raises the constitutional matter must file an affidavit of service of the notice of a constitutional matter proving compliance with paragraph 2 (a), (b) or (c) not later than the day before:

- (a) the date appointed for the directions hearing; or
- (b) the date ordered by the Court or a Judge at the directions hearing; or
- (c) the date fixed for trial.

ORDER 51A**MATTERS REMITTED BY THE HIGH COURT OF AUSTRALIA****Remittal of matters by High Court to the Court**

1. (1) A sealed copy of the order of the High Court, remitting a matter, or any part of a matter, to the Court must be filed in the District Registry named in the order of remittal.

(2) In the absence of a specification of a District Registry of the Court in a matter or part of a matter in the order referred to in subrule (1), the Chief Justice may direct that the order shall be filed in a particular District Registry.

Filing and Service

2. (1) The Registrar shall affix a notice to the High Court's order which shall be allotted a serial number as though the order was an application filed in the Registry.

(2) The notice must bear the date for a directions hearing in the matter.

(3) The notice must bear a note that before taking any step in the proceeding a party, other than the applicant, must enter an appearance in the Registry unless that party has already entered an appearance in the High Court.

(4) The notice must be in accordance with Form 53A.

(5) The Registrar must cause sealed copies of the notice with copies of the High Court's order attached thereto to be served on all parties to the proceeding in the High Court and on any other person whom the Court or a Judge directs should be so served.

(6) Service may be effected by delivery to a party's address for service in the proceeding before the High Court.

Directions hearing

3. The Court may give any directions necessary for the further conduct of the proceeding having regard to the provisions of Order 10.

Directions of High Court

4. Rules 1 to 3 of this Order apply subject to any direction of the High Court in the matter.

ORDER 51B

**Judiciary Act 1903; section 44
Industrial Relations Act 1988; subsections 412 (2) and (3)**

**MANDAMUS, PROHIBITION, INJUNCTION AGAINST AN
OFFICER OF THE COMMONWEALTH HOLDING OFFICE
UNDER THE INDUSTRIAL RELATIONS ACT 1988 OR THE
COAL INDUSTRY ACT 1946**

Application

1. Subject to this Order, the Rules of Court prescribe the practice and procedure of an application for a writ of mandamus, prohibition or injunction, remitted to the Court under section 44 of the *Judiciary Act 1903*, and sought against an officer of the Commonwealth holding Office under the *Industrial Relations Act 1988* or the *Coal Industry Act 1946*.

Form of Application

2. (1) An application must be in accordance with Form 53A.

(2) The application shall be entitled:

(name of the applicant(s))

Applicant(s)

(name and title of the officer or officers of the Commonwealth holding Office under the Industrial Relations Act 1988 or the Coal Industry Act 1946 against whom the order is sought and the name or names of any other person against whom orders are sought, together with the name of any other respondent party)

Respondent(s)

Joinder of claims for relief

3. Any other claim for relief coming within the jurisdiction of the Court and which arises out of or is connected with the same subject matter may be joined in an application under this Order.

ORDER 52

APPEALS

Interpretation

1. In this Order unless the contrary intention appears:
“**application**” means application for leave to appeal, and “**applicant**” has a corresponding meaning;
“**Court**” means the Court exercising its appellate or related jurisdiction under Part XIV Division 5 of the Act;
“**judgment**” means the judgment, decree, order, or sentence of a court or judge under appeal, or in respect of which leave to appeal is sought.

Service

2. Where in this Order service is required of a document it may be effected:

- (a) in the case of a notice of appeal or an application for leave to appeal:
 - (i) by serving a signed and sealed copy of the document personally on the party to be served; or
 - (ii) by delivering a signed and sealed copy of the document to that party's address for service in the proceeding in the court appealed from; and
- (b) in the case of any other document:
 - (i) by serving it in the manner prescribed in paragraph (a) above; or
 - (ii) by serving it in the manner prescribed in Order 7, rule 4 for service of documents which need not be served personally.

Division 1—Leave to Appeal**Application of Division**

2A. This Division applies to an application for leave to appeal from a judgment.

Leave to appeal from interlocutory judgments of the Court

2B. An application for leave to appeal from an interlocutory judgment of the Court may be made orally to the Judge who has pronounced the judgment at the time of its pronouncement.

How applications for leave to appeal to be made

3. Except in cases to which rule 2B applies or the Court or a Judge otherwise directs, an application for leave shall be:

- (a) made by motion on notice to a single Judge or a Full Court; and
- (b) determined by the Court upon the basis of written submissions, to be filed and served within such time as the Court or a Judge may specify, and without oral argument.

Form of application—Form 54

4. (1) An application must be in accordance with Form 54.

(2) An application shall be accompanied by an affidavit showing:

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

Time for filing application

5. An application must be filed within 21 days after:

- (a) the date when the judgment appealed from was pronounced; or
- (b) any later date fixed for that purpose by the court or judge who pronounced the decision.

Service

6. An application and accompanying affidavit must be served on each person who was a party to or given leave to intervene in the proceeding in the court appealed from within 5 days of the filing of the application.

Appearance

7. Where there is a respondent to the application, the application must bear a note that before taking any step in the

proceedings, the respondent must enter an appearance in the Registry and the respondent shall enter an appearance accordingly.

Time for filing and service of affidavits

8. A respondent who desires to adduce evidence must file and serve any affidavits within 14 days of the service of the application on him or her.

Setting down for hearing

9. The application shall be set down for decision by the Registrar at the proper place.

Directions hearing

10. (1) Within 7 days of the expiration of the period referred to in rule 8, any party may apply for a directions hearing in connection with the determination of the application, and the application shall be listed for directions accordingly.

(2) If a Judge so directs, the application must be listed for directions.

Division 2—Appeals

Interpretation

11. If the Court directs that a party other than the appellant shall have the carriage of the appeal, or of a proceeding in or arising out of an appeal, these Rules apply as if that party were included in the description “**appellant**”.

Form and filing of notice of appeal—Form 55

12. (1) An appeal must be instituted by filing a notice of appeal in accordance with Form 55.

(2) A notice of appeal must be filed in an appropriate Registry.

(3) For the purposes of this rule an appropriate Registry shall mean:

- (a)** if the appeal is from the judgment of a Court of a State or Territory—in the District Registry in that State or Territory;
- (b)** if the appeal is from a single Judge of the Court—in the Registry at the proper place;
- (c)** in any other case—the Principal Registry or an appropriate District Registry;

provided that the Court or a Judge may, before or after the filing of any document, order that any Registry is an appropriate Registry.

Title of proceeding

13. (1) A notice of appeal and all subsequent proceedings in an appeal must be entitled “In the Industrial Relations Court of Australia” with the name of the Registry in which they are filed, “On Appeal From” the court from which the appeal is brought, naming it, and shall also be entitled as between the party appellant and the party respondent.

(2) The notice of appeal must state:

- (a)** whether the whole or part only, and what part, of the judgment is appealed from;
- (b)** briefly, but specifically, the grounds relied upon in support of the appeal; and
- (c)** what judgment the appellant seeks in lieu of that appealed from.

(3) If the appeal is brought by leave of the Court:

- (a) the notice of appeal shall so state; and
- (b) a copy of the order giving leave to appeal must be annexed to the notice of appeal filed in the court appealed from pursuant to subrule 16 (1), and to every copy of the notice of appeal served pursuant to subrule 16 (2).

Parties

14. (1) Each party to the proceeding in the court appealed from who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal must be joined as a party appellant or respondent to the appeal.

(2) The Court or a Judge may order the addition or removal of any person as a party appellant or respondent to an appeal.

(3) A person must not be made an appellant without the person's consent.

Appearance by respondent

14A. Where there is a respondent to the appeal, the notice of appeal must bear a note that before taking any step in the proceedings, the respondent must enter an appearance in the Registry and the respondent shall enter an appearance accordingly unless the respondent has already entered a notice of appearance pursuant to rule 7.

Time for filing and serving notice of appeal

15. (1) The notice of appeal must be filed and served:

- (a) within 21 days after:
 - (i) the date when the judgment appealed from was pronounced;
 - (ii) the date when leave to appeal was granted; or

- (iii) any later date fixed for that purpose by the court appealed from; or
- (b) within such further time as is allowed by the Court or a Judge upon application made by motion upon notice filed within the period of 21 days referred to in the last preceding paragraph.

(2) Notwithstanding anything in the preceding subrule, the Court or a Judge for special reasons may at any time give leave to file and serve a notice of appeal.

(3) An application for extension of time must be made in accordance with Form 54A and be accompanied by an affidavit showing:

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reason why leave should be given.

Filing in courts and service upon parties

16. (1) Where the court appealed from is the Court of a State or Territory, a copy of the notice of appeal must be filed in the office of the Registrar, Master or other proper officer of that court.

(2) The notice of appeal must be served upon each person who was a party to or given leave to intervene in the proceeding in the court appealed from.

(3) The Court may direct that the notice of appeal be served on any other person.

Stay

17. (1) An appeal to the Court does not:

- (a) operate as a stay of execution or of proceedings under the judgment appealed from; or
- (b) invalidate any intermediate act or proceedings;

except so far as the Court or a Judge or the court below may direct.

(2) The Court may vary or vacate any direction of the Court or the court below referred to in subrule (1).

(3) An application for a direction of the Court or a Judge under subrule (1) must be made to the Court or a Judge by motion upon notice, and may be made whether or not a similar application has been made to the court below. An application for a direction under subrule (2) must be made to the Court or a Judge by motion upon notice, and may be made whether or not a similar application has been made to the court below.

Competency of appeal

18. (1) A respondent may move on notice at any time for an order dismissing an appeal as incompetent.

(2) Upon the hearing of the motion, the burden of establishing the competency of the appeal is on the appellant.

Discontinuance of appeal

19. (1) An appellant may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal is abandoned.

(2) The notice of discontinuance filed by an appellant under subrule (1) does not affect any other appellant in the appeal.

(3) Notwithstanding the filing of a notice of discontinuance pursuant to subrule (1) application may be made to the Court on motion for an order for payment of costs pursuant to section 347 of the Act and the Court may determine such application and make such order as it considers appropriate.

Security for costs

20. Unless the Court or a Judge otherwise directs no security for costs of an appeal to the Court shall be required.

Amendment by supplementary notice

21. (1) A notice of appeal may, before the date of the appointment made under rule 24, be amended without leave by filing a supplementary notice.

(2) A party who files a supplementary notice under subrule (1) shall serve and file it in accordance with rule 16 as if it were a notice of appeal.

(3) The Court may allow a notice of appeal to be amended on such terms and conditions as the Court thinks fit.

Cross-appeal

22. (1) A respondent who desires to appeal from a part of the judgment or to seek a variation of a part of the judgment, need not institute a substantive appeal, but shall:

- (a) within 21 days after the service upon him or her of the notice of appeal, or within such further time as the Court or a Judge fixes, file in the Registry a notice of cross-appeal; and
- (b) serve a copy of the notice upon the appellant and any other person affected by the relief sought.

(2) The notice of cross-appeal shall state what part of the judgment the cross-appellant cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and:

- (a) the relief that is sought in lieu of the order cross-appealed; or
- (b) the variation of that order that is sought.

(3) If a respondent proposes to contend that some matter of fact or law has been erroneously decided against him or her but does not seek a discharge or variation of a part of the judgment pronounced, the respondent need not give a notice of cross-appeal but shall:

- (a) file and serve notice of his or her contention on the appellant;
- (b) give notice to the appellant of the record of evidence or documents before the court below relevant to his or her contention, for inclusion in the appellant's draft index to be prepared in accordance with subrule 26 (1); and
- (c) at the appointment to settle the appeal papers, request the Registrar to include such record of evidence or documents in the appeal papers.

Retention of exhibits

23. (1) Where an appeal from a judgment lies, by leave or without leave, to the Court, the officer of the court below who has custody of the exhibits in the proceeding, shall, unless the court below otherwise orders, retain the exhibits:

- (a) for 21 days after the date when the judgment is pronounced; or
- (b) if within the period of 21 days leave to appeal to the Court from the judgment is granted, for a period of 21 days after leave is granted.

(2) Upon an appeal to the Court being instituted:

- (a) the proper officer of the court below or the associate to the judge below, shall make out and certify a list of exhibits; and
- (b) the exhibits, the list, and any other document before the court below, shall be delivered or transmitted to the Registry at the proper place.

(3) Where an exhibit cannot be so delivered or transmitted, the associate or officer shall state the circumstances and give such information as he or she can to enable the Registrar to cause the exhibit to be available to the Court.

(4) The Registrar shall retain the documents obtained under subrules (2) and (3) until the disposal of the appeal and shall thereupon return them to the officer or persons from whom they were obtained.

Appointment to settle

24. (1) The appellant shall, on filing the notice of appeal, get from the proper officer in the Registry, an appointment to settle the appeal papers.

(2) The appellant shall serve notice of the appointment on each person on whom the appeal is served.

(3) The notice of appointment may be subscribed to the notice of appeal.

Collection of papers

25. (1) Before the date appointed for settling the appeal papers, the appellant shall obtain and file in the Registry:

- (a)** the reasons for judgment of the court or judge below certified by the proper officer below; and
- (b)** a copy of the transcript of the proceedings below obtained from a Court Reporting Branch and corrected in accordance with subrules (3) and (4).

(2) If evidence was given orally but a copy of the transcript referred to in paragraph (1) (b) is not available:

- (a)** if notes of the evidence were taken by the presiding judge in the court below, the appellant shall, subject to any direction by the court or judge below obtain a copy of the notes and file the same in the Registry; or
- (b)** if notes of evidence are not obtainable pursuant to paragraph (a), the parties shall prepare a report of the evidence, which, subject to the directions of the court or judge below, shall be certified by the proper officer below, and shall be filed by the appellant in the Registry.

(3) An appellant who obtains a copy of the transcript referred to in paragraph (1) (b) shall:

- (a)** correct any errors that appear in it;
- (b)** submit a list of the corrections to the respondent; and

- (c) afford the respondent a reasonable opportunity of examining the transcript and corrections.

(4) If the parties disagree upon the accuracy of any part of the transcript, or are unable to agree upon a correction, the question shall be submitted to the proper officer of the court or judge below for the directions of the court or judge on that matter.

Draft index of appeal papers

26. (1) Before the date appointed for settling the appeal papers the appellant shall prepare and file in the Registry a draft index of the appeal papers.

(2) The appellant shall serve the draft index on the respondent a reasonable time before the appointment to settle the appeal papers.

Settlement

27. At the appointment to settle the appeal papers the Registrar shall:

- (a) determine what documents and matters shall be included in the appeal papers and the order of inclusion and such other matters as the Registrar thinks fit concerning the preparation of copies of the appeal papers;
- (b) settle the index in accordance with rule 28;
- (c) determine the number of copies of the appeal papers required; and
- (d) obtain an estimate of the duration of the hearing.

Preparation of Appeal Papers

28. (1) The title page of the appeal papers shall give the title of the proceeding, including the title of the court from which the appeal is brought, and the names of the solicitors or authorised representatives for each party and their addresses for service.

(2) After the title page there shall be an index of the documents comprising the appeal papers and showing the date and page number of each document.

(3) The appeal papers shall be paginated and the documents arranged as follows:

- (a) Process and pleading.
- (b) Evidence, oral or affidavit.
- (c) Testimony taken on commission or before an examiner and put in or used as evidence.
- (d) Exhibits. Arranged in the order in which they have been lettered or numbered as exhibits in the court below.
- (e) The reasons for decisions)
of the tribunal or board.)
- (f) The formal decision of) If the court or judge below
the tribunal or board.) was hearing an appeal
from a tribunal or board
- (g) The notice of appeal, if)
any, to the court below.)
- (h) The reasons for judgment of the court below.
- (i) The formal judgment or order of the court below.
- (j) The notice of appeal.
- (k) Any notice of cross-appeal or notice of contention.
- (l) The Certificate required by subrule (6).

(4) The date and a short description of the nature of each document shall precede it, but formal headings shall not be printed or copied, and jurats, formal identification of exhibits and the like shall be omitted.

(5) Interrogatories and answers and affidavits of documents shall not be copied except so far as they were put in evidence.

(6) A copy of the appeal papers shall be filed in the Registry with a certificate by the parties or their solicitors or authorised representatives that it has been examined and is correct.

(7) The appeal papers need not be in bound and printed form but shall be clear and legible and securely fastened.

(8) The appeal papers shall be prepared to the satisfaction of the Registrar.

(9) The requirements of this rule shall be subject to any direction which may be given by the Court or a Judge.

(10) The appellant shall file such number of copies of the appeal papers as the Registrar directs pursuant to paragraph 27 (c).

Setting down appeal

29. The Registrar, after consultation with the Chief Justice, shall fix a time and place for hearing and shall notify the parties accordingly.

Written submissions

30. (1) Subject to subrule (2) a party to an appeal may serve on the other parties a notice that the party proposes to prepare and file written submissions.

(2) Where a date for the hearing of the appeal has been fixed, a party shall not, unless the Court or a Judge otherwise orders, give a notice under subrule (1) later than 14 days before that date.

(3) Where a notice under subrule (1) is served on any party, that party may, by notice filed within 2 days after service on him or her of the notice under subrule (1), object to the use of written submissions.

(4) A party filing a notice of objection under subrule (3) shall, on the day of filing, serve the notice on each other party.

(5) Upon the filing of a notice of objection under subrule (3), the Registrar shall forthwith obtain the direction of the Chief Justice or the senior Judge available, and communicate it to the parties.

Directions

31. (1) The Court may, of its own motion, direct the preparation of written submissions.

(2) The Registrar shall serve notice on the parties of a direction under subrule (1).

Preparation

32. (1) Subject to any determination under subrule 30 (5), upon service of a notice under subrule 30 (1), each party shall prepare written submissions.

(2) Upon service of notice of a direction under rule 31, each party shall prepare written submissions.

(3) Written submissions:

- (a)** shall be divided into paragraphs numbered consecutively;
- (b)** shall state concisely:
 - (i)** the circumstances out of which the appeal arises;
 - (ii)** the contentions advanced by the party concerned; and
 - (iii)** the reasons relied upon; and
- (c)** shall, so far as practicable, refer to matter in the copies of appeal papers by page number, and shall not extract that matter;
- (d)** shall be filed and served in such order, and within such times, as a Judge may determine and the Registrar notify to the parties.

Further evidence on appeal

33. (1) This rule applies to any application to the Court to receive evidence in a proceeding on an appeal additional to evidence in the court below.

- (2) This rule applies unless the Court otherwise directs.
- (3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.
- (4) The grounds of the application shall be stated in an affidavit.
- (5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wants the Court to receive shall be given by affidavit.
- (6) The applicant shall file any affidavit not later than 21 days before the hearing of the appeal.
- (7) The evidence of any other party to the appeal shall unless the Court or a Judge otherwise orders be given by affidavit filed not later than 14 days before the hearing of the appeal.
- (8) A party to the appeal shall, not later than the time limited for him to file an affidavit under this rule:
 - (a) lodge as many copies of the affidavit as the Registrar may direct; and
 - (b) serve 3 copies of the affidavit on each other party to the appeal.

Expediting appeals

34. (1) The Court or a Judge may at any time make such orders as appear just for expediting of the appeal.
- (2) A party requiring leave to appeal may move on notice before the Court for an order that the application for leave to appeal be heard concurrently with or immediately before the hearing of the appeal, and for such consequential orders as may be necessary.

Directions by Registrar

35. At any time after the filing of the notice of appeal the Registrar may give directions as to any matter which appears to him or her to be a convenient matter upon which to give directions.

Want of prosecution

36. (1) Where an appellant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted the appeal with due diligence, the Court may:

- (a) order that the appeal shall be dismissed for want of prosecution;
- (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal shall stand dismissed for want of prosecution, or subsequently and in the event of non-compliance, order that it be so dismissed; or
- (c) make any other order as may seem just.

(2) A respondent may move on notice for an order under subrule (1), and the Court, after notice to the appellant has been given by the Registrar, may make orders in accordance with subrule (1) of its own motion.

(3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

Reference to Court by single Judge

37. In any rule in this order where power is conferred on the Court or Judge, a single Judge may refer a question to the Court if he or she considers it appropriate.

THERE ARE NO ORDERS 53 TO 61 INCLUSIVE

ORDER 62

COSTS

Determination of amount of costs

1. If the Court orders that costs (in this rule called “**the costs**”) be paid to any person, the Court may:

- (a) order or give directions that a scale of costs, that is used to calculate costs in a court constituted under a Commonwealth law, must be used to calculate the costs;
- (b) specify the amount of the costs to be allowed; or
- (c) direct the Registrar to determine the amount of the costs in accordance with the procedure set out in rule 42 of Order 62 of the Federal Court Rules.

ORDER 63

MONEYS PAID INTO COURT

Application

1. Moneys or funds paid into Court shall be governed by this Order.

Litigants’ Fund

2. (1) Funds paid into Court, shall, unless otherwise ordered, be paid into a bank account to the credit of an account entitled “Industrial Relations Court of Australia Litigants’ Fund”.

(2) An account referred to in subrule (1) is to be established with a bank having its principal office in Australia.

(3) The signing officer for the account will be an officer of the Attorney-General's Department and the counter-signing officer will be the person holding the appointment from time to time of District Registrar.

Particulars of payment

3. An order which directs funds in Court to be paid out, or shall state the particulars of the payment out or other action to be taken by the Registry.

Other application of moneys

4. (1) The Court or a Judge may, at any time, order that moneys or funds paid into Court, or to be paid into Court, shall be credited or applied in a manner other than payment into an Industrial Relations Court of Australia Litigants' Fund.

(2) In the event that any interest is earned on the moneys or funds referred to in subrule (1), the Court or a Judge may direct the disbursement of that interest.

Payment under order

5. No moneys or funds shall be paid out of an Industrial Relations Court of Australia Litigants' Fund without an order of the Court or a Judge.

Enquiry by bank unnecessary

6. A bank with which an account is established under subrule 2 (2) may receive moneys or funds and make payment out without enquiry whether an order has been made.

Certification Payment

7. (1) Within 3 days after payment of moneys or funds into Court pursuant to these rules or an order of the Court, the

District Registrar shall forward to each party a certificate that the moneys or funds so received have been received and credited or applied in the manner required by the rules or order.

(2) Within 3 days after the application of funds paid into Court where they are applied pursuant to an order that they be dealt with in a manner other than payment into an Industrial Relations Court of Australia Litigants' Fund, the District Registrar shall forward to each party a certificate that the moneys or funds paid in have been credited or applied in a manner required by the order.

**THERE ARE NO ORDERS 64 TO 71
INCLUSIVE**

ORDER 72

MEDIATION AND ARBITRATION

Division 1—Preliminary

Mediation or arbitration procedure

1. If, with the consent of the parties, the Court, a Judge or a Judicial Registrar orders proceedings, part of proceedings, or any matter arising out of proceedings, to be referred to a mediator or an arbitrator, the mediation or arbitration must proceed in accordance with this Order unless the Court, a Judge or a Judicial Registrar orders otherwise.

Application of Order

2. (1) Division 2 of this Order does not apply if a Judge or a Judicial Registrar undertakes a mediation.

(2) Nothing in this Order affects an order or direction made under Order 10, rule 1.

If a Judge or a Judicial Registrar undertakes mediation

3. If a Judge or a Judicial Registrar undertakes a mediation, the Judge or Judicial Registrar may give any directions with respect to the conduct of the mediation that he or she thinks fit.

Adjournment of proceedings

4. (1) If the Court, a Judge or a Judicial Registrar makes an arbitration or mediation order in relation to proceedings, the proceedings stand adjourned until the mediator or arbitrator reports back to the Court unless the Court, a Judge or a Judicial Registrar considers that in all the circumstances the proceedings should not be adjourned.

(2) If the Court, a Judge or a Judicial Registrar considers it appropriate, the proceedings may be adjourned to a fixed date when the mediator or arbitrator must report to the Court on progress in the mediation or arbitration.

Court may terminate mediation or arbitration

- 5. (1)** Nothing in this Order prevents the Court from:
- (a) terminating a mediation or an arbitration at any time; or
 - (b) terminating the appointment of a mediator or an arbitrator; or
 - (c) appointing a new mediator or arbitrator to replace a mediator or an arbitrator who has died, or ceased to hold office, or whose appointment has been terminated.

(2) If, when the Court appoints a new arbitrator, the Court considers it appropriate in all the circumstances, the Court may order that:

- (a) the new arbitrator must treat any evidence given, or any record, document or anything else produced, or anything done, in the course of earlier proceedings as if it had been given, produced or done before or by the new arbitrator; or
- (b) any interim award made in the course of the earlier proceedings is to be taken to have been made by the new arbitrator; or
- (c) the new arbitrator must adopt and act on any determination of a matter made by the previous arbitrator without applying his or her own judgment to the matter.

(3) If the Court:

- (a) appoints a new mediator; and
- (b) considers it appropriate;

the Court may, with the consent of the parties, order that the mediation continue on whatever basis the parties have agreed.

Division 2—Mediation

Nomination of mediator

6. (1) As soon as practicable after a mediation order is made, the Registrar must:

- (a) nominate a person as the mediator; and
- (b) give the parties written notice:
 - (i) of the name and address of the mediator; and
 - (ii) of the time, date and place of mediation; and
 - (iii) of any further documents that one or more of the parties must give direct to the mediator for the purposes of the mediation.

(2) In fixing the time and date for the mediation, the Registrar must:

- (a) consult the parties to ascertain their wishes; and
- (b) have regard to the time fixed by the Court within which the mediation must be commenced, or completed, or both.

Conduct of mediation conferences

7. (1) A mediation conference must be conducted:

- (a) in accordance with any directions given by the Court or a Judge; and
- (b) as a structured process in which the mediator assists the parties by encouraging and facilitating discussion between the parties so that:
 - (i) they may communicate effectively with each other about the dispute; and
 - (ii) if agreement is reached and if the parties consent, the agreement can be included in a consent order under Order 35, rule 10.

(2) If part only of proceedings before the Court is the subject of a mediation order, the mediator may, on the conclusion of the mediation, report back to the Court in terms agreed between the parties.

Adjournment or termination of mediation

8. (1) If the mediator considers that a mediation should not continue, the mediator must, subject to any order of the Court, a Judge or Judicial Registrar:

- (a) terminate the mediation; and
- (b) report back to the Court.

(2) A party may terminate a mediation at any time by giving notice of the termination to the Court, the mediator and to each other party.

(3) If a mediation is terminated under subrule (2), the proceedings, part of proceedings, or any matters arising out of the proceedings, are adjourned back to the Court, a Judge or a Judicial Registrar.

Division 3—Arbitration

Appointment of arbitrator

9. (1) If an arbitration order is made, the Court or a Judge may, with the consent of the parties, nominate a particular person to be the arbitrator.

(2) A nomination under subrule (1) must be accompanied by the arbitrator's written consent to the appointment.

(3) The parties may, at the time of appointment, or at any subsequent directions hearing, ask the Court or a Judge to make orders by consent setting out:

- (a) the manner in which the arbitration is to be conducted; and
- (b) the time by which the arbitration is to be completed; and
- (c) the manner in which the arbitrator, and the expenses of the arbitration, are to be paid.

(4) The parties may ask the Court or a Judge to indicate to the arbitrator the manner in which the arbitrator's report on the proceedings, part of the proceedings, or any matter arising out of the proceedings, are to be reported back to the Court.

Termination of arbitration

10. A party may withdraw from an arbitration at any time prior to the completion of the arbitration by giving written notice to the Court, to the arbitrator, and to each other party.

ORDER 73**REPRESENTATIVE PROCEEDINGS****Interpretation**

1. (1) In this Order, unless the contrary intention appears: “**application for an order involving notice**” means an application for an order under section 441, 452, 453 or 456 of the Act in relation to which the Court may require notice to be given to group members; “**opt out notice**” means a notice under section 440 of the Act.

(2) An expression used in this Order that is defined for the purposes of Part XIV, Division 6 of the Act has the same meaning in this Order as it has in that Part.

Application of Order

2. This Order applies to the commencement of representative proceedings and, as far as practicable, to the conduct of those proceedings.

Commencement of proceedings

3. Representative proceedings must be commenced by filing an application in accordance with Form 129.

Consent to be a group member

4. A person referred to in subsection 437 (2) of the Act may give consent to be a group member in accordance with Form 130.

Applications for orders involving notice

5. (1) An application for an order involving notice must be made by notice of motion.

- (2) The notice of motion must:
 - (a) have attached a supporting affidavit that sets out to the best information, knowledge and belief of the applicant:
 - (i) the identity or description of the group members; and
 - (ii) the whereabouts of the group members; and
 - (iii) the means by which a notice ordered by the Court is most likely to come to the attention of the group members; and
 - (b) be served on all other parties.

Opt out notices

6. An opt out notice filed under section 440 of the Act may be in accordance with Form 131.

ORDER 74

DELEGATION OF POWERS TO JUDICIAL REGISTRARS

Interpretation

1. In this Order “**Judicial Registrar**” means a person appointed under section 375 of the Act.

Powers of Judicial Registrars

2. In relation to any proceeding in the Court, in so far as that proceeding relates to:

- (a) a claim for an amount of not more than \$10,000 or such greater amount as the regulations may from time to time prescribe; or
- (b) a claim that the termination of an employee's employment was unlawful, or that the proposed termination of an employee's employment would be unlawful, whether because of the Act or any other law (including an unwritten law) of the Commonwealth or of a State or Territory;

all the powers of the Court are delegated to each Judicial Registrar.

Prescribed time in relation to review

3. For the purposes of section 377 (1) of the Act, the time prescribed in relation to an application to review the exercise of a power by a Judicial Registrar is 21 days or such further time as is allowed by the Court or a Judge for special reasons upon application at any time.

ORDER 75**APPLICATIONS TO THE COURT UNDER SECTION 170EA
OF THE ACT IN RESPECT OF TERMINATION OF
EMPLOYMENT****Interpretation**

1. In this Order "claim" means an application under section 170EA of the Act.

Administration of a claim

2. A claim is to be administered and determined by the Court without undue formality and with regard to the objective of avoiding unnecessary costs to the parties to the claim.

Form of application

3. (1) A claim is commenced by filing an application in accordance with Form 132.

(2) Order 41 rule 1 does not apply to the application.

(3) The application may be accepted for filing if, in the opinion of the Registrar, it complies substantially with subrule (1).

(4) In spite of sub-rule (1) an application that is not signed by the employee may be accepted for filing if the Registrar is satisfied that obtaining the employee's signature would cause undue difficulty or delay and:

- (a)** the claim is made by a trade union on behalf of an employee; or
- (b)** the application has been prepared by a solicitor or authorised representative of the applicant.

Appearance

4. (1) A claim is answered by the respondent filing a notice of appearance in accordance with Form 133.

(2) A notice of appearance must be filed within 7 days of service of the application on the respondent.

(3) Order 41 rule 1 does not apply to the notice.

(4) The notice may be accepted for filing if, in the opinion of the Registrar, it complies substantially with subrule (1).

Claim referred for conciliation or mediation

5. (1) If the respondent to an application has entered an appearance, a Judge, Judicial Registrar or Registrar may, whether or not the parties to the application are present, make an order referring the application:

- (a) to the Australian Industrial Relations Commission for conciliation; or
- (b) to a Judge, Judicial Registrar or Registrar for an informal mediation in an endeavour to settle the dispute by amicable agreement.

(2) If a Judge, Judicial Registrar or Registrar forms the view that the application should not be referred for conciliation or mediation before directions are given, the application may be listed for directions and, if it is listed, the Registrar must notify the parties to the application accordingly.

(3) If the application is referred for conciliation or mediation:

- (a) a person representing the applicant must promptly advise the applicant:
 - (i) of that fact; and
 - (ii) of the importance of the employee being personally present at the conciliation or mediation hearing; and
- (b) a person representing the respondent must promptly advise the respondent:
 - (i) of that fact; and
 - (ii) if the respondent is an individual—of the importance of the respondent being personally present at the conciliation or mediation hearing; and
 - (iii) if the respondent is a partnership or body corporate—of the importance of a person being present at the conciliation or mediation hearing who has authority to make a decision binding the respondent.

Pre-trial directions hearings

6. (1) If the Court refers an application to the Australian Industrial Relations Commission for conciliation and the Commission issues a certificate under subsection 170ED (2) of the Act, the Registrar must promptly:

- (a) set a date and time for a directions hearing in relation to the application; and
- (b) notify the parties to the application, in writing or by telephone, of the date and time.

(2) At the directions hearing the Court is to fix the earliest practicable date for the hearing of the application.

NUMERICAL TABLE OF FORMS

Form Number	Title of Form
1	Head of Document
2	Abbreviated Entitling of Document
3	Document where there is no Respondent
4	Conclusion of Document for Signature
5	Application (Order 4, rule 1)
5A	Application (Order 4, rule 17)
6	Rule to Show Cause
7	Statement of Claim
8	Cross-Claim where Cross-Claim is served before date of Directions Hearing appointed in Application
9	Cross-Claim where Cross-Claim is not served before date of Directions Hearing appointed in Application
10	Defence and Cross-Claim against a Party
11	Notice for Pleadings
12	Notice of Service at Document Exchange
14A	Request to Court for substituted service in non-convention country
14B	Request for transmission of Notice to a foreign government
14C	Order permitting request for substituted service in non-convention country
15	Notice of Appearance
16	Defence
17	Reply
18	Reply and Defence to Cross-Claim
19	Notice of Amendments
20	Affidavit
21	Notice for Discovery
22	List of Documents
23	Notice to answer Interrogatories
24	Example of Verified Statement in answer to Interrogatories

NUMERICAL TABLE OF FORMS—continued

Form Number	Title of Form
25	Notice to admit Facts (and Authenticity of Documents)
26	Notice disputing Facts (and Authenticity of Documents)
27	Notice of Motion
28	Notice of Withdrawal of Appearance
29	Notice of Discontinuance
30	Notice of Withdrawal of Defence
31	Notice of Deposit (Order 23 rule 6)
32	Notice of Withdrawal of Deposit
33	Notice of Acceptance
34	Notice Confirming Deposit
35	Notice Withdrawing Acceptance
36	Security to Pay into Court
37	Order for Examination
38	Order Appointing Examiner
39	Order (Order 24, paragraph 1 (b))
40	Deed
41	Subpoena for Production
42	Subpoena to give Evidence
43	Subpoena for Production and to give Evidence
44	Request to fix date for trial
45	Notice to Produce
46	Order (Order 33, rule 14)
46B	Order (Order 33, rule 15)
47	Order (Order 36)
47A	Certificate of Judgment
48	Warrant for Arrest
49	Warrant for Committal
50	Notice of Claim
51	Summons
52	Information for an Offence
53	Notice of a Constitutional Matter under Section 78B of the Judiciary Act 1903
53A	Notice of Proceeding

NUMERICAL TABLE OF FORMS—continued

Form Number	Title of Form
54	Application for Leave to Appeal
54A	Application for Leave to File and Serve out of Time (Order 52, subrule 15 (5))
55	Notice of Appeal (Order 52, rule 12)
THERE ARE NO FORMS 56 TO 128 INCLUSIVE	
129	Application under Division 6 of Part XIV of the Industrial Relations Act 1988
130	Notice of consent to be a group member
131	Notice of opting out by a group member
132	Claim of unlawful termination of employment— Application for remedy
133	Claim of unlawful termination of employment— Notice of employer's Appearance

FIRST SCHEDULE

(Order 1, rule 7)

FORM 1

HEAD OF DOCUMENT

(Order 41, rule 1)

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

A.B. and
E.F.

Cross-Respondents

FORM 2

ABBREVIATED ENTITLING OF DOCUMENT

(Order 41, subrule 1 (4))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B. and others

Applicants

C.D.

Respondent

and cross-claimants

FIRST SCHEDULE—continued

FORM 3

DOCUMENT WHERE THERE IS NO RESPONDENT

(Order 41, subrule 1 (3))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

The application of
A.B.

FORM 4

CONCLUSION OF DOCUMENT FOR SIGNATURE

(Order 41, rule 6)

Date: (*e.g. 7 May, 19*).

(Signed, applicant or solicitor or authorised representative).

FORM 5

APPLICATION

(Order 4, rule 1)

Application under (*specify the Act(s) and the section(s) on which the application is based*)On the grounds appearing in the accompanying affidavit (or statement of claim) the applicant claims (*where appropriate*)

- 1.
- 2.

FIRST SCHEDULE—continued

etc.

And

And the applicant claims by way of interlocutory relief:

1. An order (or declaration) that (*etc.*)
 - 2.
- etc.

Date: (*e.g. 7 May 19*).

(Signed, applicant or solicitor or authorised representative).

To the respondent (*address*)

A directions hearing in this application (and/or for the applicant's claim for an interlocutory order) will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or by your counsel or solicitor or authorised representative, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time you must file an appearance in the Registry.

Time: (*Date and time to be entered by Registry unless fixed by Court*).

Place: (*Address of Court*)

(*where the time for service has been abridged, add:*)

The time by which this application is to be served has been abridged by the Court to (*time*.)

Date: (*e.g. 7 May, 19*).

(Signed, Registrar)

The applicant's address for service is (*specify address for service*).

FIRST SCHEDULE—continued

The applicant's address is (*if a natural person—specify residence or place of business; if a body corporate—specify principal place of business*).

FORM 5A

APPLICATION

(Order 4, rule 17)

On the grounds appearing in the accompanying affidavit, the applicant claims:

- 1.
- 2.

Date: (*e.g. 7 May 19*).

(Signed, applicant or solicitor or authorised representative)

To the respondent (*name and address*)

This application will be heard by the Court at the time and place specified below. If there is no attendance before the Court by you or by your counsel or solicitor or authorised representative, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time you must file an appearance in the Registry.

Time: (*date and time to be entered by Registry unless fixed by Court*).

Place: (*address of Court*)

(*where time for service has been abridged, add:*)

The time by which this application is to be served has been abridged by the Court to (*time*).

FIRST SCHEDULE—continued

Date (e.g. 7 May 19).

(Signed, Registrar)

The applicant's address for service is (*specify address for service*)

FORM 6

RULE TO SHOW CAUSE

(Order 4, subrules 15 (2) and 16 (2))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

BETWEEN:

A.B.

Applicant

and

C.D.

Respondent

ORDER

JUDGE:

DATE OF ORDER:

WHERE MADE:

It is ordered that (*name of respondent*) appear before the Industrial Relations Court of Australia at _____ in the State of _____ on the day of _____ 19 at _____ o'clock in the _____ noon, to show cause why (*state nature of relief required*) on the grounds or reasons set forth in the affidavit of _____ sworn the _____ day of _____ 19 and filed herein.

District Registrar

Date Entered:

FIRST SCHEDULE—continued

And the Applicant claims by way of interlocutory relief:

1. An order (or declaration) that (*etc.*).
2. *etc.*

Date: (*e.g. 7 May 19*).

(Signed, applicant or solicitor or authorised representative)

To the respondent (Name and address)

A directions hearing (and/or the applicants' claim for interlocutory relief) will be heard by the Court at the time and place specified above. If there is no attendance before the Court by you or by your counsel or solicitor or authorised representative, the rule to show cause may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time you must file an appearance in the Registry.

The applicant's address for service is (*specify address for service*).

FORM 7

STATEMENT OF CLAIM

(Order 4, rule 6, Order 11)

1.
(plead as required by the Rules)
- 2.

The applicant claims the relief specified in the application.

(Particulars under Order 12 may be given as follows, for example:

PARTICULARS OF FRAUD (*or other appropriate heading*)

FIRST SCHEDULE—continued

1.

(state the relevant particulars)

2.

(These particulars may appear in the relevant place in the statement of facts or separately at the end of the pleading, whichever is convenient.)

FORM 8

CROSS-CLAIM WHERE CROSS-CLAIM IS SERVED BEFORE DATE
OF DIRECTIONS HEARING APPOINTED IN APPLICATION

(Order 5, rules 5 and 8 and subrule 11 (6))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

E.F.

Cross-respondent

CROSS-CLAIM

1.

(plead as required by the Rules)

2.

FIRST SCHEDULE—continued

The cross-claimant (*C.D.*) claims:

1.

(specify relief sought)

2.

(particulars under Order 12 may be given in the manner indicated in the prescribed form of Statement of Claim under Form 7.)

Date: *(e.g. 7 May 19)*.

(Signed, applicant or solicitor or authorised representative)

To *(E.F.) (address)*

A directions hearing in this application including this cross-claim will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or by your counsel or solicitor or authorised representative, the cross-claim may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time you must file an appearance in the Registry.

Time: *(date and time to be entered by Registry unless fixed by Court)*.

Place: *(address of Court)*.

(where the time for service has been abridged, add:)

The time by which this cross-claim is to be served has been abridged by the Court to *(time)*.

Date: *(e.g. 7 May, 19)*.

(Signed, Registrar)

The cross-claimant's address for service is *(specify address for service)*.

FIRST SCHEDULE—continued

FORM 9

**CROSS-CLAIM WHERE CROSS-CLAIM IS NOT SERVED BEFORE
DATE OF DIRECTIONS HEARING APPOINTED IN APPLICATION**

(Order 5, rules 5 and 8 and subrule 11 (6))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

E.F.

Cross-respondent

CROSS-CLAIM

1.

(plead as required by the Rules)

2.

The cross-claimant (*C.D.*) claims:

1.

(specify relief sought)

2.

*(particulars under Part II may be given in the manner indicated in the prescribed
form of statement of Claim under Form 7.)*Date: (*e.g. 7 May, 19*).(Signed, cross-claimant or solicitor or authorised
representative)

FIRST SCHEDULE—continued

To (*E.F.*)
(*address*)

Judgment may be given or an order made unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this statement of cross-claim on you and you comply with the Rules of Court relating to your defence.

Date: (*e.g. 7 May, 19*).

(Signed, Registrar)

The cross-claimant's address for service is (*specify address for service*).

FORM 10

DEFENCE AND CROSS-CLAIM AGAINST A PARTY

(Order 5, subrules 5 (2) and (3))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

E.F.

Cross-respondent

FIRST SCHEDULE—continued

DEFENCE AND CROSS-CLAIM

Defence

1.
(*plead as required by the Rules*)

- 2.

Cross-claim

1.
(*plead as required by the Rules*)

- 2.

The cross-claimant C.D. claims:

1.
(*specify the relief claimed*)

- 2.

(*particulars as in Form 8*)

(*follow the prescribed form of conclusion of documents for use by a party, Form 4.*)

FORM 11

NOTICE FOR PLEADINGS

(Order 5, rule 6)

To: (*name of cross-claimant*):

(*name of cross-respondent*)

requires you to serve upon him or her, within 3 days after service of this notice on you, copies of all pleadings (*or as the case may require*) filed before the filing of your cross-claim.

(*follow the prescribed form of conclusion of documents for use by a party, Form 4*)

FIRST SCHEDULE—continued

FORM 12

NOTICE OF SERVICE AT DOCUMENT EXCHANGE

(Order 7, rule 7)

The (*applicant*) may be served at the following exchange box in (*insert name of capital city*) of (*insert name of document exchange*).

(*name of solicitor or authorised representative whose exchange box it is*)

(*exchange box number*)

FIRST SCHEDULE—continued

FORM 14A

REQUEST TO COURT FOR SUBSTITUTED* SERVICE IN
NON-CONVENTION COUNTRY

(Order 8, subrules 14 (1) and 16 (2))

I, [*insert name*]
 request that [*identify document(s) to be served*]
 be transmitted through the diplomatic channel to [*insert name of country*]
 for service*/substituted service* on the respondent [*insert name of
 respondent*]
 at [*insert address for service*] or elsewhere in [*insert name of country*] .

I personally undertake to be responsible for all expenses incurred by the
 Commonwealth in respect of the requested service and, on receiving due
 notification of the amount the expenses, will pay the amount to the
 Commonwealth and will produce the receipt for that payment to the proper
 officer of the Industrial Relations Court of Australia.

Dated

.....
 (Signature of solicitor)

* *Omit if inapplicable*

FIRST SCHEDULE—continued

FORM 14B

REQUEST FOR TRANSMISSION OF NOTICE TO
A FOREIGN GOVERNMENT

(Order 8, subrules 14 (2) and 16 (3))

The Chief Justice of the Industrial Relations Court of Australia requests the Secretary of the Attorney-General's Department to transmit to the government of [*insert name of country*] the following documents:

with the requests that:

- (a) the documents be served personally*/by substituted service* on [*insert name of respondent*] against whom these proceedings have been taken in the Industrial Relations Court of Australia; and
- (b) evidence of service of the documents be officially certified or declared (on oath or otherwise) to this Court in such manner as is consistent with usage or practice of the courts in [*insert name of country*] in proving service of legal process.

*The Chief Justice further requests that, if efforts to effect personal service of the documents prove ineffectual, the government or court of [*insert name of country*] be requested to certify or declare (on oath or otherwise) to this Court that fact.

Dated

* *Omit if inapplicable.*

FIRST SCHEDULE—continued

FORM 14C

ORDER PERMITTING REQUEST FOR SUBSTITUTED SERVICE IN
NON-CONVENTION COUNTRY

(Order 8, subrule 16 (1))

It is ordered, on reading the certificate*/declaration* [*insert description of certificate/declaration*]
that the applicant be permitted to request the Court to request substituted
service of [*insert description of document(s) to be served*] on the respondent at
[*insert address for service*] or elsewhere in [*insert name of country*]
and that the respondent have _____ days after the substituted service
within which to enter an appearance.

Dated

FORM 15

NOTICE OF APPEARANCE

(Order 9, rule 4)

(A.B.)
of (*address*) (*occupation*) appears.

(*if a person under disability*)
His or her tutor is (C.D.)

(*add other notices, for example, under Order 5, rule 6, relating to notice for pleadings.*)

Solicitor or authorised representative: (*name*)
(*address*)

Telephone: (*number*)

FIRST SCHEDULE—continued

Solicitor's agent: (*name*)
(*address*)

Telephone: (*number*)

Address for service: (*the office of the solicitor or authorised representative, or as the case may be—see Order 7, rule 6.*)

(*follow the prescribed form of conclusion of documents for use by a party, Form 4.*)

(*This notice of appearance may be added to a notice of motion of a person applying to be added as a respondent, for example, under Order 7, subrule 8 (1).*)

(*Where, under Order 9, rule 6, a respondent wishes to enter a conditional appearance, insert “conditionally” after “appears”.*)

FORM 16

DEFENCE

(Order 11, rule 20)

(*plead as required by the Rules, for example:*)

1. The respondent denies (*etc.*)

(*or*)

(*where one of two or more respondents:*)

DEFENCE OF (*A.B.*)

1. This respondent denies (*etc.*)

(*follow the prescribed form of conclusion of documents for use by a party, Form 4.*)

FIRST SCHEDULE—continued

FORM 17

REPLY

(Order 11, rule 22)

(plead as required by the Rules and see Order 11 relating to joinder of issue.)

FORM 18

REPLY AND DEFENCE TO CROSS-CLAIM

(Order 11, subrule 22 (2))

REPLY

(plead as required by the Rules.)

DEFENCE TO CROSS-CLAIM

(plead as required by the Rules.)

FIRST SCHEDULE—continued

FORM 19

NOTICE OF AMENDMENTS

(Order 13, rule 8)

The (*describe document*) was amended on (*e.g. 7 May, 19*), under an order made on, 19 pursuant to (*Order, rule*) by:

omitting: “ ”
(omitting : “ ” and inserting: “ ”)
(inserting : “ ”).

FORM 20

AFFIDAVIT

(Order 14, rule 2)

On (*e.g. 7 May, 19*), I (*name, address and occupation*) say on oath:

- 1.
- 2.

Sworn at :
before me:

FIRST SCHEDULE—continued

FORM 21

NOTICE FOR DISCOVERY

(Order 15, rule 1)

To the respondent:

The applicant requires you to give discovery of documents with verification within days after service of this notice on you.

FORM 22

LIST OF DOCUMENTS

(Order 15, rule 6)

Pursuant to notice filed (*or* order made) on (*e.g.* 7 May, 19), the party says:

1. The party has in his or her possession, custody or power, the document(s) enumerated in Schedule 1.
2. The documents enumerated in Part 2 of Schedule 1 are privileged from production on the ground:
 - (a) as to documents numbered (*e.g.* 4 to 7) inclusive, that (*state the ground*);
 - (b) as to documents numbered (*e.g.* 8 and 9), that (*state the ground*).
3. The party has had, but does not now have, in his or her possession, custody or power, the document(s) enumerated in Schedule 2.
4. The document numbered 10, referred to in Schedule 2:
 - (a) was last in the respondent's possession, custody or power on (*state when*); or
 - (b) (*state what has become of it*); or

FIRST SCHEDULE—continued

- (c) to the best of the respondent's knowledge, information and belief (*state in whose possession, custody or power it is and where it is*).

5. To the best of the respondent's knowledge, information and belief, neither the respondent nor his or her solicitor nor authorised representative, nor any other person on the respondent's behalf, has now, or ever had, in his or her possession, custody or power, any document relating to any matter in question between the applicant and the respondent (*to be altered according to the terms of any order made under Order 15, rule 5*), other than the documents enumerated in Schedule 1 and 2.

(Describe each document in the schedules as original or copy, see Order 18, rule 3.)

SCHEDULE 1

Part 1

- 1.
- 2.
- 3.

Part 2

- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

SCHEDULE 2

- 10.

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

AFFIDAVIT

On, 19 , I, (*name*) say on oath:

- 1. I am the respondent.

FIRST SCHEDULE—continued

2. The statements of fact made in paragraphs 1, 2, 3, 4 and 5 of the above list are true.

Sworn (*etc.*)

I certify that, according to my instructions, this list and the statements in it are correct.

The documents enumerated in Part 1 of Schedule 1 may be inspected at (*address*) on _____, 19 ____ between (*specify time under Order 15, rule 6*).

Respondent's solicitor or authorised representative

FORM 23

NOTICE TO ANSWER INTERROGATORIES

(Order 16, rule 1)

Within _____ days after service of this notice on each of them respectively, (*CD*) is required to answer interrogatories numbered 1 to 8 (and verify the answers) and (*EF*) is required to answer interrogatories numbered 1 to 12 (and verify the answers).

INTERROGATORIES

1. (*state the question.*)

2. (*state the question.*)

FIRST SCHEDULE—continued

FORM 24

EXAMPLE OF VERIFIED STATEMENT IN ANSWER TO
INTERROGATORIES

(Order 16, rules 6 and 7)

The respondent (*EF Pty Ltd*) answers the applicant's interrogatories specified in notice filed on (*e.g. 7 May, 19*), as follows:

1A. (*state in full the interrogatory.*)

1B. (*state the answer.*)

2A. (*state in full the interrogatory.*)

2B. (a) The respondent objects to answer on the grounds of privilege;

(b) (*state the facts on which this objection is based.*)

(*Follow the prescribed form of conclusion of documents for use by a party, Form 4.*)

AFFIDAVIT

On, 19 , I (*name*) , of (*address*) (*occupation*) say on oath:

1. I am the secretary of the respondent and am authorised to make this affidavit on its behalf.

2. (*the deponent should state which of the answers are true to his or her own knowledge and which are true to the best of his or her knowledge, information and belief based on his or her inquiries of officers of the company and others and on his or her other investigations.*)

Sworn (*etc.*)

FIRST SCHEDULE—continued

FORM 25

NOTICE TO ADMIT FACTS (AND AUTHENTICITY OF DOCUMENTS)

(Order 18, rule 2)

To the respondent:

The applicant requires you to admit, for the purpose of these proceedings only:

1.

(state each fact)

2.

The applicant requires you to admit, for the purpose of these proceedings only, the authenticity of the following documents:

1.

(describe each document)

2.

If you do not, within 14 days after service of this notice on you, serve a notice on the applicant disputing any fact (and the authenticity of any document) above specified, that fact (and the authenticity of that document) shall, for the purpose of these proceedings, be admitted by you in favour of the applicant.

FIRST SCHEDULE—continued

FORM 26

NOTICE DISPUTING FACTS (AND AUTHENTICITY OF DOCUMENTS)

(Order 18, rule 2)

The respondent disputes the following facts specified in the applicant's notice dated (*e.g. 7 May, 19*).

1.

(state each fact)

2.

The respondent disputes the authenticity of the following documents which were specified in the applicant's notice (or list of documents) dated (*e.g. 7 May, 19*).

1.

(describe each document)

2.

The respondent admits:

1.

(state each fact or describe each document)

2.

FIRST SCHEDULE—continued

FORM 27

NOTICE OF MOTION

(Order 19, rule 2)

The abovenamed applicant or respondent or as the case may be will at 10.15 a.m. on (*e.g. 7 May 19*), at (*address of Court*) move the Court for orders:

1.

(state concisely the nature of each order which is sought but not the grounds on which the order is sought)

2.

(Where the time for service under Order 19, rule 3 has been abridged, add:

The time before which this notice of motion is to be served, has been abridged by the Court to *(specify time)*).

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

To: *(name each party affected by the above order sought)*.

FORM 28

NOTICE OF WITHDRAWAL OF APPEARANCE

(Order 22, rule 1)

The respondent (*CD*) withdraws his (or her) appearance.

FIRST SCHEDULE—continued

FORM 29

NOTICE OF DISCONTINUANCE

(Order 22, rule 2)

The applicant (by consent, if consent is required, or pursuant to the leave of the Court granted on (*e.g. 7 May, 19*), if leave is obtained) discontinues the proceedings (in respect of claims numbers (*e.g. 1 to 3 inclusive*) of the application).

(Follow the prescribed form of conclusion of documents for use by a party, Form 4. Where discontinuance is by consent, each party or his or her solicitor or authorised representative must sign the notice.)

FORM 30

NOTICE OF WITHDRAWAL OF DEFENCE

(Order 22, rule 4)

The respondent (*CD*) (*by consent, if consent is required*) or by the leave of the Court granted on (*e.g. 7 May, 19*), (*if leave is obtained*), withdraws his or her defence (*e.g., in respect of paragraphs numbers 1 to 3 inclusive, of the defence*).

(Conclude as in Form 29).

FIRST SCHEDULE—continued

FORM 31

NOTICE OF DEPOSIT

(Order 23, rule 6)

The respondent has *paid /*filed a security to pay into Court \$

That sum is in answer to *the cause of action /*all the causes of action on which the applicant claims (and after taking into account this respondent's cause of action [for (*specify*)] on his or her cross-claim).

or

That sum is in answer to the following causes of action on which the applicant claims, namely (*specify*) (and after taking into account [*as above*]).

or

Of that sum, \$ _____ is in answer to the cause of action for (*specify*) on which the applicant claims (and after taking into account [*as above*]) and \$ _____ is in answer to the cause of action for (*specify*) on which the applicant claims (and after taking into account [*as above*]).

* *Omit if inapplicable*

FIRST SCHEDULE—continued

FORM 32

NOTICE OF WITHDRAWAL OF DEPOSIT

(Order 23, rule 9)

Pursuant to leave granted by the Court on (*e.g. 7 May, 19*), the respondent withdraws the deposit of \$ brought into Court by him/ her on (*e.g. 10 April, 19*).

FORM 33

NOTICE OF ACCEPTANCE

(Order 23, rule 10)

The applicant accepts \$ brought into Court by the respondent, (*CD*), in satisfaction of the causes of action in answer to which it was so brought in, as against (*CD*), (and abandons all his/ her other causes of action as against (*CD*) and abandons those causes of action as against the respondents (*EF*) and (*GH*)).

FORM 34

NOTICE CONFIRMING DEPOSIT

(Order 23, rule 10)

The respondent confirms the notice dated (*e.g. 10 April, 19*), of deposit of \$ brought into Court before the beginning of the trial.

FIRST SCHEDULE—continued

FORM 35

NOTICE WITHDRAWING ACCEPTANCE

(Order 23, rule 12)

Pursuant to leave granted by the Court on (*e.g. 20 May, 19*) the applicant withdraws his/ her acceptance of money brought into Court by the respondent (*name*) being the acceptance mentioned in the applicant's notice of acceptance dated (*e.g. 7 May, 19*).

FORM 36

SECURITY TO PAY INTO COURT

(Order 23, rule 15)

(*name of authorised person under rule 5*) whose address for service is promises to the Registrar of the Court to pay \$ into Court according to the requirements of Order 23 of the Rules.

Signed

or

The Common Seal

(and so on)

FIRST SCHEDULE—continued

FORM 37

ORDER FOR EXAMINATION

(Order 24, paragraph 1 (a))

THE COURT ORDERS THAT:

I, (*name*) of (*address*) be examined on oath before
(*name and address, or describe examiner*).

(*Complete as in general form of order under Order 36.*)

FORM 38

ORDER APPOINTING EXAMINER

(Order 24, paragraph 1 (a))

THE COURT ORDERS:

1. That (*name and address or description*) be appointed examiner for the purpose of taking the examination on oath of a witness (*name*) of (*address out of Australia* in accordance with the Rules of this Court (but without the power to compel a witness to attend [*if this is required by a convention*])).

2. That the party obtaining this order give to each other interested party 7 days' notice in writing of the date on which the party proposes to send this order to the examiner.

3. That not less than 4 days after that notice has been given, each party shall give to the other the name of his/ her agent at (*place*) to whom notices may be sent.

(*Complete as in general form of order under Order 37.*)

FIRST SCHEDULE—continued

FORM 39

ORDER

(Order 24, paragraph 1 (b))

THE COURT ORDERS THAT:

A letter of request be sent to the judicial authorities of (*country*) to take or cause to be taken the evidence of (*name*).

(*Complete as in general form of order under Order 37.*)

FORM 40

DEED

(Order 26, rule 3)

PARTICULARS

1. Date: *e.g. 7 May 19* .
2. Receiver: (*name*)
(*address for service*)
3. Guarantor: (*name*)
(*address for service*)
4. Date of order for appointment of Receiver: *e.g. 10 April, 19* .

THIS DEED made between the Guarantor and the Registrar of the Court witnesses that the Guarantor promises the Registrar that if the Receiver does not account to the Court for what he/she receives as Receiver or does not deal with what he/she receives as Receiver, as the Court directs, the Guarantor will pay to the Registrar whatever is required to make good the default to a limit of \$.

Signed (*etc.*)

FIRST SCHEDULE—continued

FORM 41

SUBPOENA FOR PRODUCTION

(Order 27, rule 2)

To

(*name*)

(*address*)

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule:

- (a) before (the Court *or as the case may be*); and
- (b) at (*address of Court or other place*); and
- (c) on (*date*) at (*time*) and until you are excused from further attending, but:
 - (i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you; and
 - (ii) if you are not a party to these proceedings, instead of so attending you may produce this subpoena and the documents and things described in the schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and
 - (iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, and (*insert relevant part of State or Territory enactment enabling alternative mode of proof of entries in bankers' books*) applies—you need not produce it if you produce proof of the relevant entries in accordance with (*that Part or that Division or those sections*).

FIRST SCHEDULE—continued

SCHEDULE

*(description)*Date: *e.g. 7 May, 19 .*

By the Court
(signature and description of officer of the Court)

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest or, in the case of a corporation, an order of sequestration may be made. Issued at the request of *(name)*, the applicant's solicitor or authorised representative *(or as the case may be)*.

 FORM 42

SUBPOENA TO GIVE EVIDENCE

(Order 27, rule 2)

To *(name)*
(address)

THE COURT ORDERS that you attend for the purpose of giving evidence:

- (a) before (the Court *or as the case may be*);
- (b) at *(address of Court or place)*;
- (c) on *(date)* at *(time)* and until you are excused from further attending;

but you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Date: *e.g. 7 May, 19 .*

By the Court
(signature and description of officer of the Court)

FIRST SCHEDULE—continued

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest.

Issued at the request of (*name*), the applicant's solicitor or authorised representative (*or as the case may be*).

FORM 43

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

(Order 27, rule 2)

To (*name*)
(*address*)

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule and attend for the purpose of giving evidence:

- (a) before (the Court *or as the case may be*);
- (b) at (*address of Court or place*);
- (c) on (*date*) at (*time*) and until you are excused from further attending, but:
 - (i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you; and
 - (ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and (*insert relevant part of State or Territory enactment enabling alternative mode of proof of entries in bankers' books*) applies—you need not produce it if you produce proof of the relevant entries in accordance with (*that Part or that Division or those sections*).

FIRST SCHEDULE—continued

SCHEDULE

*(description)*Date: *e.g. 7 May, 19 .*

By the Court
(signature and description of officer of the Court)

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest.

Issued at the request of *(name)*, the applicant's solicitor or authorised representative *(or as the case may be)*.

 FORM 44

REQUEST TO FIX DATE FOR TRIAL

(Order 30, subrule 2 (1))

[heading to form as in Form 1]

The applicant *[or as the case may be]* requests that a date be fixed for the trial of the proceeding.

To: *[name of party]*
[address for service of party]

.....
(Signature of requesting party or
the party's solicitor or authorised representative)

FIRST SCHEDULE—continued

FORM 45

NOTICE TO PRODUCE

(Order 33, rule 12)

To the applicant:

The respondent requires you to produce at the trial (*or otherwise specify the occasion or place*) the following documents for the purpose of evidence:

(enumerate the documents or things)

FORM 46

ORDER

(Order 33, rule 14)

THE COURT ORDERS THAT:

1. The Superintendent (*or as the case may be*) shall have (*name*), a prisoner, before this Court to be examined as a witness and duly returned to confinement.
2. The first day on which he or she is required to have the prisoner before the Court is (*e.g. 7 May, 19*), at (*e.g. 10.15 a.m.*) at (*address of Court*).

(Complete as in general form of order under Order 36)

FIRST SCHEDULE—continued**THERE IS NO FORM 46A**

FORM 46B

ORDER

(Order 33, rule 15)

THE COURT ORDERS THAT:

1. The Superintendent (*or as the case may be*) shall have (*name*), a prisoner, before this Court to be present during the hearing of the proceeding concerning him/ her and duly returned to confinement.
2. The first day on which it is required to have this prisoner before the Court is (*e.g. 7 May 19*) at (*e.g. 10.15 a.m.*) at (*address of Court*).

(*Complete as in general form of order under Order 36*)

FIRST SCHEDULE—continued

FORM 47

ORDER

(Order 36)

JUDGE(S):

DATE OF ORDER:

WHERE MADE:

THE COURT ORDERS (*OR* DECLARES) THAT:

- 1.
- 2.
- 3.

DISTRICT REGISTRAR

Date Entered:

FORM 47A

CERTIFICATE OF JUDGMENT

(Order 36, subrule 11 (3))

Causes of action to which the judgment relates	The rate of interest (if any) payable on any amount payable under the judgment	Amount payable under the judgement on date of issue of certificate	Amount of costs ordered to be paid under the judgment	Particulars (if any) required by a foreign tribunal in which it is proposed to register or enforce the judgment	Date of trial	Date of judgment
--	--	--	---	---	---------------	------------------

FIRST SCHEDULE—continued

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on (*date e.g. 7 May, 19*) in a suit wherein (*name of applicant*) was applicant and (*insert name of respondent*) was respondent.

Dated *e.g. 7 May, 19* .

Registrar

FORM 48

WARRANT FOR ARREST

(Order 40, rules 9 and 11; Order 49, subrule 4 (3) and (4))

To the Sheriff—

Arrest (*name*) and bring him or her before the Court to answer the charge set out below, detaining him/ her in custody in the meantime unless, by paying the sum of \$ into Court (*or as the case may be*) he or she gives security for his/ her appearance in person before the Court to answer the charge and to submit to the judgment (*or order*) of the Court.

(*name*) is charged with (*charge, e.g. contempt of court*) in that (*give particulars*).

Date: *e.g. 7 May, 19* .

Judge

FIRST SCHEDULE—continued

FORM 49

WARRANT FOR COMMITTAL

(Order 37, rule 9)

To the Sheriff

Take (*name*) to (*name of prison*) and deliver him/ her to the Superintendent of that prison.

To the Superintendent of (*name of prison*)

Receive (*name*) into your custody and keep him/ her there until the further order of this Court (*or as the case may be*).

His/ her committal is for contempt of court in that he/ she (*nature of the contempt, e.g., wilfully insulted the Judge while the Judge was sitting in Court*).

Date: *e.g. 7 May, 19* .

Judge

FORM 50

NOTICE OF CLAIM

(Order 44, rule 4)

(*Heading and title*)

The claimant claims the property described in the schedule, being (*part of*) the property taken (*intended to be taken*) in execution by the Sheriff at (*address*) under process against (*name*).

FIRST SCHEDULE—continued

SCHEDULE

*(description)*Date: *e.g.* 7 May, 19 .*(signature)*

Claimant's solicitor or authorised representative

Claimant: *(name)*

Place of abode:

Address for service:

To the execution creditor

If you do not, within 4 days after service of this notice on you, serve on the Sheriff a notice that you admit this claim, the Court may, on application by the Sheriff, grant relief by way of interpleader.

If you admit the claim, you will not be liable to the Sheriff for any fees or expenses incurred by him/ her after you serve on the Sheriff notice that you admit it.

(signature)

Sheriff

Date:

FIRST SCHEDULE—continued

FORM 51

SUMMONS

(Order 49, rule 2)

To the defendant:

To the defendant:

You are required to appear before the Industrial Relations Court of Australia at the time and place specified below to answer the charge the prosecutor makes against you, *viz*:

1. (*state offence*)

The particulars of the charge are:

2. (*state particulars in accordance with Order 49, paragraph 2 (1) (b)*)

3.

TAKE NOTICE that if you do not appear before the Court at the time and place specified below, a warrant may be issued for your arrest.

Time: (*date and time to be entered by Registry unless fixed by the Court*).

Place: (*Address of Court*).

The prosecutor's address for service is (*specify address for service*).

Date *e.g.* 7 May 19 .

Registrar

FIRST SCHEDULE—continued

FORM 52

INFORMATION FOR AN OFFENCE

(Order 49, rule 2)

At the time and place specified below (*name of prosecutor*) of (*address of prosecutor*) in the State of _____ appears before (*name of Registrar*) (*description of Registrar*) and informs the said (*name of Registrar*) that on (*date and place of offence*) (*name and address of defendant*) did (*or failed to do*) (*set out details of offence and specific description of legislation creating the offence.*).

(*Signature of Prosecutor*)

Time: (*date and time prosecutor appears before Registrar*).

Place: (*address of Court*).

Signed by the abovenamed prosecutor before me:

Date: *e.g. 7 May, 19* .

Registrar

FIRST SCHEDULE—continued

FORM 53

NOTICE OF A CONSTITUTIONAL MATTER UNDER SECTION 78B
OF THE JUDICIARY ACT 1903

(Order 51)

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

NOTICE OF A CONSTITUTIONAL MATTER

1. (*the party whose case raises the matter, e.g. applicant, respondent, etc.*) gives notice that the above proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

2.

3. (*specify the nature of the matter.*)

4.

5. (*specify if the facts showing the matter is one to which section 78B of the Judiciary Act 1903 applies.*)

(*Conclude in accordance with Form 4*)

FIRST SCHEDULE—continued

FORM 53A

NOTICE OF PROCEEDING

(Order 51A, rule 2; Order 51B. rule 2)

IN THE INDUSTRIAL RELATIONS COURT

OF AUSTRALIA

DISTRICT REGISTRY

No. of 19 .

On remittal from the High Court of Australia

A.B.

Applicant

C.D.

Respondent

NOTICE OF PROCEEDING

To (*party*) (*address*)

This matter (or part of this matter) has been remitted to the Industrial Relations Court of Australia by the accompanying order of the High Court of Australia.

A directions hearing in this matter will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or your counsel or solicitor or authorised representative, the application may be dealt with and judgment be given or an order made in your absence.

Before any attendance at that time you must file an appearance in the Registry unless you are the applicant or have entered an appearance in the High Court.

Time:

Place: (*address of Court*)Date of notice: (*e.g. 5 May 1984*)

.....
(Signed, Registrar)

FIRST SCHEDULE—continued

FORM 54

APPLICATION FOR LEAVE TO APPEAL

(Order 52, rule 4)

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies for leave to appeal from the judgment of (*specify court or Judge below*) given on (*specify date*) at (*specify place*).
2. Leave to appeal is required by (*specify legislation giving right to appeal with leave*).
3. The grounds of the application appear in the annexed affidavit.

To the respondent
(*address*):

Take Notice: Before taking any step in the proceeding you must enter an appearance in the Registry.

The applicant's address for service is (*specify address for service*)

(*Conclude in accordance with Form 4*)

FIRST SCHEDULE—continued

FORM 54A

APPLICATION FOR LEAVE TO FILE AND SERVE OUT OF TIME

(Order 52, subrule 15 (3))

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE AND SERVE
NOTICE OF APPEAL

1. The applicant applies for an extension of time in which to file and serve a notice of appeal from the judgment of (*specify court or Judge below*) given on (*specify date*) at (*specify place*).
2. An extension of time is required because a notice of appeal was not filed and served within the time limited by Order 52 rule 15.
3. This application will be heard by the Court at _____ on (*place and date to be inserted by the Registrar*).
4. The grounds of the application appear in the annexed affidavit.

Date:

.....
 (Signed, applicant, or as the, case
 may be, or his/her solicitor or authorised representative)

FIRST SCHEDULE—continued

FORM 55

NOTICE OF APPEAL

(Order 52, rule 12)

IN THE INDUSTRIAL RELATIONS COURT
OF AUSTRALIA
DISTRICT REGISTRY

No. of 19 .

On appeal from (specify Court or Judge)

BETWEEN:

A.B.

Applicant

and

C.D.

Respondent

NOTICE OF APPEAL

1. The appellant appeals from the whole (*or if from a part, specify part*) of the judgment of (*specify court or Judge below*) given on (*specify date*) at (*specify place*).

(*where applicable*)

2. The appeal is brought pursuant to leave granted on (*specify date*).

GROUND(S):

3.

(*specify grounds of appeal*)

4.

ORDER SOUGHT: (*state what judgment or order the appellant seeks in lieu of the judgment appealed from*).

To the respondent

(*address*):

FIRST SCHEDULE—continued

TAKE NOTICE:

- (a) Before taking any step in the proceeding you must enter an appearance in the Registry, unless you have already entered an appearance pursuant to Order 52, rule 7.
- (b) The papers in the appeal will be settled before the Registrar at _____ on *(place, date and time to be inserted by the Registrar)*.

The appellant's address for service is *(specify address for service)*.

(Conclude in accordance with Form 4)

THERE ARE NO FORMS 56 TO 128 INCLUSIVE

FORM 129**APPLICATION TO COMMENCE A REPRESENTATIVE PROCEEDING**

(Order 73, rule 3)

(Heading in Form 1)

1. This application is brought by the applicant as a representative party.
2. The group members to whom this proceeding relates are *(identify the group members in accordance with paragraph 439 (1) (a) of the Industrial Relations Act 1988)*.
3. The applicant claims *(specify the nature of the claims made on behalf of the group in accordance with paragraph 439 (1) (b) of the Industrial Relations Act 1988)* and claims relief as follows: *(specify the relief claimed)*.

FIRST SCHEDULE—continued

4. The questions of law or fact common to the claims of the group members are (*see paragraph 439 (1) (c) of the Industrial Relations Act 1988*).
5. And the applicant claims by way of interlocutory relief:
(*specify the interlocutory relief sought*)

Date: *e.g. 7 May 19*

Signature of applicant or applicant's solicitor or authorised representative

FORM 130

NOTICE OF CONSENT TO BE A GROUP MEMBER

(Order 73, rule 4)

(Heading in Form 1)

TO: The Applicant and the Respondent:

TAKE NOTICE THAT (insert name of person) , a person referred to in subsection 33E (2) of the *Industrial Relations Act 1988*, consents to be a group member in these proceedings.

Date: *e.g. 7 May 19*

Signature of person or his or her solicitor or authorised representative

Name and position of person signing consent notice:

Address of person signing the consent notice:

FIRST SCHEDULE—continued

FORM 131

NOTICE OF OPTING OUT BY GROUP MEMBER

(Order 73, rule 6)

(Heading in Form 1)

TO: The Registrar
Industrial Relations Court of Australia

The Applicant

The Respondent

I, (*name of group member*), a group member in the above representative proceedings, give notice under subsection 44D of the *Industrial Relations Act 1988*, that I am opting out of the representative proceedings.

Date: *e.g. 7 May 19* .

Signature of group member or his or her solicitor or authorised
representative

Address of group member:

FIRST SCHEDULE—continued

FORM 132

**CLAIM OF UNLAWFUL TERMINATION OF EMPLOYMENT—
APPLICATION FOR A REMEDY**

(Order 75, subrule 3 (1))

Industrial Relations Court of Australia	Court use only
Claim of unlawful termination of employment —application for a remedy	file number
	date received
Industrial Relations Act 1988 (Cth) section 170EA—form 132	

application by the employee alone union - give name of union:

Details of employee

1	full name	Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Family name given names
2	home address	postcode
3	phone	(business hours) () (after hours) ()
4	date of birth	day/month/year
5	first language	English <input type="checkbox"/> other <input type="checkbox"/> (specify)

Details of employment

6	employer's name	
7	employer's trading address or registered office	postcode
		phone () fax ()

FIRST SCHEDULE—continued

8	work performed for employer (occupation)		
9	place of work	suburb/town	postcode
10	period of employment	date started work / /	last date worked / /
11	were you given a written notice of termination?	No <input type="checkbox"/> Yes <input type="checkbox"/> - I attach a copy	

Details of union

12	Is your union acting on your behalf?	No <input type="checkbox"/> go to 16 Yes <input type="checkbox"/> go to 13	
13	name of union		
14	address		postcode
15	contact person - name - phone	()	fax ()

Details of solicitor

16	Is a solicitor representing you?	No <input type="checkbox"/> go to 20 Yes <input type="checkbox"/> go to 17	
17	solicitor's name		
18	name of solicitor's firm		
19	address		postcode
		DX phone ())	fax ()

Notices from the Court

20	Where do you want notices from the Court sent?	address in 2 <input type="checkbox"/> union in 13-15 <input type="checkbox"/> solicitor in 17-19 <input type="checkbox"/> other <input type="checkbox"/> give details	
----	---	---	--

FIRST SCHEDULE—continued

Remedy sought																			
21 What are you asking the Court for?	reinstatement <input type="checkbox"/> compensation <input type="checkbox"/> other <input type="checkbox"/> - give details																		
Declaration																			
I declare that all the facts in this application are correct and complete to the best of my knowledge and belief.	<i>If a union is applying on behalf of the employee, a union representative must sign here</i>																		
I understand that the Court usually arranges for conciliation or mediation first. If the matter is settled at a conciliation or mediation conference, it will not be necessary to go to Court.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">signature for union</td> <td style="width: 30%; padding: 5px;">date</td> </tr> <tr> <td style="text-align: center; padding: 10px 0 10px 10px;">/ /</td> <td></td> </tr> <tr> <td style="padding: 5px;">name (print)</td> <td style="padding: 5px;">position</td> </tr> </table>	signature for union	date	/ /		name (print)	position												
signature for union	date																		
/ /																			
name (print)	position																		
<i>The employee must sign this declaration*</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px;">signature of employee</td> <td style="width: 20%; padding: 5px;">date</td> <td style="width: 40%; padding: 5px;"></td> </tr> <tr> <td style="text-align: center; padding: 10px 0 10px 10px;">/ /</td> <td></td> <td></td> </tr> <tr> <td colspan="3" style="padding: 5px;"> <i>If a solicitor or authorised representative has prepared the application, that person must sign here</i> </td> </tr> <tr> <td style="padding: 5px;">signature of solicitor or authorised representative</td> <td style="padding: 5px;">date</td> <td style="padding: 5px;"></td> </tr> <tr> <td style="text-align: center; padding: 10px 0 10px 10px;">/ /</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">name (print)</td> <td style="padding: 5px;">position</td> <td style="padding: 5px;"></td> </tr> </table>	signature of employee	date		/ /			<i>If a solicitor or authorised representative has prepared the application, that person must sign here</i>			signature of solicitor or authorised representative	date		/ /			name (print)	position	
signature of employee	date																		
/ /																			
<i>If a solicitor or authorised representative has prepared the application, that person must sign here</i>																			
signature of solicitor or authorised representative	date																		
/ /																			
name (print)	position																		
<p><i>*Note: The application need not be signed by the employee if the Registrar is satisfied that obtaining the employee's signature would cause undue difficulty or delay AND the claim is made by a trade union on the employee's behalf, or the application has been prepared by a solicitor or an authorised representative under section 469 of the Act.</i></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px;">signature of solicitor or authorised representative</td> <td style="width: 20%; padding: 5px;">date</td> <td style="width: 40%; padding: 5px;"></td> </tr> <tr> <td style="text-align: center; padding: 10px 0 10px 10px;">/ /</td> <td></td> <td></td> </tr> <tr> <td style="padding: 5px;">name (print)</td> <td style="padding: 5px;">position</td> <td style="padding: 5px;"></td> </tr> </table>	signature of solicitor or authorised representative	date		/ /			name (print)	position										
signature of solicitor or authorised representative	date																		
/ /																			
name (print)	position																		

FORM I33

CLAIM OF UNLAWFUL TERMINATION OF EMPLOYMENT—
NOTICE OF EMPLOYER'S APPEARANCE

(Order 75, subrule 4 (1))

Industrial Relations Court of Australia**Claim of unlawful termination of employment
—notice of employer's appearance**

Industrial Relations Act 1988 (Cth) section 170EA—form 133

1	File number as on application	Family name given names
2	Employee's full name as on application	
Details of employer		
3	full name	
4	Has the employee given your name correctly?	Yes <input type="checkbox"/> No <input type="checkbox"/> —it is as in (3)
5	address	
6	contact person — name	Family name given name
	— phone	() fax ()
7	type	company <input type="checkbox"/> partnership <input type="checkbox"/> sole trader <input type="checkbox"/> government authority <input type="checkbox"/> cooperative <input type="checkbox"/> club <input type="checkbox"/> other <input type="checkbox"/> specify
8	Are you the true employer?	Yes <input type="checkbox"/> No <input type="checkbox"/> —Who is? Give details
Details of representative		
9	Is anyone representing you?	No <input type="checkbox"/> go to 14 Yes <input type="checkbox"/> —solicitor <input type="checkbox"/> employer organisation <input type="checkbox"/>

FIRST SCHEDULE—continued

10	name of solicitor's firm or of employer organisation	
11	address	(postcode)
		DX
12	solicitor or contact person	
13	phone	() fax ()
Address for notices		
14	Where do you want notices from the Court sent?	address in 4-5 <input type="checkbox"/> solicitor in 10-12 <input type="checkbox"/> employer organisation in 10-12 <input type="checkbox"/>
Declaration		
All the facts in this notice are correct and complete to the best of my knowledge and belief		employer <input type="checkbox"/> solicitor <input type="checkbox"/> employer organisation <input type="checkbox"/>
		signature date / /
		name (print)
		position

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 14 October 1994.