I certify that this is a copy of the authorised version of this Statutory Rule as at 29 July 2026, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 29 July 2026.

K Woodward
Chief Parliamentary Counsel
Dated 29 July 2026

TASMANIA

SUPREME COURT RULES 2000

STATUTORY RULES 2000, No. 8

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SUPREME COURT RULES 2000

IN THE SUPREME COURT OF TASMANIA

Dated 3 March 2000.

We, the Honourable William John Ellis Cox, AC, RFD, ED, Chief Justice, and the Honourable Peter George Underwood, the Honourable Ewan Charles Crawford and the Honourable Peter Ethrington Evans, Puisne Judges of the Supreme Court of Tasmania, on the recommendation of the Rule Committee, make the following Rules of Court under the *Supreme Court Civil Procedure Act 1932*.

PART 1 – PRELIMINARY

1. Short title

These Rules of Court may be cited as the *Supreme Court Rules 2000*.

2. Commencement

These Rules of Court take effect on 1 May 2000.

PART 2 – APPLICATION, INTERPRETATION AND PRELIMINARY MATTERS

Division 1 – Preliminary

3. Application of these rules

Subject to rules 3A and 4, the provisions of these rules apply to any civil proceedings commenced in Court.

3A. Admiralty jurisdiction

(1) This rule applies to the following persons:

(a) the Principal Registrar;

(b) the Deputy Registrar;

(c) the Assistant Deputy Registrar.

(2) In civil proceedings in the admiralty jurisdiction of the Court, a person to whom this rule applies may perform the functions and exercise the powers of the Registrar and the Marshal under the *Admiralty Rules 1988* of the Commonwealth.

(3) If a person to whom this rule applies cannot conveniently execute a warrant or other instrument related to civil proceedings in the admiralty jurisdiction of the Court –

(a) that person may engage an appropriate officer of the Court to execute the warrant or instrument; and

(b) the officer referred to in paragraph (a) is authorised to execute that warrant or instrument.

(4) In any civil proceedings in the admiralty jurisdiction of the Court –

(a) a fee is payable in respect of those proceedings in relation to any matter for which a fee is payable for that matter in any other civil proceedings under these Rules; and

(b) a fee payable under paragraph (a) in relation to a matter is the same as the fee payable for that matter in any other civil proceedings.

4. Special provisions made by other rules

These rules do not apply to a proceeding in respect of which special provision is made by any other rule unless otherwise provided by that other rule.

5. Interpretation

In these rules –

A4 paper means paper known by that name that is 297 millimetres in length by 210 millimetres in width;

Act means the *Supreme Court Civil Procedure Act 1932*;

action means a proceeding commenced by a writ;

address for service means an address for service that complies with rule 128;

application means –

(a) an originating application in writing by which a proceeding mentioned in rule 89 or 90 is commenced; and

(b) an interlocutory application, oral or in writing, made to the Court or a judge in the course of any proceeding already commenced in the Court;

barrister has the same meaning as in the *Legal Profession Act 2007*;

Convention means a convention, other than the Hague Convention, with a foreign country, made with or extended to the Commonwealth or the State, with respect to legal proceedings in civil matters whether or not it is also made with respect to other legal proceedings;

Convention country means a foreign country to which a Convention applies;

corporation has the same meaning as in the Corporations Act;

Court means the Supreme Court;

deliver includes serve;

document means any process, pleading, notice, order, application or other document or written communication;

endorsement, used in respect of a writ, includes any statement of a plaintiff's claim set out on the face of the writ;

Hague Convention means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965;

Hague Convention country means a country, other than Australia, that is a party to the Hague Convention;

hearsay rule has the same meaning as in the *Evidence Act 2001*;

inspect includes the following, with or without the aid of equipment:

(a) to view data or visual images embodied in any document;

(b) to listen to sounds embodied in any document;

(c) to reproduce sounds, data or visual images embodied in any document;

judge, in relation to an inferior court, includes any judicial officer invested with the

power of exercising the jurisdiction of that inferior court;

law practice has the same meaning as in the *Legal Profession Act 2007*;

Law Society means the Law Society of Tasmania within the meaning of the *Legal Profession Act 2007*;

Legal Profession Board has the same meaning as in the *Legal Profession Act 2007*;

litigation guardian means a litigation guardian for a person under disability;

office seal means a seal kept under rule 17;

officer means –

(a) a person employed in a registry of the Court; and

(b) the Associate Judge; and

(c) the Principal Registrar; and

(d) a district registrar;

opposite party includes any party to a cause or matter in which an issue is to be determined or a right is to be adjudicated;

ordinary sittings of a Full Court means a sitting of a Full Court appointed under section 20(2) and (3) of the Act;

originating process means –

(a) any document by which an original proceeding is commenced; and

(b) a writ;

person under disability means an infant or a person who is incapable of managing and administering his or her affairs in relation to proceedings resulting from any absence, loss or abnormality of mental or psychological function;

personal service means service effected by delivery to the person to be served;

practitioner means an Australian legal practitioner;

prescribed fee means a fee prescribed by Schedule 2;

prescribed form means the appropriate form prescribed in the *Supreme Court Forms Rules 2000*;

prescribed rate of interest means the rate of interest prescribed under rule 5A;

Principal Registrar means the Registrar of the Court;

Principal Registry includes the only registry of the Court if there is no district registry;

probate action includes every proceeding relating to the grant or recall of probate or letters of administration other than common form business;

proceeding means any matter commenced by originating process;

process server means a person, who is not an officer of the Sheriff, responsible for the service or execution of a document or process;

receiver includes –

(a) an assignee; and

(b) a manager; and

(c) a manager appointed by or under an order of the Court;

register of proceedings means the register kept under rule 32(1)(c);

registrar means –

(a) the Principal Registrar; and

(b) a district registrar of the Court;

registry, in relation to any proceeding or intended proceeding, means the registry of the Court in which that proceeding is pending or is intended to be commenced;

seal of the Court means the Great Seal of the Court;

sealed copy, in relation to a document, means a copy sealed with the seal of the Court or an office seal;

society includes –

(a) an unincorporated society; and

(b) a fellowship; and

(c) a club, other than a proprietary club; and

(d) an association;

taxing officer means an officer of the Court empowered to conduct a taxation of costs under these rules;

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010* of the Commonwealth;

writ, used without any qualification, means a document in accordance with the prescribed form;

writing includes print and typewriting.

5A. Prescribed rates of interest for administration proceedings, pre-judgment interest and post-judgment interest

(1) For administration proceedings under Division 6 of Part 36, the prescribed rate of interest for a calendar year, or for part of a calendar year, is

the last cash rate published by the Reserve Bank of Australia before 1 January in that year.

(2) For the purpose of section 34 of the *Supreme Court Civil Procedure Act 1932* and rule 347(1)(b), the prescribed rate of interest for a calendar year, or for part of a calendar year, is a rate equal to 4% plus –

(a) for the period commencing on 1 January in a calendar year and ending on 30 June in that year, or for part of that period, the last cash rate published by the Reserve Bank of Australia before that 1 January; and

(b) for the period commencing on 1 July in a calendar year and ending on 31 December in that year, or for part of that period, the last cash rate published by the Reserve Bank of Australia before that 1 July.

(2A) For the purpose of section 35A of the *Supreme Court Civil Procedure Act 1932*, the prescribed rate of interest that is not to be exceeded under that section for a calendar year, or for part of a calendar year, is the rate specified in subrule (2).

(3) For the purpose of section 165 of the *Supreme Court Civil Procedure Act 1932* and rule 887A(1)(b), the prescribed rate of interest for a calendar year, or for part of a calendar year, is a rate equal to 6% plus –

(a) for the period commencing on 1 January in a calendar year and ending on 30 June

in that year, or for part of that period, the last cash rate published by the Reserve Bank of Australia before that 1 January; and

(b) for the period commencing on 1 July in a calendar year and ending on 31 December in that year, or for part of that period, the last cash rate published by the Reserve Bank of Australia before that 1 July.

6. Notices

Any notice required by these rules is to be in writing unless –

(a) these rules provide that it may be given orally; or

(b) the Court or a judge authorises it to be given orally.

7. Forms

(1) If a rule requires anything to be in accordance with a prescribed form, the relevant form is to be used with any variation the circumstances require.

(2) A requirement that a title be inserted in a form is taken to be a requirement that the form include the title required for an originating process under rule 97.

8. . . . . .

9. Court acting on own motion or on application

The Court or a judge may exercise any power under these rules –

(a) of the Court's or judge's own motion; or

(b) on the application of a person who has a sufficient interest.

10. Directions as to proper procedure

(1) A party or a person intending to become a party may make an application under section 201 of the Act to a judge for directions.

(2) An application is to –

(a) be in writing; and

(b) be addressed to the registrar; and

(c) state the grounds of the application.

(3) Two or more parties or intended parties may make a joint application.

(4) A person making an application may serve an application on any other party to the proceeding or intended proceeding that the person considers may be affected by the judge's directions.

(5) On receipt of an application, the registrar is to –

(a) fix a time for the judge's determination of the application; and

(b) notify the applicant, and any party who has been served with a copy of the application, of that time.

(6) On an application, a judge may –

(a) order the applicant to give notice of the application to any person and may adjourn the application so that that person can attend; and

(b) act on the material contained in the application and any other material the judge may receive; and

(c) give any directions the judge considers may best give effect to the purposes of these rules.

(7) A copy of any direction or order made concerning an intended proceeding is to be endorsed at the time of filing on the originating process and on every copy.

11. Corporations to act by practitioner

Except where otherwise provided by any Act or these rules, a corporation, whether or not a party, is not to take any step in a proceeding otherwise than by a practitioner.

12. Acting by practitioner

An act required by these rules to be done in relation to a party who is suing or appearing by a practitioner is to be done in relation to the practitioner, unless it is provided that it be done in relation to the party personally.

Division 2 – Failure to comply with the rules

13. Setting aside for irregularity

Failure to comply with any of these rules does not make any proceedings void, unless the Court or a judge so orders.

14. Application to set aside for irregularity

(1) The Court or a judge may order that any proceedings that do not comply with these rules –

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

(b) be amended or otherwise dealt with in any manner and on any terms the Court or judge considers fit.

(2) An application to set aside any proceedings on the ground that they do not comply with these rules is to state each irregularity complained of in detail.

(3) On an application, the Court or judge must not make an order setting aside the proceedings unless –

(a) the application was made within a reasonable time; and

(b) the applicant has taken no fresh step in the proceedings after becoming aware of an irregularity complained of.

15. Wrong originating process

A proceeding or the originating process by which it was commenced is not void solely on the ground that the proceeding was commenced by the wrong process.

PART 3 – SEALS, REGISTRIES AND SHERIFF

Division 1 – Seals and Registries

16. Seal of the Court

(1) The Principal Registrar, as the deputy of the Chief Justice, has custody of the seal of the Court.

(2) The Principal Registrar is to ensure that the seal of the Court is kept safely when not in use.

17. Office seals

(1) Each registrar is to keep an office seal.

(2) The office seal –

(a) is to bear the words "Supreme Court Office", together with the word "Hobart", "Launceston" or "Burnie"; and

(b) is to be affixed to all documents required or authorised to be sealed, except as provided by rule 18(1).

18. Affixing of seal

(1) The following documents are to be sealed with the seal of the Court only and not with an office seal:

(a) a commission issued by authority of the Court or a judge;

(b) an exemplification of proceedings in the Court;

(c) a grant of probate or administration, whether by way of original grant or by way of sealing a grant made elsewhere;

(d) a certificate of admission of a person to the legal profession;

(e) a document issued from the Court for use beyond the jurisdiction of the Court, except for a document for service on a party to a cause or matter;

(f) a document which the Court or a judge directs to be sealed with the seal of the Court.

(2) The following documents are to be sealed with the office seal:

(a) a document for service issued out of a registry;

(b) a writ;

(c) an office copy of a record of the Court or of a document filed in the Court;

(d) a document which the Court or a judge directs to be sealed with the office seal.

19. Court holidays

The following days are Court holidays:

(a) New Year's Day;

(b) Good Friday, Easter Monday and Easter Tuesday;

(c) Christmas Day and the 3 days following Christmas Day;

(d) . . . . . .

(e) any other day appointed by the Chief Justice.

20. Office hours

(1) Subject to any direction published by the Principal Registrar, each registry is to be open from 9 am until 4.30 pm on every day in the year except Saturdays, Sundays and Court holidays.

(2) The Principal Registrar may authorise a district registry to be closed for the period between 1 pm and 2 pm.

21. Management of Principal Registry

The Principal Registrar has the general management of the officers employed in the Principal Registry and, subject to any Act, is to allocate their duties.

22. Authority of district registrar

Subject to any direction under rule 24, a district registrar may exercise any authority and jurisdiction in respect of a proceeding in the

district registry the Principal Registrar may exercise.

23. Proceedings in district registries

(1) Any step in a proceeding in a district registry, whether before or after judgment and including execution, is to be taken in the district registry unless these rules otherwise provide or the Court or a judge otherwise orders.

(2) If the Court or a judge directs a judgment or an order in a proceeding in a district registry to be entered in the Principal Registry, the Principal Registrar is to send an office copy of the judgment or order to the district registry for filing.

24. Management of district registries

(1) The Principal Registrar has the general management of all district registries and may give directions to any district registrar.

(2) The Principal Registrar may direct a district registrar to send a document filed in the district registry to the Registry or to another district registry.

(3) A district registrar must comply with any direction given by the Principal Registrar.

25. Officers subject to order or direction of Court

Every officer is subject to an order or direction of the Court or a judge.

26. Custody of documents

(1) The Principal Registrar is to have custody of –

(a) all the records of the Court, other than documents filed in a district registry; and

(b) all other documents filed, deposited or impounded in the Principal Registry.

(2) A district registrar is to have custody of all documents filed in the district registry.

27. Documents required for hearing

(1) The registrar is to deliver to the associate of the judge who is to hear a matter all documents filed in the registry and required for use in relation to that matter a reasonable time before the hearing.

(2) Immediately after the conclusion of the hearing, the associate is to return to the registrar any of the documents that are not required by the judge.

(3) The associate is to return the documents that are required by the judge as soon as practicable after the judge has finished with them.

28. Transmission of documents between registries

(1) If any proceeding pending in a district registry is to be tried outside the district for that registry, the district registrar is to send all documents filed in the registry to –

(a) the district registrar in whose district the trial is to be held; or

(b) the Principal Registrar, if the trial is not to be held within the district of any district registry.

(2) If any proceeding which is not pending in a district registry is to be tried within the district of a district registry, the Principal Registrar is to send all documents filed in the registry to the district registrar in whose district the trial is to be held.

29. Removal of documents from registry

(1) Except as provided by this Division, a record of the Court or other document is not to be removed from a registry without an order of the Court or a judge.

(1A) A judge, the Principal Registrar, a District Registrar, or an officer of the Court with the approval of the Principal Registrar, may temporarily remove a record of the Court or other document from a registry.

(2) A subpoena is not to be issued for the production of a document referred to in subrule (1).

30. Power of clerks

A writ, judgment, commission, appeal book or other document provided for by these rules may be received, signed, settled and filed by a registrar or any other officer to whom those duties are assigned.

31. Prepayment of fees

A document in respect of which a fee is payable is not to be sealed or filed until the fee is paid, unless by order of the Registrar.

32. Indexes of judgments, orders and files

(1) The Principal Registrar and each district registrar are to maintain –

(a) . . . . . .

(b) indexes of files and bundles of documents filed; and

(c) a register of the documents filed and steps taken in every proceeding, showing the dates of filing and of the taking of each step in chronological order.

(2) An index or a register –

(a) is to be maintained in a form which enables convenient reference; and

(b) may be maintained in computerised form.

(3) An index or register referred to in subrule (1) is to be accessible to the public during office hours on payment of the prescribed fee.

(4) . . . . . .

33. Searches

(1) A person may request the registrar to search an index or a register.

(2) A request is to –

(a) be in writing; and

(b) contain details of the information sought in relation to a proceeding; and

(c) be accompanied by the prescribed fee.

(3) On receipt of a request, the registrar is to –

(a) cause the index or register to be searched; and

(b) issue a certificate certifying the results of the search.

(4) Except with the leave of the Court or a judge, a person who is not a party to a proceeding may not search in a registry for, or inspect, the following:

(a) with respect to proceedings in chambers, any judgment, order, transcript of a proceeding or other document;

(b) any affidavit, interrogatories, answers to interrogatories, list of documents given on discovery, admissions, evidence taken on deposition, subpoena or document lodged in answer to a subpoena;

(c) any document which the registrar considers ought to remain confidential to the parties.

(5) Subrule (4) does not apply to a person who makes a request under subrule (1) for the purpose of reporting for the Council of Law Reporting for Tasmania.

34. Filing of certificates

A certificate of a registrar made under a judgment or order is to be filed in the registry in which the judgment or order is entered.

34A. Certificate of finalisation

(1) If an action or proceeding has been finalised otherwise than by judgment, order or discontinuance, the party who filed the originating process in the action or proceeding is to file a notice certifying that the action or proceeding has come to an end.

(2) A notice filed under subrule (1) is to –

(a) be in the prescribed form; and

(b) be filed within 21 days after the action or proceeding has come to an end.

35. Office copies

(1) On receipt of a request from a person entitled to have a copy of any record of the Court or of any document filed, the registrar is to supply a copy of the record or document requested.

(2) The record or document is to be marked with the words "office copy" and sealed.

(3) An office copy provided under subrule (1) is a certified copy for the purposes of any law relating to the admission in evidence of certified copies.

36. Documents deposited or left in registry

(1) A document ordered to be left or deposited is to be left or deposited –

(a) in the registry named in the order; or

(b) if no registry is so named, in the registry in which the relevant proceeding is pending.

(2) The document is to be subject to any directions the Court or a judge may give as to its production.

37. Attendance away from place of discharge of duties

An officer required by any person to attend at any place out of the city or town in which the officer normally discharges his or her duties of office, may require that person to –

(a) deposit a sum of money sufficient to cover the expected charges and expenses associated with the attendance; and

(b) undertake to pay any charges and expenses in excess of the deposit.

38. Directions to registrar

A party may apply to the Court or a judge *ex parte* in a summary way for a direction that the registrar do any act which –

(a) a registrar is required or entitled to do; and

(b) the party requires to be done; and

(c) has not been done.

39. Rules of Court

In relation to any Rules of Court made by the judges, the Principal Registrar is to –

(a) countersign the rules; and

(b) keep the original rules in safe custody; and

(c) keep an index of the rules.

Division 2 – Sheriff

40. Attendance of Sheriff in Court

The Court or a judge may require the Sheriff or a deputy of the Sheriff to attend a sitting of the Full Court or a sitting of a judge whether in Court or in chambers.

41. Documents to be left with Sheriff with written instructions

A party requiring a document or process to be served or executed by the Sheriff is to –

(a) leave the document or process with the Sheriff; and

(b) provide written instructions for its service or execution.

42. Verification of service or execution

(1) The service or execution of any document or process by the Sheriff or by any person who is not an officer of the Sheriff charged with the service or execution of the document or process is proved by a return under subrule (2).

(2) A return is to –

(a) state by whom the document or process has been served or executed; and

(b) state the date and mode of service or execution; and

(c) be signed by the Sheriff or the person who is charged with its service or execution.

43. Returns

(1) The Sheriff or process server is to return the process into Court if required by the party at whose instance it was issued.

(2) The return is to be made by filing the original process in the registry from which it issued endorsed with, or having annexed to it, a certificate –

(a) that is signed by the Sheriff, an officer of the Sheriff or other person; and

(b) that records what has been done under the process.

44. Return that person not found

If the person on whom a document or process is to be served or executed cannot be located, the Sheriff or process server is to –

(a) return the document or process into Court; and

(b) certify that the person cannot be located.

45. Return of writ

(1) An order for the return of any writ or to bring in a person ordered to be attached or committed is not necessary.

(2) A party at whose instance a writ of execution was issued or an order for attachment or committal was made may give notice to the Sheriff or process server requiring –

(a) the return of the writ; or

(b) that the Sheriff or the process server –

(i) make a report; or

(ii) bring in the person within a specified time, being not less than 8 days.

(3) The Sheriff or any other person who does not comply with a notice under subrule (2) is liable to attachment.

PART 4 – TIME

46. Calculation of periods of sittings

The days of the start and finish of a sitting or vacation are included in the sitting or vacation.

47. Computation of number of days

A period of a particular number of days, not expressed to be clear days, excludes the first day and includes the last day.

48. Vacation excluded for certain purposes

Unless the Court or a judge otherwise directs, the period between the twenty-third day of December and the seventh day of January following is not to be reckoned in the computation of the times appointed or allowed by these rules for the filing, amendment or delivery of any pleading or appearance.

49. Service

A writ, pleading, notice, application, order or other document must not be served on a Sunday, Good Friday or Christmas Day.

50. Exclusion of certain days

A period of less than 6 days appointed or allowed for doing any act or taking any

proceeding does not include a Saturday, Sunday or Court holiday.

51. Expiry of period on closed day

If the period for doing any act or taking any proceeding expires on a Saturday, Sunday or Court holiday, the act or proceeding may be done or taken on the next day which is not a Saturday, Sunday or Court holiday.

52. Extension or abridgment of period

(1) The Court or a judge may extend or abridge the period for doing any act or taking any proceedings allowed or limited by these rules or by any order of the Court or a judge on any terms the Court or judge considers just.

(2) An extension of any period may be ordered although the application is made after the expiration of the period originally allowed or limited.

(3) The costs of an application and an order made under subrule (1) are to be borne by the applicant unless the Court or a judge otherwise orders.

53. Extension of period by consent

The period for delivering, amending or filing any pleading or other document may be extended by the consent in writing of the parties to the proceeding who may be affected by the pleading

or document without application to the Court or a judge.

54. Fixing of period

The Court or a judge may fix a period if a period is not fixed by these rules or by any judgment or order for doing any act in any proceeding.

55. Notice after delay of one year

If a step, other than an application on which no order has been made, has not been taken in a proceeding for at least one year since the last step was taken, a party may not take any further step in the proceeding without first giving to every other party one month's notice of intention to proceed.

56. Notice after delay of 6 years

(1) If a step, other than an application on which no order has been made, has not been taken in a proceeding for 6 years since the last step was taken, a party may not take any further step in the proceeding without the order of the Court or a judge.

(2) An order may be made either *ex parte* or on notice.

PART 5 – JURISDICTION AS TO COSTS

57. Costs in discretion of Court

(1) The costs of the proceeding in the Court or before a judge are to be in the discretion of the Court or judge.

(2) Subrule (1) does not affect the entitlement of an executor or administrator, or a trustee or mortgagee, who has reasonably instituted, carried on or resisted any proceeding, to costs out of a particular estate or fund.

58. Costs of proceedings tried before judge of an inferior court or referee

If a proceeding is tried, determined or dealt with by a judge of an inferior court of civil jurisdiction, an officer or a referee who has the power to deal with the costs of the proceeding, the judge, officer or referee has the same discretion with respect to costs conferred on the Court or judge by rule 57.

59. Costs of cause removed from inferior court

The costs of any proceeding removed from an inferior court which had jurisdiction in that proceeding are costs in the cause.

60. Costs due to neglect of counsel or practitioner

If the hearing of any matter is delayed or adjourned because of the neglect of the counsel or practitioner for any party, the Court or judge may order that the counsel or practitioner –

(a) is not entitled to recover any costs the Court or judge determines; and

(b) is personally liable for all or any of the party's costs the Court or judge determines.

61. Costs due to delay or misconduct of practitioner

(1) If in any proceeding it appears to the Court or a judge that a person has incurred costs improperly or without any reasonable cause or that, because of any undue delay, misconduct or default by a practitioner, costs properly incurred have proved fruitless to the person incurring them, the Court or judge may require the practitioner of the person to show cause –

(a) why costs should not be disallowed as between the practitioner and the client of the practitioner; and

(b) why the practitioner should not repay to the client any costs which the client has been ordered to pay to any other person.

(2) The Court or judge may make any order that the justice of the case requires and may –

(a) refer the matter to a taxing officer for inquiry and report; and

(b) direct the practitioner in the first place to show cause before the taxing officer; and

(c) direct or authorise the Legal Profession Board to attend and take part in the inquiry.

(3) Notice of any proceedings or order under this rule is to be given to the client in any manner the Court or judge directs.

(4) Any costs incurred by the Legal Profession Board in connection with an inquiry are to be paid by any person, or out of any fund, the Court or a judge directs.

62. Costs of practitioner litigation guardian

(1) If a practitioner acts in any proceeding as the litigation guardian of a person under disability, the Court or a judge may –

(a) direct that any costs incurred in the performance of the duties of guardian be paid –

(i) by a party to the proceeding; or

(ii) out of any fund in Court in which the person under disability is interested; and

(b) give directions for the repayment or allowance of those costs.

(2) If a practitioner acts without an order as litigation guardian of a person under disability, the costs incurred in the performance of the duties as guardian are in the discretion of the Court or judge.

62A. Liability of litigation guardian for costs

If in a proceeding the Court or a judge orders a litigation guardian to pay costs to any other party to that proceeding, unless otherwise ordered by the Court or judge –

(a) the litigation guardian is not personally liable for those costs; and

(b) those costs may be set off against any costs that the Court or judge has ordered that other party to pay to that litigation guardian; and

(c) any balance is to be paid out of the estate of the relevant person under disability.

63. Costs not to be out of estate

Subject to rule 62A, costs of an unsuccessful claim or unsuccessful resistance to a claim to any property are not to be paid out of an estate unless the Court or a judge so orders.

64. Costs to be out of legacy

The costs of, or relating to, an inquiry to ascertain the person entitled to any legacy,

money or share are to be paid out of the legacy, money or share, unless the Court or a judge otherwise orders.

65. Costs of incidental applications

Unless the Court or a judge otherwise orders –

(a) the costs of an opposed application in a proceeding are part of the costs of the cause of the party in whose favour the application is determined; and

(b) the costs of an unopposed application in a proceeding are part of each party's costs of the cause.

66. Costs of application not disposed of

If an application or other matter is ordered to stand over to the trial and an order is not made at the trial as to the costs of the application or matter, the costs of each party to the application or matter are part of that party's costs of the cause.

67. Costs reserved

If the Court or judge reserves the costs of a motion, application or other proceeding, those costs are to follow the event unless the Court or a judge otherwise directs.

68. Costs for unnecessary proceedings

If the further prosecution of any proceeding becomes unnecessary, except for the purpose of determining by whom the costs of the proceeding should be paid, the Court or a judge may determine that on the application of a party.

69. Costs unnecessarily incurred

The Court or a judge may order that any costs unnecessarily incurred by a party be paid by that party, although that party is otherwise entitled to the costs of the proceeding.

PART 6 – SUITORS' FUND

70. Interpretation of Part 6

In this Part –

common fund means the common fund formed under rule 74(1);

half-year means a half-year ending on a day specified in rule 75(1);

interest includes –

(a) dividends or periodical income; and

(b) the interest, dividends and other periodical income on any funds referred to in an order by the Court or a judge;

money in Court means –

(a) any sum of money paid into Court or placed to the credit of any cause, matter or account in Court; and

(b) any dividends on securities in Court and interest on money lodged in Court and invested under any legislation.

71. Payment out of Court

Any money in Court that a person is entitled to may be paid out to the person or his or her practitioner on such written authority as the Principal Registrar considers sufficient.

72. Remission of money by Principal Registrar

(1) A person who is entitled to payment of any money in Court may give written instructions to the Principal Registrar to remit the money to that person or his or her practitioner, banker or another person by cheque sent by post or otherwise.

(2) The Principal Registrar, on being satisfied of the fulfilment of any conditions attached to the payment, may remit the money in accordance with the instructions.

(3) A cheque or other document by which payment of money is effected for the purposes of this Division when endorsed, signed or negotiated by the payee named in it is a valid discharge to the Principal Registrar for the amount expressed.

(4) The Principal Registrar may require a receipt for a payment made by the Principal Registrar.

73. Evidence

The Principal Registrar may determine what evidence is sufficient evidence that a person is entitled to –

(a) the payment of any money in Court; or

(b) the transfer of any securities standing in Court; or

(c) the fulfilment of any condition affecting such a payment or transfer.

74. Investment of money in Court

(1) Subject to any direction of the Court or a judge, the Principal Registrar is to invest all money in Court, other than money lodged for safe custody, in any securities specified by any law or instrument, and where none is specified, the money is to form a common fund to be invested by the Principal Registrar in –

(a) any one or more of the investments specified in section 194C(2) of the Act; or

(b) a contributory first mortgage of real estate in the State under the control of the Public Trustee or a trustee company within the meaning of the *Trustee Companies Act 1953*, whether or not the moneys secured by the mortgage are provided wholly or partly by the Principal Registrar from the common fund.

(2) The Principal Registrar is to cause to be paid into the common fund all interest earned on investments under this rule.

75. Interest on money in common fund

(1) At the end of every half-year ending on 30 June or 31 December the Principal Registrar is to –

(a) fix the annual rate at which interest is to be credited to an account in which money forming part of the common fund was standing at the end of that half-year; and

(b) credit interest at that rate to each account.

(2) Interest is not to be computed on an amount less than $1.

(3) Interest on money in the common fund accrues by calendar months and is not to be computed for any shorter period than one month unless the Court or a judge or the Principal Registrar otherwise directs.

(4) For the purposes of subrule (3), interest –

(a) is to be computed from a day to be fixed by the Principal Registrar in the month following that in which the money is paid into the common fund; and

(b) ceases on the corresponding day of the last month preceding the day of the withdrawal of the money from the common fund.

(5) Interest paid into the common fund by cheque does not form part of the common fund until the cheque has been credited in the books of the

authorised deposit-taking institution into which it has been paid.

(6) If money that has been invested as part of the common fund is paid out of Court before the end of a half-year, interest that has accrued but has not been credited to the account is to be computed at the rate last fixed under subrule (1).

(7) The Principal Registrar may deduct from the amount of the interest payable on money under subrule (6) a sum not exceeding 0.5% a year of that amount and the amount so deducted remains part of the common fund.

(8) In this rule,

authorised deposit-taking institution means a body corporate that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* of the Commonwealth.

76. Interest on money not in common fund

If the interest on an investment, other than an investment of money in the common fund, is to be accumulated, the Principal Registrar may invest that interest in the common fund until it amounts to $200, when it is to be invested in accordance with rule 74.

77. Reserve fund

(1) Interest earned by the common fund and not credited to an account to which money forming

part of the common fund was standing during any half-year is to be carried to a reserve fund.

(2) The reserve fund is part of the common fund and, with the approval of a judge, may be used by the Principal Registrar –

(a) in making good any deficiencies in the funds in Court; or

(b) in making good any amount by which the amount of interest to be credited to the accounts forming part of the common fund during any half-year exceeds the amount of interest earned for that half-year; or

(c) to pay any expenses incurred in administering the funds in Court.

(3) Interest in the reserve fund that is not used for the purposes of subrule (2) –

(a) is to be invested as part of the common fund; and

(b) is not to be treated as unclaimed money.

PART 7 – PROCEEDINGS

Division 1 – Documents

78. Requirements for documents

Any document filed, delivered or otherwise used in connection with any proceeding is –

(a) to be printed on A4 paper with a space of not less than 4 millimetres between the lines; and

(b) not to be a carbon copy; and

(c) . . . . . .

(d) to have an inner margin of about 25 millimetres in width and an outer margin of about 19 millimetres in width; and

(e) not to be handwritten, except by leave of a registrar.

79. Identification of party

A document is to have the following information shown below a horizontal line drawn at the foot of the first page:

(a) if the party is represented by a practitioner –

(i) the name of the party on whose behalf the document is filed; and

(ii) the name, address, telephone number and facsimile number of the practitioner; and

(iii) if an agent for the practitioner acts in the proceeding, the name, address, telephone number and facsimile number of the agent; and

(iv) the name of the practitioner who has carriage of the proceedings in which the document is filed; and

(v) the address of the practitioner for the reception of documents in a document exchange; and

(vi) if the practitioner accepts service of documents by email, the email address of the practitioner;

(b) if the party is not represented by a practitioner –

(i) the name, telephone number and facsimile number of the party for whom the document is filed; and

(ii) the address for service of the party; and

(iii) if the party accepts service of documents by email, the email address of the party.

80. Statement of numbers

In any document dates and numbers are to be expressed in figures.

81. Copies of documents

A party who, under these rules or an order, receives a copy of a document in the possession of another party is to pay that other party at the rate for copies of documents set out in Part 1 of Schedule 1.

Division 2 – Filing

82. Filing in Court act of an officer

(1) Only an officer may receive a document for filing in the Court.

(2) If a person other than an officer is directed or requested to file a document, that person is to lodge it for filing by an officer in the Court.

82A. Frivolous or vexatious writ, &c.

(1) If a writ or process appears to a registrar to be, on its face, an abuse of the process of the Court or a frivolous or vexatious proceeding, the registrar is to seek the direction of a judge unless the party seeking to issue the writ or process first obtains leave of a judge.

(2) A judge may direct the registrar to issue the writ or process or to refuse to issue it.

83. Lodgment for filing

(1) A document is to be –

(a) lodged for filing at a registry; or

(b) sent for filing by prepaid post in an envelope addressed to a registry; or

(c) sent by email for filing, in accordance with Division 2A of Part 7.

(2) An originating process is to be filed in the registry in which it is proposed to commence the original proceeding.

(3) Except where otherwise provided by these rules, a document, other than an originating process, is to be filed in the registry in which the cause or matter is proceeding.

(4) The officer receiving any document lodged for filing at a registry is to –

(a) note the time and date of lodgment on the document; and

(b) if the document is in order for filing –

(i) file it as at the time and date of lodgment; and

(ii) if it is accompanied by a copy of the document, seal the copy or, if sealing is not required, note on the copy the time and date of lodgment and return the copy to

the person lodging the document; and

(c) if the document is not in order for filing, return it together with a note of the reasons for its return.

(5) If a document is sent by post and the original is to be –

(a) filed, it is to be accompanied by a copy for return; or

(b) returned, it is to be accompanied by a copy for filing.

(6) A document sent by post is to be accompanied by a duly stamped and addressed envelope for the return to the person requesting filing of the copy or original document not filed.

(7) On receipt of a document sent by post –

(a) an officer of the registry is to note the time and date of receipt on the original and any copy; and

(b) if the document is in order for filing –

(i) the officer is to file the document; and

(ii) a registrar is to seal any copy posted with the document or, if sealing is not required, note on the copy the time and date of lodgment and return the copy to the person requesting filing; and

(c) if the document is not in order for filing, the officer is to return it together with any accompanying documents and a note of the reasons for its return.

(8) If the person requesting filing fails to provide an envelope in accordance with subrule (6), the registrar is to notify the person of the requirement for an envelope.

(9) If the person subsequently provides a duly stamped and addressed envelope, the filing of the document is to be as of the day on which the envelope was provided.

84. Documents delivered to a document exchange

Rule 83 applies to the lodgment for filing of a document if the registry and the practitioner for a party have a facility for the reception of documents in the same document exchange as if –

(a) the reference in rule 83(1)(b) to sending by prepaid post were a reference to delivery into that facility; and

(b) the envelope required under rule 83(6) were to be addressed to the practitioner's address in the document exchange.

85. Document not having intended effect

A document is in order for filing if it complies with these rules as to its formal elements, even though it may not have its intended effect.

86. Application to judge if document is returned

If a document, the filing of which is necessary for a person to commence or pursue proceedings for relief of any kind, is returned under rule 83, a judge, on the application of that person, may order that –

(a) the document be filed as at the date and time of its first lodgment; or

(b) an amended version of the document or a different document in substitution for it be filed as at that date and time.

87. Construction of certain references

A reference in these rules or in any other enactment to the issuing of a document out of the Court by a person other than an officer is a reference to lodging that document for filing and includes a requirement that, when the document is filed, the registrar is to issue a sealed copy of that document.

Division 2A – Emailing and filing, &c., of electronic documents

87A. Limitation on electronic documents

(1) The Principal Registrar may approve a person, firm, corporation or government agency as a person, firm, corporation or government agency who may lodge or serve documents by email.

(2) The Principal Registrar, in his or her absolute discretion, may refuse to accept for lodgment a document that is emailed to a registry by a person, firm, corporation or government agency who is not approved by the Principal Registrar under subrule (1).

(3) The Principal Registrar, by notice in writing to the holder of an approval, may, in his or her absolute discretion, revoke the approval at any time.

87B. Approved formats, email addresses and cover letters

(1) A document that is emailed to a registry for filing is to –

(a) be in a format approved by the Principal Registrar; and

(b) be sent to the email address approved by the Principal Registrar; and

(c) be capable of being printed in its entirety and in the form in which it was created; and

(d) include, in the footer required under rule 79, an email address for service; and

(e) be accompanied by a cover sheet.

(2) For the purposes of subrule (1)(e), the cover sheet to the document is to contain the following information:

(a) the title of the proceeding to which the document relates;

(b) the heading of the proceeding;

(c) the registry in which the proceeding is being, or is to be, conducted;

(d) if a registry has assigned a file number to the proceeding, that file number;

(e) a description of the document;

(f) the date the document is emailed;

(g) the name of the party on whose behalf the document is being lodged;

(h) the email address of the person lodging the document.

87C. Electronic signatures

(1) A document (other than an affidavit) that is emailed and required by these rules to be signed is taken to be signed if a facsimile of the signature is affixed to the document by electronic means.

(2) For the purposes of subrule (1), the signature is to be affixed to the document by, or at the direction of, the signatory.

87D. Electronic office seals

(1) A document that is emailed and required by these rules to be sealed with an office seal is

taken to be sealed if a facsimile of the office seal is affixed to the document by electronic means.

(2) For the purposes of subrule (1), an office seal is to be affixed to the document by, or at the direction of –

(a) the Principal Registrar; or

(b) an officer acting with the authority of the Principal Registrar.

87E. Electronic lodgment for filing

(1) In this rule –

date of lodgment, of a document by email, means –

(a) if the document is received by the Court on a Saturday, Sunday or Court holiday, the first day that is not a Saturday, Sunday or Court holiday following the day on which the email is received; or

(b) if the document is received by the Court on a day that is not a Saturday, Sunday or Court holiday –

(i) if the document is received by the Court before 4:30 p.m., the day on which the email is received; or

(ii) if the document is received by the Court on or after 4:30 p.m., the first day, that is not a Saturday, Sunday or Court holiday, following the day on which the email is received.

(2) An officer who receives a document that is lodged by email for filing is to –

(a) affix to the document, by electronic means, the date of lodgment of the document; and

(b) if the document is in order for filing –

(i) affix the office seal to the document in accordance with rule 87D; and

(ii) file the document.

(3) If the officer files the document and it requires listing before the Court, the officer is to email the person who lodged the document a notice stating the time, date and place of the hearing.

(4) If the document is not in order for filing, the officer is to email the person who lodged the document a statement of the reasons for the officer's refusal to file the document.

87F. Effecting electronic service

(1) A person may serve a document by email if the person on whom the document is to be served has given an email address for service.

(2) If a document is served on a person by email, the document is taken to be served –

(a) if the document is received by the person on a Saturday, Sunday or Court holiday, the first day that is not a Saturday, Sunday or Court holiday following the day on which the email is received; or

(b) if the document is received by the person on a day that is not a Saturday, Sunday or Court holiday –

(i) if the document is received by the person before 4:30 p.m., the day on which the email is received; or

(ii) if the document is received by the person on or after 4:30 p.m., the first day, that is not a Saturday, Sunday or Court holiday, following the day on which the email is received.

87G. Affidavits

(1) An affidavit that is lodged by email for filing may have annexures attached to it if –

(a) an index of the annexures is specified in the affidavit beneath the title to the proceedings; and

(b) each reference to an annexure in the index contains a hyperlink to its relevant annexure; and

(c) each reference to an annexure in the body of the affidavit contains a hyperlink to its relevant annexure.

(2) The cover sheet accompanying an affidavit that is lodged by email for filing is to include, in addition to the information specified in rule 87B(2) –

(a) a list, under the description of the affidavit, that separately identifies each exhibit, if any; and

(b) a certificate, signed by the person lodging the affidavit, stating that –

(i) the affidavit is a true and complete facsimile of the original; and

(ii) the original of the affidavit will be held in safe custody until the proceeding to which the affidavit relates has been concluded and at least 3 months have passed since the expiry of any period allowed for appeal or further appeal in relation to the proceeding; and

(iii) the original of the affidavit will be produced for inspection upon request by a party to the proceeding, the Court or a judge.

(3) Unless the Court or a judge makes an order to the contrary, a person who has lodged an affidavit by email for filing may not use the affidavit as evidence if a request for the production of the original of the affidavit is not satisfied.

87H. Original documents generally

(1) Unless the Court or a judge makes an order to the contrary, if a document that is emailed for filing exists in an original paper form then the person who emails that document must keep the original in safe custody until –

(a) the proceeding to which the document relates has been concluded; and

(b) at least 3 months have passed since the expiry of any period allowed for appeal or further appeal in relation to the proceeding.

(2) Upon request by the Court or a judge, a person must produce for inspection the original of a document that is emailed for filing.

Division 3 – Commencement of proceedings

88. Actions

The following classes of proceedings are to be commenced by a writ, unless these rules provide that they are to be commenced by application:

(a) for the recovery of a debt;

(b) for the recovery of wages or other remuneration;

(c) for the restitution or return of money paid;

(d) for the assessment of a sum as the value of goods or services, including claims on a quantum meruit or quantum valebat;

(e) proceedings based on a common count;

(f) for the recovery of a sum due on a negotiable instrument;

(g) for the return of goods or their value;

(h) for the recovery of money due in respect of necessaries supplied;

(i) for the enforcement of a bond;

(j) for the enforcement of a contract, an indemnity or a guarantee;

(k) for the specific performance of a contract;

(l) for the recovery of rent or mesne profits;

(m) for the recovery of land;

(n) for the recovery of damages, however arising;

(o) for the declaration of a private right, including a right to ownership of personal property, except one to which rule 89(a) or rule 90(1)(a) applies;

(p) for the declaration of a public right, except one to which rule 89(a) or rule 90(1)(a) applies;

(q) for the rectification of a deed or other instrument;

(r) for the setting aside of a contract or a gift;

(s) for the setting aside of a deed, conveyance, transfer or other instrument;

(t) in the nature of an action of replevin;

(u) for an injunction, except if it is sought as ancillary to relief claimed in an application;

(v) for the enforcement of a statutory right if the statute creating the right specifies that the proceeding to enforce the right is to be by way of an action;

(w) for other relief which, before the commencement of the Act, was sought by action commenced by –

(i) writ or plaint and summons; or

(ii) bill or information in the equity jurisdiction of the Court; or

(iii) citation or otherwise in the ecclesiastical jurisdiction of the Court;

(x) for the repeal, revocation, cancellation or vacation of any grant or charter granted or issued by the Crown or of any record;

(y) against the Crown.

(z - za) . . . . . .

89. Applications to Court

The following classes of proceedings are to be commenced by application to the Court:

(a) determination of a question of construction arising under a statute, regulation, letters patent, by-law or other written instrument of a public nature made by the Crown or a public or local authority and declaration of the rights of persons interested under that instrument;

(b) application under the *Trustee Act 1898*, other than an application to which rule 90 applies;

(c) . . . . . .

(d) a writ of attachment not by way of execution;

(e) establishing documentary title to property;

(f) compensation for land resumed or compulsorily acquired;

(g) foreclosure or redemption of a mortgage;

(h) discovery in order to claim other relief;

(i) an account and payment of the balance found due, not being an account that any executor, administrator or trustee is bound to give;

(j) administration of an estate or trust, including a charitable trust;

(k) order for punishment for contempt, except where the person charged with the contempt has been taken into custody immediately and is before the Court;

(l) admission to the legal profession, except an application made in accordance with the mutual recognition principle enacted in Part 3 of the *Mutual Recognition Act 1992* of the Commonwealth and adopted in this State by the *Mutual Recognition (Tasmania) Act 1993*;

(m) order for relief similar to *certiorari* at the instance of the Attorney-General ex officio;

(n) . . . . . .

(o) application under section 6 of the *Variation of Trusts Act 1994*;

(p) application under the *Wills Act 1992* or the *Wills Act 2008*, other than an application for authorisation to make or alter a will, or revoke the whole or any part of a will;

(q) proceedings for a grant of probate or letters of administration where the only reason for seeking the grant in solemn form is the need to rely on section 26 of the *Wills Act 1992* or section 10 of the *Wills Act 2008*;

(r) . . . . . .

(s) proceedings which, by an enactment other than the Act, are directed to be begun by motion or petition, other than proceedings to which rule 90 applies;

(t) proceedings in any case in which an application is authorised to be made, and is made to a Full Court or a judge sitting in court as a Court;

(u) application under the *Judicial Review Act 2000*, where the decision in relation to

which the application is made was made following a public hearing;

(v) proceedings under the *Vexatious Proceedings Act 2011*, other than an application for leave to institute proceedings.

90. Applications to judge in chambers

(1) The following classes of proceedings are to be commenced by application to a judge in chambers:

(a) determination of a question of construction arising under a deed, will or other written instrument, other than a question to which rule 89(a) applies, and declaration of the rights of persons interested under that instrument;

(b) question affecting the rights or interests of a person claiming to be a creditor, devisee, legatee or one of the next-of-kin of a deceased person or otherwise beneficially interested in the property of a deceased person;

(ba) proceedings under the *Intestacy Act 2010*;

(c) question affecting the rights or interests of a cestui que trust under a trust or a person beneficially interested in the property subject to a trust;

(d) furnishing of any particular accounts by the executor, administrator or trustee and any vouching of those accounts;

(e) payment into Court of any money or security in the hands of an executor, administrator or trustee;

(f) directions to an executor, administrator or trustee to do, or abstain from doing, a particular act;

(g) removal of a trustee;

(h) appointment of a trustee in the place of a removed trustee or a direction that any remaining trustees may continue to act without an additional trustee;

(i) determination of a question arising in the administration of any estate or trust, including a question whether or not any deed, will or other instrument creates a valid charitable trust or a valid gift to charity;

(j) determination of a question arising in the execution or administration of a charitable trust or gift to charity created by a deed, will or other instrument;

(k) appointment of a new trustee, with or without a vesting order or other consequential order;

(l) vesting order or other order consequential on the appointment of a

new trustee, whether the appointment is made by the Court or a judge or out of Court;

(m) under section 6 of the *Foreign Judgments Act 1991* of the Commonwealth for the registration of a judgment to which Part 2 of that Act applies;

(n) under the *Commercial Arbitration Act 2011*;

(o) authorisation to make or alter a will, or revoke the whole or any part of a will, or leave to apply for such authorisation;

(p) under section 13 of the *Variation of Trusts Act 1994*;

(q) by a judgment creditor of a partner for an order under section 28 of the *Partnership Act 1891* charging the interest of the partner in the partnership property and profits;

(r) for a charging order;

(s) for an order under Part 2 of the *Evidence on Commission Act 2001*;

(t) any application which is not required by the provisions of any enactment to be heard by, or made to, a Full Court or a judge sitting in court as a court;

(u) with respect to the ascertainment of any class of creditors, legatees, devisees, next-of-kin or other persons;

(v) for approval of a sale, purchase, compromise or other transaction;

(w) with respect to the making of any inquiries or the taking of any accounts as on a decree of the Court directing the inquiries to be made or accounts to be taken, whether in relation to a case of wilful default or not;

(x) vesting order or other consequential order if a judgment or an order has been given or made for the sale, conveyance or transfer of any land or stock or the suing for, or recovering of, a chose in action;

(y) proceedings relating to a fund paid into Court;

(z) orders nisi for relief similar to *certiorari*, *mandamus* or prohibition;

(za) leave to exhibit an information in the nature of *quo warranto*;

(zb) relief similar to *mandamus* or *quo warranto*;

(zc) general orders to show cause why any form of relief should not be granted;

(zd) proceedings under the *Settled Land Act 1884*;

(ze) extension of time in any matter or in respect of any contemplated proceeding;

(zf) proceedings under the *Testator's Family Maintenance Act 1912*;

(zfa) proceedings under the *Relationships Act 2003*;

(zg) declaration of rights as between vendor and purchaser;

(zh) sale or partition;

(zi) dissolution of partnership;

(zj) proceedings under section 171 of the Act;

(zk) requiring a practitioner to answer an affidavit;

(zl) striking a practitioner off the roll or to suspend, or otherwise discipline, a practitioner;

(zm) disbarring, or otherwise disciplining, a barrister;

(zn) admission to the legal profession in accordance with the mutual recognition principle enacted in Part 3 of the *Mutual Recognition Act 1992* of the Commonwealth and adopted in this State

by the *Mutual Recognition (Tasmania) Act 1993*;

(zo) proceedings which, by an enactment other than the Act, are directed to be commenced by summons or by application to the Court or a judge, other than proceedings to which paragraph (a) to paragraph (r), inclusive, of rule 89 apply;

(zp) application under the *Judicial Review Act 2000*, other than an application to which rule 89(u) applies;

(zq) application for leave to institute proceedings under section 11 of the *Vexatious Proceedings Act 2011*.

(2) A proceeding before a judge sitting in Court as in Chambers is to be open to the public unless –

(a) there is a legislative requirement that the matter be heard in private; or

(b) the matter, or part of it, would be heard in private if it were being heard in Court; or

(c) it is otherwise ordered by the judge.

91. Habeas corpus

Proceedings for a writ of habeas corpus may be commenced by application to the Court or a judge in chambers.

92. Multiple claims

(1) A person wishing, in a single proceeding, to seek from the Court or a judge relief of more than one kind in respect of more than one matter, may claim all kinds of relief sought by –

(a) writ, if, in respect of any relief sought, these rules require proceedings to be commenced by writ; or

(b) application to the Court, if, in respect of any relief sought, these rules require proceedings to be commenced by application to the Court; or

(c) application to a judge in chambers, in any other case.

(2) The Court or a judge hearing any action or other proceeding in which relief of more than one kind is sought may order the separation of the claims.

(3) The Court or a judge, on an application made in any action or other proceeding in which relief of more than one kind is sought, may order the separation of the claims.

(4) Notwithstanding subrule (1), a person may claim any ancillary relief with the principal relief claimed.

93. Certain judgments in open court

A judge who, on an application to which rule 90(1)(zk), (zl) or (zm) applies, determines to discipline the respondent is to adjourn the

application into Court to give reasons and to make the necessary order.

94. Directions as to matters to be dealt with in court

(1) A majority of the judges may give general directions as to what proceedings and applications are to be heard by, or made to, a judge sitting in court.

(2) A general direction –

(a) is to be printed and a copy of it kept at every registry; and

(b) is to be open to inspection at all reasonable times; and

(c) rescinds an earlier general direction.

(3) A general direction is not a rule of Court.

(4) Notwithstanding a direction under subrule (1), a judge, subject to the Act and these rules, may hear in chambers any matter directed to be heard by, or made to, a judge sitting in court.

95. Change of course of proceedings

(1) At any time, the Court or a judge may –

(a) order that –

(i) an action change to proceed as if it had begun by application; or

(ii) a proceeding begun by application change to proceed as an action; and

(b) direct the taking, amending or ignoring of any procedural step in the proceeding required by that change; and

(c) provide for the costs caused or occasioned by that change, including the cost of any thing no longer necessary or appropriate or any step rendered otiose.

(2) The Court may direct an application before it to be continued in chambers.

(3) A judge in chambers may direct an application to be continued before the Court.

Division 4 – Originating process generally

96. Originating process

A plaintiff or an applicant may lodge in any registry originating process for filing.

97. Title and heading of causes and matters

(1) An originating process filed in the Court is to –

(a) be titled –

(i) if it is not a probate action, "In the Supreme Court of Tasmania"; or

(ii) if it is a probate action, "In the Supreme Court of Tasmania (Probate)"; and

(b) state below the title –

(i) the words "Hobart Registry", if the proceeding is to be commenced in the Principal Registry; or

(ii) the name of the district followed by "Registry", if the proceeding is to be commenced in a district registry; and

(c) state the file number assigned to it in the registry.

(2) If a proceeding is transferred from one registry to another registry –

(a) the name of the registry to which it is transferred is to be substituted for the name of the registry from which it is transferred; and

(b) the file number of the proceeding assigned to it by the registry to which it is transferred is to be substituted for its former number.

(3) In an action –

(a) the person who commences the proceeding is to be called the plaintiff; and

(b) the person against whom the action is commenced is to be called the defendant; and

(c) after the title, the writ and any other process in the action is to be headed accordingly as being between the parties.

(4) In an *inter partes* proceeding other than an action –

(a) the person who commences the proceeding is to be called the applicant; and

(b) the person against whom the proceeding is commenced is to be called the respondent; and

(c) after the title, the originating application and any other process in the proceeding is to be headed accordingly as being between the parties.

(5) In a proceeding which is not *inter partes* –

(a) the person who commences the proceeding is to be called the applicant; and

(b) after the title, the originating application and any other process in the proceeding is to be headed "In the Matter of" followed by a reference to the statutory provision, if any, under which the applicant's claim arises and, if appropriate, "In the Matter of" followed

by a short description of the estate, will, settlement, deed, instrument or thing or the name of the person to which or to whom the application relates.

98. Appearing if served within jurisdiction

The period for entering an appearance limited by a writ or any other originating process which requires an appearance and which is served within the jurisdiction of the Court is 7 days after service.

99. Appearing if served out of jurisdiction

The period for entering an appearance limited by a writ or any other originating process which requires an appearance and which is served outside the jurisdiction of the Court is –

(a) 21 days after service, if the originating process is served in Australia; or

(b) the time allowed under the Trans-Tasman Proceedings Act, if the originating process is served in New Zealand; or

(ba) . . . . . .

(c) the time allowed under rule 147E, if the originating process is served in any other place.

100. Address of defendant or respondent

A writ or originating application is to state –

(a) the address of the defendant or respondent, if it is known to the plaintiff or applicant; or

(b) if it is not known, the fact that it is not known.

101. Address of plaintiff or applicant

A writ or originating application is to state –

(a) the address of the plaintiff or applicant; and

(b) if it is lodged for filing by a practitioner or law practice, the name and address of the practitioner or law practice.

102. Concurrent writ or originating application

(1) If the period limited for entering an appearance is to be altered or a different period is required in respect of a different defendant or respondent, the plaintiff or applicant may have sealed as many concurrent writs or concurrent originating applications as he or she requires.

(2) A concurrent writ or concurrent originating application is to –

(a) show the same day of filing as the original process; and

(b) be in the same form as the original process except for the time limited for entering an appearance; and

(c) be in force only for the period during which the original process is in force.

103. Declaratory judgment

(1) A proceeding is not open to objection only on the ground that it seeks a merely declaratory judgment or order.

(2) The Court may make a binding declaration of right, whether or not any consequential relief is, or may be, claimed.

(3) A person claiming to be interested under a deed, will or other written instrument may apply, by originating application, to a judge in chambers for –

(a) the determination of any question of construction arising under the instrument; and

(b) a declaration of the rights of the persons interested.

(4) If a judge considers that any question on an application under subrule (3) ought not to be determined on an originating application, the judge –

(a) is not bound to determine the question; and

(b) may exercise the powers conferred by rule 95.

Division 5 – Writs

104. Form of writ

A writ is to be in accordance with the prescribed form.

105. Issue of writ

A writ is issued when it is filed and sealed.

106. Filing of writs

If a writ is filed, the officer receiving it is to –

(a) make an entry of the writ in the register of proceedings; and

(b) in that entry, distinguish the action to which the writ relates by the year, a number and the name of the registry out of which the writ has been issued; and

(c) insert that year and number on each sealed copy of the writ.

107. Duration of writ

(1) An original writ is in force for –

(a) if it is issued before 1 May 2006, 12 months commencing on, and including, the date of issue; and

(b) if it is issued on or after 1 May 2006, 6 months commencing on, and including, the date of issue.

(2) On the application of the plaintiff made whilst a writ is in force, the Court or a judge may order that the original writ and any concurrent writ be renewed for such period as the Court or judge thinks fit if a defendant named in the writ has not been served.

(3) The period for which the writ is renewed commences on, and includes, the date of the order.

(4) If a writ is renewed, the registrar is to –

(a) make a copy of the original writ filed in the Court; and

(b) impress that copy with a seal bearing the word "renewed" and the date of the renewal; and

(c) deliver the copy to the plaintiff; and

(d) make a note of the renewal on the file of the action.

(5) The production of a renewed writ marked in accordance with subrule (4) is sufficient evidence of –

(a) the renewal; and

(b) the commencement of the action as of the date on which the original writ was filed.

(6) A renewed writ is in force from the date of issue of the original writ.

Division 6 – Endorsement of claim on writ

108. Endorsements

(1) Before a writ is issued, it is to be endorsed –

(a) in the case of a claim for a debt or liquidated demand with a statement –

(i) of the amount claimed for the debt or liquidated demand and costs; and

(ii) of brief particulars of the debt or liquidated demand; and

(iii) stating that the action will be at an end, except in respect of the recovery of land, on payment of the amount claimed in respect of the debt and costs or liquidated demand and costs, within the period limited for appearance; or

(b) in any other case, with a statement of claim or a concise statement of the nature of the claim made and the relief or remedy sought in the action begun by the writ.

(2) The amount claimed for the costs in an action under subrule (1)(a) is to be in accordance with the Table in Part 3 in Schedule 1.

(3) If the plaintiff includes a claim for the recovery of land, the capital value of the land, if stated in the endorsement on the writ, is part of the amount of the claim for the purpose of the Table in Part 3 in Schedule 1.

109. Insufficient endorsement

(1) The Court or a judge, on the application of a defendant, may set aside a writ which has an endorsement of claim if the endorsement does not contain a statement sufficient to give notice of –

(a) the nature of the claim; and

(b) the remedy or relief sought in the action.

(2) An application is to be made before filing an appearance.

(3) On the hearing of the application, the Court or judge may order –

(a) that the writ be amended; or

(b) that the plaintiff deliver particulars of the claim to the defendant.

110. Claim of general relief not necessary

An endorsement of claim need not include a claim for general or other relief but that relief may be granted to the same extent as if it had been claimed in the endorsement.

111. Representative capacity

If a plaintiff sues, or a defendant is sued, in a representative capacity, the endorsement of claim is to show the relevant capacity.

112. Claim for possession of land

If a plaintiff claims the recovery of possession of land, the endorsement of claim is to state the capital value of that land.

113. Claim in detinue

If a plaintiff makes a claim in detinue, the endorsement of claim is to state the value of all goods of which possession is sought, whether or not the plaintiff claims to recover their value.

114. Claim for account

If a plaintiff in the first instance wants to have an account taken, the endorsement of claim is to state that fact.

115. Claim in defamation

If a plaintiff sues for defamation, the endorsement of claim is to state sufficient particulars to identify each publication in respect of which the action is brought.

116. Claim for unliquidated damages

If a plaintiff claims unliquidated damages, the amount claimed as damages is only stated in the endorsement of claim if that amount does not exceed $50 000.

117. Alteration of claim without amendment of writ

Whenever a statement of claim is delivered, the plaintiff, in that statement of claim, may alter the claim against any defendant who has appeared, without amending the endorsement of the writ.

Division 7 – Originating applications

118. Form of originating application

(1) An originating application is to be in accordance with the prescribed form.

(2) . . . . . .

119. Commencement of originating application

An originating application is commenced when it is filed and sealed.

120. Application for attachment or to strike off

(1) An originating application for attachment or for an order that a practitioner or a barrister be struck off is to state, in general terms, the grounds of the application.

(2) A copy of any affidavit intended to be used by the applicant is to be served with the application.

121. Notice of oral evidence

Notice of any intention to adduce oral evidence on the hearing of an originating application is to be endorsed on, or served with, the application.

122. Service of originating application

If the Court or a judge orders that an originating application not intended to be served be served, the copy which is served is to be endorsed with a notice in accordance with the prescribed form, signed by the registrar.

123. Time for service

(1) An originating application which requires an appearance and is served within the State is to be served at least 9 clear days before the hearing date.

(2) An originating application which does not require an appearance and is served within the State is to be served at least 2 clear days before the hearing date.

(3) An originating application which is served outside the State is to be served the number of days before the hearing date that is 2 days more than the period limited for the entry of an appearance under rule 99 in respect of the place at which the application is served.

124. Amendment of notice of hearing

If an originating application which is to be served within the State has not been served as required by rule 123(1), the registrar may make an endorsement on the original and each sealed copy of the application appointing a new time, date and place for the parties to attend for the hearing of the application.

125. Appearance

Unless the Court or a judge otherwise orders, a party to an originating application which requires the entry of an appearance is not to be heard on the application before that party has entered an appearance.

126. Applications as to purchase money

(1) In the case of an application for an order directing that the purchase money of any property sold be paid into Court, a person who claims to be entitled to that money is to make and file an affidavit in accordance with subrule (2).

(2) An affidavit is to –

(a) verify the title of the claimant; and

(b) state –

(i) that the claimant is not aware of any right on the part of, or any claim made by, any other person to any part of the money claimed; or

(ii) if the claimant is aware of such a right or claim, particulars of that right or claim and the relevant facts concerning it.

Division 8 – Practitioners and address for service

127. Declaration of authority of originating process

(1) A practitioner whose name is endorsed on any originating process, on demand in writing made by or on behalf of any person who has been served with the process or has appeared to it, is to declare in writing whether the process has been issued by, or with the authority of, that practitioner.

(2) If a practitioner declares that an originating process was not so issued –

(a) all proceedings relating to the process are to be stayed; and

(b) further proceedings are not to be taken without leave of the Court or a judge.

(3) If a practitioner declares that an originating process was so issued, the Court or a judge, on the application of a defendant or respondent, may order that the practitioner declare in writing, within a specified period, the profession, occupation and place of abode of the plaintiff or applicant.

128. Address for service

(1) If a plaintiff or applicant sues by practitioner, the plaintiff's or applicant's address for service is –

(a) the business address of the practitioner endorsed on the originating process; or

(b) if the practitioner acts through an agent, the business address of the agent.

(2) If a plaintiff or applicant sues in person, the plaintiff's or applicant's address for service is the plaintiff's or applicant's address in Tasmania endorsed on the originating process.

(3) If a defendant, respondent or other person who enters an appearance appears by practitioner, the person's address for service is –

(a) the business address of the practitioner stated in the notice of appearance; or

(b) if the practitioner acts through an agent, the business address of the agent.

(4) If a defendant, respondent or other person who enters an appearance appears in person, the person's address for service is the person's

address in Tasmania stated on the notice of appearance.

(5) A person's address for service under this rule must be an address –

(a) at which documents may be left for the person during ordinary business hours; and

(b) to which documents may be posted to the person.

(6) Notwithstanding this rule, an address for service specified in accordance with section 18(1) of the *Service and Execution of Process Act 1992* of the Commonwealth is a sufficient address for service.

128A. Fictitious address

(1) If satisfied that an address for service of a person is illusory, fictitious or in some other way not genuine or appropriate, the Court or a judge may make any order that is appropriate to deal with the situation.

(2) Without limiting the generality of subrule (1), the Court or judge may make one or more of the following orders under that subrule:

(a) an order setting aside a notice of appearance;

(b) an order providing for service of documents;

(c) an order dispensing with service.

(3) If a notice of appearance is set aside under subrule (1) then, unless it is ordered otherwise, a document may be served on the person who filed the notice of appearance by filing the document in the registry.

129. Change of practitioner or address for service

(1) A party to a proceeding, by filing a notice in the registry, may –

(a) change his or her practitioner; or

(b) change the practitioner acting as the agent for the party's practitioner; or

(c) if acting in person, appoint a practitioner; or

(d) discharge his or her practitioner and act in person; or

(e) change the address for service to another address which complies with rule 128.

(2) A notice takes effect when it is filed and a copy of it is served on each other party.

(3) A notice is to be in accordance with the prescribed form.

130. Name of practitioner taken off record

(1) A practitioner may have his or her name taken off the record as practitioner for a client in a

proceeding on filing and serving on each other party –

(a) a notice in accordance with the prescribed form; and

(b) an affidavit stating that the client has been given at least 7 days' notice of the intention of the practitioner to file the notice.

(2) Notice for the purpose of subrule (1)(b) is to be –

(a) in accordance with the prescribed form; and

(b) served personally on the client.

(3) If a practitioner is unable to effect prompt personal service of the notice on the client, the Court or judge may make any order for substituted service as is just.

(4) After a practitioner has ceased to act for a party and until some other practitioner has commenced to act for that party, the party is taken to be acting in person.

131. Applications between client and practitioner

(1) A client or former client of a practitioner may apply to the Court or a judge for an order against the practitioner for the delivery of a cash account, the payment of money or the delivery of securities.

(2) On hearing an application, the Court or a judge may –

(a) order the practitioner to deliver to the applicant a list of the money or securities in the custody or control of the practitioner on behalf of the applicant; or

(b) order the practitioner to bring into Court the whole or any part of that money or those securities; or

(c) in the event that the practitioner asserts a claim for costs, make any provision for the payment or security of those costs or the protection of any practitioner's lien, as may be appropriate.

Division 9 – Service

132. Personal service

If a document is to be served personally, it is sufficient to serve –

(a) the original of the document; or

(b) a sealed copy of the document; or

(c) any copy of the document, at the same time showing the person the original.

133. Originating process to be served personally

Unless otherwise provided for, any originating process is to be served personally.

134. Service on practitioners

An originating process may be served on the practitioner for a party if the practitioner undertakes in writing to accept service on behalf of the party.

135. Effecting personal service

Personal service of a document may be effected by –

(a) delivering the document to, and leaving it with, the person to be served; or

(b) offering to deliver the document to, and leave it with, that person.

136. Service on persons under disability

(1) If a person under disability is a party to a proceeding, service may be effected on any of the following persons:

(a) if a person is authorised under the *Guardianship and Administration Act 1995* to conduct in the name and on behalf of the person under disability the proceedings in connection with which the service is required to be made, the person so authorised;

(b) if no person is so authorised and the person under disability is an infant, a parent or guardian or, if the infant has no parent or guardian, the person with

whom the infant resides or who has the care of the infant;

(c) in any other case, the person with whom the person under disability resides or who has the care of the person under disability.

(2) Notwithstanding subrule (1), the Court or a judge may order –

(a) that service made, or to be made, personally on a person under disability is good service; or

(b) that service be made personally on a person under disability if the person is not an infant.

137. Service on corporations

In the absence of any statutory provisions regulating service of process on corporations, an originating process to be served on a corporation, whether or not incorporated under the laws of the State, may be served on the mayor, president or other head officer, or general manager, treasurer, manager or secretary of the corporation.

138. Service on unincorporated bodies

An originating process to be served on the persons who constitute an unincorporated body, other than a partnership, may be served on the president, chairman, other presiding officer,

secretary or treasurer of the body or on any other officer holding a similar office.

139. Service on agents

(1) An originating process arising out of a contract entered into within the State by or through an agent residing or carrying on business within the State on behalf of a principal residing or carrying on business out of the State may, with the leave of the Court or a judge, be served on the agent.

(2) Leave of the Court or a judge under subrule (1) is to be given before the determination of the agent's authority or business relationship with the principal.

(3) The plaintiff is to send a copy of the order and the originating process by certified post to the defendant or respondent at the defendant's or respondent's address out of the State.

140. Recovery of land

Service of any originating process seeking the recovery of land may be made by affixing a sealed copy of the process to a conspicuous part of the land, if –

(a) no person appears to be in possession of the land; and

(b) service cannot otherwise be effected.

141. Substituted service

(1) If it appears to the Court or a judge that a party is unable to effect prompt personal service or service in any other prescribed manner, the Court or judge may make an order for substituted service by advertisement or otherwise as is just.

(2) Substituted service has the same effect as personal service or service in the relevant prescribed manner.

142. Service of judgments and orders

(1) A judgment or order may not be enforced by attachment unless it has been served personally on the person against whom attachment is sought.

(2) It is not necessary to effect personal service of a judgment or order or to show the original of the judgment or order except –

(a) as provided by subrule (1); or

(b) on demand by the party served.

143. Affidavits of service

An affidavit of service is to state –

(a) the name of the person who effected service; and

(b) the date, time and place of service; and

(c) the manner in which service was effected.

144. Manner and time of service when not personal

(1) A document which is not required to be served personally is sufficiently served on a person if it is –

(a) left at the person's address for service on a day on which the registry in which the cause or matter is proceeding is open; or

(b) posted to the person at the person's address for service; or

(c) communicated to the person using a postal address, document exchange address, email address or facsimile number given by the person pursuant to rule 79.

(2) If a document is required by these rules to be delivered to a person, it is sufficient if it is served in accordance with subrule (1).

(3) A document is taken to be served or delivered –

(a) if sent by post, at the time when the document would be delivered in the ordinary course of post; or

(b) if communicated using a document exchange address, on the first day that the registry in which the cause or matter is proceeding is open following the day of delivery to the document exchange; or

(c) if communicated using an email address or facsimile number –

(i) at the time of communication if the communication occurs during the hours specified in rule 20(1) (***office hours***); or

(ii) at the commencement of office hours following the time of communication if the communication occurs outside office hours.

(4) A document served or delivered by email or facsimile transmission is to be accompanied by a document stating each of the following:

(a) the name of the person transmitting the document;

(b) the name of the person to whom the document is being transmitted;

(c) a brief description of the document being transmitted;

(d) the date and time of transmission;

(e) that the document is being served or delivered pursuant to this rule.

145. Service of notices from Court

A notice given by an officer of the Court –

(a) may be sent by post or transmitted by email; and

(b) if sent by post, is taken to be given at the time when it would be delivered in the ordinary course of post.

146. Service if no appearance or no address for service

Service of a document not required to be served personally on a party may be effected by filing the document in the registry if the party has made default in appearing or does not have an address for service in accordance with these rules.

146A. Notice of serving by filing

A person who serves a document by filing it in the registry must endorse on it –

(a) a statement that the document is filed as service; and

(b) the name of the person upon whom it is served.

146B. Confirmation of informal service

If for any reason a document required to be served on a person is not served on the person in the manner required by these rules but the document comes to the person's notice, the document is nevertheless taken to have been

served on the person on the day on which it came to the person's notice.

Division 10 – Service of originating process outside Australia

146C. Interpretation of Division 10

In this Division –

originating process includes a document that initiates a civil proceeding, a cross-claim or a third party claim.

147. Application of rules

(1) Rules 147A, 147B, 147C, 147D, 147E, 147F, 147G and 147H apply to the service of originating process outside Australia.

(2) Rules 148, 149, 150, 151, 152 and 153 apply to the service of any document for the purpose of a proceeding in the Court –

(a) in a Convention country; or

(b) in any other country, other than a Hague Convention country, that the Attorney-General, by instrument filed in the proceeding, specifies.

(3) This Division does not apply to proceedings to which Part 2 of the Trans-Tasman Proceedings Act applies.

147A. Service outside of Australia – when allowed without leave

An originating process may be served without leave in the following cases:

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

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

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

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

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

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

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

(iv) was by its terms or by implication to be governed by Australian law

or to be enforceable or cognizable in an Australian court;

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

(d) when the claim –

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

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

(iii) without limiting subparagraph (ii), is an application for a freezing order under rule 937B, or an ancillary order under rule 937C, in respect of any matter or thing in or connected with Australia;

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

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

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

(h) when any person outside of Australia is –

(i) a necessary or proper party to a proceeding properly brought against another person who has been served or is to be served (whether within Australia or outside of Australia) under any

other provision of these Rules of Court; or

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

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

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

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

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

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

(iv) the enactment expressly or by implication confers jurisdiction on the Court over persons outside of Australia (in which case any requirements of the enactment

relating to service must be complied with);

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

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

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

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

(o) when the claim affects the person to be served in respect of his or her membership of a corporation incorporated in Australia, or of a partnership or association that has been formed, or is carrying on any part of its affairs, in Australia;

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

(q) when the claim –

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

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

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

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

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

147B. Service outside of Australia – when allowed with leave

(1) In any proceeding when service is not allowed under rule 147A, an originating process may be served outside of Australia with the leave of the Court.

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

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

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

(5) The Court may grant an application for leave under this rule if satisfied that –

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

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

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

147C. Court's discretion whether to assume jurisdiction

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

(2) Without limiting subrule (1), the Court may make an order under this rule if satisfied –

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

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

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

147D. Notice to person served outside of Australia

If a person is to be served outside of Australia with an originating process, the person must also be served with a notice, in accordance with the prescribed form, informing the person of –

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

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

(c) the person's right to challenge service of the originating process or the jurisdiction of the Court, or to file a conditional appearance.

147E. Time for filing appearance

Except when the Court otherwise orders, a person who has been served outside of Australia

must file an appearance within 42 days from the date of service.

147F. Leave to proceed where no appearance by person

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

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

147G. Service of other documents outside of Australia

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

147H. Mode of service

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

148. Lodgment of documents

(1) In this Division,

applicant means a person requiring a document to be served in another country.

(2) An applicant is to –

(a) lodge with the Principal Registrar –

(i) the document to be served; and

(ii) unless English is an official language of the country concerned, a translation of the document in accordance with rule 149; and

(iii) a copy of the document and of any translation; and

(iv) any further copies of the document and of the translation the Principal Registrar directs; and

(v) if any special manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and

(b) file –

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

(ii) a request and undertaking in accordance with rule 150.

149. Translations

A translation of a document lodged under rule 148(2)(a)(ii) is to –

(a) be a translation into an official language of the country in which service is required; and

(b) bear a certificate of the translator in that language stating that it is an accurate translation of the document.

150. Request and undertaking

(1) A request and undertaking filed under rule 148(2)(b)(ii) is to contain –

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

(b) if the applicant requires service under a Convention, a reference to that Convention; and

(c) an undertaking by the practitioner for the applicant or, if there is no practitioner, by the applicant, to pay to the Principal Registrar an amount equal to the expenses incurred because of the request for service.

(2) The Principal Registrar may require the applicant or the practitioner for the applicant to give security to the satisfaction of the Principal

Registrar for the expenses referred to in subrule (1)(c).

151. Procedure on lodgment

(1) If a document is lodged and filed in accordance with rule 148(2), the Principal Registrar is to seal the document and send it to the Attorney-General for transmission for service together with any letter of request.

(2) A letter of request is to be in accordance with the prescribed form.

152. Evidence of service

A certificate purporting to be a certificate of a judicial authority or other responsible person in the relevant country or of an Australian consular authority in that country as to service, attempted service or non-service which is filed is evidence of the matters stated in the certificate.

153. Order for payment of expenses of service

If a person files an undertaking under rule 148(2)(b)(ii) and within 14 days after delivery to that person of an account of expenses incurred because of the request for service does not pay to the Principal Registrar the amount of the expenses, the Court or a judge, on application by the Principal Registrar, may –

(a) order the person to pay the amount of the expenses to the Principal Registrar; and

(b) stay the proceedings, so far as concerns the whole or any part of any claim for relief by the person, until payment.

Division 11 – Appearance

154. Appearance generally

(1) If a person served with a writ or originating application wishes to take part in the proceedings, the person, within the period limited on the writ or application, is to –

(a) file a notice of appearance in a registry; and

(b) serve the notice in accordance with rule 157.

(2) A respondent is not required to file a notice of appearance to an originating application –

(a) under Part 11 of the *Legal Profession Act 1993*; or

(b) under the *Commercial Arbitration Act 2011*; or

(c) for interpleader relief under Division 16; or

(d) for rectification of the register under section 32 of the *Bills of Sale Act 1900*; or

(e) for satisfaction of a registered bill of sale to be registered under the *Bills of Sale Act 1900*; or

(f) under section 8 of the *Married Women's Property Act 1935*; or

(g) under rule 90(1)(zk), (zl) or (zm); or

(h) for registration of a judgment under Part X of the *Supreme Court Civil Procedure Act 1932*.

(3) A notice of appearance is to be in accordance with the prescribed form.

155. Filing of notice of appearance

A notice of appearance may be lodged for filing in any registry of the Court.

156. Filing of notice of appearance in different registry

(1) If a person lodges a notice of appearance at a registry other than that in which the proceeding is pending, the registrar of that other registry, before accepting it, is to –

(a) communicate with the registry in which the proceeding is pending to ensure that it may be filed; and

(b) if it may be, inform the registry of the time, date and place of its lodgment.

(2) The registry in which the proceeding is pending is to note the information in the register of proceedings and the relevant file.

(3) A notice of appearance, if accepted, is taken to be filed when lodged, but it is to be transferred to the other registry and filed there, subject to rule 158.

157. Duplicate notice of appearance

(1) A duplicate notice of appearance is to be lodged with a notice of appearance.

(2) The registrar is to –

(a) seal the duplicate with the office seal, showing the date on which it is sealed; and

(b) return it to the person lodging it.

(3) The sealed duplicate notice is a certificate that the notice of which it is a duplicate was filed on the day indicated by the seal.

(4) As soon as practicable after filing a notice of appearance, a party is to serve the sealed duplicate notice on the plaintiff's or applicant's practitioner or on the plaintiff or applicant if acting in person.

(5) Service is to be –

(a) at the address for service given in the writ or originating application; or

(b) by prepaid post directed to that address.

158. Transfers of action to other registry

(1) The Court or a judge may order that a proceeding be transferred from one registry to another registry.

(2) If a proceeding is transferred to another registry, any document filed is to be transferred to that registry.

159. Addresses in notice of appearance

A notice of appearance is to state –

(a) if the defendant or respondent is appearing by a practitioner, the name and address of the practitioner or law practice; or

(b) if the defendant or respondent is not appearing by a practitioner –

(i) the address of the defendant or respondent; and

(ii) an address for service in accordance with rule 128.

160. No address

A notice of appearance which does not contain an address required by rule 159 is not to be filed.

161. Entry in register of proceedings

On receiving a notice of appearance, an officer is to enter the appearance in the register of proceedings as soon as possible.

162. Several defendants

If 2 or more defendants or respondents in the same proceeding appear at the same time by the same practitioner, the names of all of those defendants or respondents are to be inserted in one notice of appearance.

163. Appearance not entered on undertaking

A practitioner is liable to attachment if he or she –

(a) gives a written undertaking to accept service of any originating process, other than process in which the defendant or respondent is not required to appear; and

(b) is served with the originating process; and

(c) does not cause to be filed and served a notice of appearance within the period limited by the originating process.

164. Late appearance

(1) A defendant or respondent may file a notice of appearance at any time before judgment or final order.

(2) If a notice of appearance is filed after the period limited in the writ or originating application, the defendant or respondent is not entitled to any further period for delivering a defence or taking any other step than if the notice of appearance had been filed within that period, unless the Court or a judge otherwise orders.

165. Person not named may defend for land

(1) By leave of the Court or a judge, a person not named as a defendant in a writ for the recovery of land may enter an appearance on filing an affidavit showing that the person is in possession of the land, either personally or by tenant.

(2) An appearance by a person as landlord only is to state that it is entered in that capacity.

(3) A notice of appearance under subrule (1) is to be filed and served on each party to the action.

(4) A person appearing is to be named as an additional defendant in all subsequent proceedings.

(5) The Court or a judge may strike out or confine an appearance by a person not in possession, either personally or by tenant, of the land of which recovery is sought.

166. Limitation of defence in action for recovery of land

(1) A person who appears in an action for the recovery of land may limit the defence of the action to a part of the land mentioned in the writ.

(2) A limitation is to be –

(a) by notice endorsed on the notice of appearance; or

(b) served within 4 days after the filing of the notice of appearance.

167. Setting aside service before appearance

On the application of a person who has not lodged a notice of appearance, the Court or a judge may make an order setting aside the service on that person of the writ or originating application.

168. Conditional appearance

(1) A defendant or respondent in any originating proceeding may file and serve a notice of conditional appearance by which the defendant or respondent –

(a) denies the jurisdiction of the Court; or

(b) reserves the right to apply for an order setting aside the originating process or its service, on the ground of any informality or irregularity which renders the originating process or its service invalid.

(2) A conditional appearance is to be in accordance with the prescribed form.

(3) A defendant or respondent does not submit to the jurisdiction of the Court by a conditional appearance, except as to the costs occasioned by –

(a) the filing and service of the notice of conditional appearance; or

(b) by any application under this rule.

(4) On filing a conditional appearance, a defendant or respondent may apply to the Court or a judge for an order to set aside the originating process or its service.

(5) Unless the Court or a judge otherwise orders, a notice of conditional appearance becomes, and operates as, an unconditional notice of appearance if an application under subrule (4) –

(a) is not made within 14 days after filing the notice; or

(b) is dismissed.

Division 12 – Joinder of claims and parties and adding and deleting parties

169. Joining causes of action

A plaintiff or an applicant may join several causes of action in the same proceeding.

170. Claims for the recovery of land

(1) In a proceeding for the recovery of land, other than one to which subrule (3) applies, no other cause of action may be joined without the leave of the Court or a judge.

(2) Subrule (1) does not apply to a claim –

(a) in respect of mesne profits, arrears of rent or double value in respect of the land; or

(b) for damages for breach of a contract under which the land is held; or

(c) for a wrongful act occasioning injury to the land.

(3) An applicant for foreclosure or redemption may claim and obtain an order against the respondent for delivery of possession of the mortgaged property to the applicant on or after the order absolute for foreclosure or redemption.

(4) If an applicant for redemption of a mortgage fails to redeem and because of that failure the mortgage is foreclosed, the Court or a judge, on an application made in the redemption application by the respondent in whose favour the foreclosure has taken place, may make an order for delivery of possession of the mortgaged property to the respondent.

171. Claims by trustee in bankruptcy

A claim by a trustee in bankruptcy acting in that capacity may not be joined with any claim by the trustee in any other capacity except with the leave of the Court or a judge.

172. Claims by or against spouses

A claim by or against spouses may be joined with a claim by or against one of them separately.

173. Claims by or against trustees and personal representatives

A claim by or against a personal representative may not be joined with another claim by or against that personal representative personally unless that other claim is alleged to arise with reference to the estate to which the proceedings relate.

174. Joint and separate claims

A claim by plaintiffs or applicants jointly may be joined with a claim by one of them separately against the defendant or respondent.

175. Counterclaim in case of misjoinder

If in a proceeding a person has been improperly or unnecessarily joined as a plaintiff or applicant and a defendant or respondent has set up a

counterclaim, set-off or cross-application, the counterclaim, set-off or cross-application is not defeated by reason of the misjoinder.

176. Joinder of defendants

(1) If a plaintiff or applicant claims to be entitled to relief in respect of, or arising out of, a transaction, a set of circumstances or a series of transactions involving a question of law or fact common to 2 or more persons –

(a) those persons may be joined as defendants against whom relief is claimed jointly, severally or in the alternative; and

(b) those persons may be so joined notwithstanding that the joinder involves the joinder of different causes of action.

(2) The Court or a judge may in any case order the name of any person joined under subrule (1) to be struck out of the proceedings.

177. Joining parties jointly and severally liable

A plaintiff may join as defendants to the same action all or any of the persons severally, or jointly and severally, liable on one contract, bill of exchange or promissory note.

178. Joining defendants in cases of doubt

A plaintiff or applicant who is in doubt as to from whom he or she is entitled to redress or against whom he or she is entitled to relief may join as defendants or respondents all persons from whom he or she might be entitled to redress or entitled to relief.

179. Persons claiming jointly, severally or in the alternative may be plaintiffs

(1) All persons claiming to have any right to relief in respect of, or arising out of, a transaction, set of circumstances or series of transactions, whether jointly, severally or in the alternative, may be joined in one action or proceeding as plaintiffs or applicants if a common question of law or fact would arise if those persons brought separate proceedings.

(2) Persons may be joined under subrule (1) notwithstanding that the joinder involves a joinder of different causes of action.

(3) If it appears that a joinder under subrule (1) may delay the trial of the proceeding or that separate and distinct questions arise, the Court or a judge may –

(a) order that separate pleadings be filed and delivered; or

(b) order that separate trials be held; or

(c) make any other order as may be expedient.

(4) The Court or a judge may give judgment or make an order in favour of any one or more of the plaintiffs or applicants entitled to relief for any relief to which any plaintiff or applicant may be entitled.

(5) An unsuccessful defendant or respondent in a proceeding brought under subrule (1) is entitled to the costs occasioned by the joining of any plaintiff or applicant found not to be entitled to relief unless the Court or a judge otherwise orders.

180. Defendant or respondent with partial interest

If a defendant or respondent is interested in part only of the relief sought, or cause of action included, in a proceeding, the Court or a judge may make any order to prevent the defendant or respondent from being put to expense by being required to attend any proceedings in which the defendant or respondent has no interest.

181. Amendment on misjoinder of parties

A proceeding is not defeated by reason of the misjoinder or non-joinder of parties and in any proceeding the Court or a judge may deal with the matter in controversy so far as regards the rights and interest of the parties actually before the Court or judge.

182. Abatement

(1) A proceeding does not abate by reason of the marriage, death or bankruptcy of a party if the cause of action survives or continues.

(2) Whether the cause of action survives or not, a proceeding does not abate by reason of the death of a party between the verdict or finding of the issues of fact and judgment which may be entered notwithstanding the death.

183. Management of estate during proceeding

If there is an assignment, creation or devolution of any estate or title during the course of a proceeding, the proceeding may be continued by or against the person to, or on, whom the estate or title has come or devolved.

184. Adding or deleting parties

(1) At any stage of a proceeding and whether or not any relevant limitation period has expired, the Court or a judge, either on or without application, may order –

(a) that the name of a party improperly or erroneously joined be struck out; or

(b) that the name of a person who ought to have been joined as a party or whose presence may be necessary for the Court or judge to adjudicate on and settle all the questions involved in the proceeding be added; or

(c) if through a genuine mistake a proceeding has commenced in the name of the wrong person as plaintiff or applicant or it is doubtful if it has commenced in the name of the right plaintiff or applicant, that any other person be added or substituted as plaintiff or applicant.

(2) If, in any proceeding concerning the estate of the deceased person or in which a deceased person was interested, it appears that the deceased person does not have a legal personal representative, the Court or a judge may –

(a) proceed in the absence of any person representing the estate of the deceased person; or

(b) make an order appointing a person to represent the estate for all the purposes of the proceeding.

(3) Any judgment or order binds the estate of the deceased person as if a legal personal representative of the deceased had been a party to the proceeding.

(4) A person must not be added as a plaintiff or applicant without his or her consent in writing.

(5) A person must not be added as the litigation guardian of a person under disability without the consent in writing of the first-mentioned person.

(6) Unless otherwise ordered, a proceeding against a party whose name is added as defendant or

respondent is taken to have begun on the service of the originating process on that party.

(7) An application under subrule (1) –

(a) may be made to the Court or a judge at any time before trial or at the trial of the action; and

(b) is to be made in a summary manner.

(8) If an order is made under subrule (1) or (2)(b) –

(a) the originating process is to be amended accordingly; and

(b) the plaintiff or applicant is to file a copy of the originating process as amended; and

(c) any new defendant or respondent is to be served with the amended originating process in the same manner as originating process is served; and

(d) the proceeding continues as if the new defendant or respondent had originally been made a defendant or respondent.

185. Parties altered by order on change of interest

(1) The Court or a judge, on an *ex parte* application, may make an order that a person be made a party or that a party be made a party in another capacity and any other orders for the disposal of the proceeding as may be just if it is appropriate because of –

(a) the death of a party; or

(b) the bankruptcy of a party; or

(c) the devolution by operation of law of the estate of a party; or

(d) a person interested coming into existence after the commencement of the proceeding; or

(e) any other event occurring after the commencement of a proceeding which causes a change or transmission of interest or liability.

(2) On the making of the order, the new party or the party who is made a party in another capacity is to be served with notice of the order.

(3) Unless the Court or a judge otherwise orders, the order is to be served on all of the parties, other than the person making the application.

(4) Subject to subrules (5) and (6), on service of the order, the person served –

(a) is bound by the order; and

(b) is to file and serve a notice of appearance within the same period and in the same manner as if that person had been served with a writ.

(5) A person who is not under any disability, or who is under a disability and has a litigation guardian in a proceeding, and who is served with the order

may apply, within 12 days of service, to the Court or a judge to discharge or vary the order.

(6) If a person who is under a disability does not have a litigation guardian in a proceeding and is served with the order –

(a) that person may apply to the Court or a judge to discharge or vary the order at any time within 12 days after the appointment of a litigation guardian; and

(b) the order does not have force or effect against that person until the period of 12 days has expired.

186. Direction to serve a person not a party

The Court or a judge may direct that a person who is not a party to an originating application be served with the application without joining that person as a party.

187. Use of initial letters

A party in a proceeding may refer to another party or person in the proceeding by any initial letter or letters or other contraction of the name of the other party or person, other than the surname, if the full name of that other party or person is stated to be unknown to the first-mentioned party.

188. Consolidation

(1) The Court or a judge may order proceedings to be consolidated in any case in which –

(a) substantially the same question is involved in all those proceedings; or

(b) the decision in one proceeding will determine the other proceeding.

(2) An application for an order may be made by a party to 2 or more of the proceedings.

Division 13 – Intervention by the Attorney-General

189. Intervention

The Attorney-General may intervene in a proceeding referred to in section 16(1)(a) or (b) of the *Crown Proceedings Act 1993* by –

(a) filing in the registry in which the proceeding is pending a notice stating that the Attorney-General intervenes in the proceeding and the grounds of that intervention; and

(b) serving a copy of that notice on each party to the proceedings.

190. Application for leave to intervene

An application for leave to intervene under section 16(1)(c) of the *Crown Proceedings Act 1993* is to be –

(a) filed in the registry in which the proceeding is pending; and

(b) supported by an affidavit setting out the precise grounds on which intervention is sought and the extent of intervention considered appropriate; and

(c) served on each party to the proceeding together with a copy of each affidavit in support.

191. Discharge of order

The Court or a judge may vary or discharge an order granting leave to intervene.

Division 14 – Counterclaims and cross-applications

192. Counterclaim and set-off

(1) Subject to subrules (7) and (8), a defendant to an action may claim any relief against a plaintiff by counterclaim in that action.

(2) A counterclaim may comprise several distinct and inconsistent causes of action or claims to relief.

(3) A defendant to an action may plead any right or claim by way of set-off against the claim of a plaintiff.

(4) A counterclaim or set-off enables the Court or a judge to pronounce a final judgment in the

action, both on the original claim and on the set-off or counterclaim.

(5) A defendant seeking to raise a counterclaim is to –

(a) state that fact specifically in the defence; and

(b) set out the counterclaim as a separate part of the defence headed "Counterclaim".

(6) A counterclaim to recover possession of land or goods is to contain, or be endorsed with, the statement required by rule 112 or 113.

(7) In an action in which there are no pleadings, a defendant may bring a counterclaim only with the leave of a judge.

(8) A judge may grant leave on any terms the judge considers proper.

(9) A counterclaim to which subrule (7) applies is to be brought by an application in the action.

193. Cross-applications

A respondent to an originating application, by application in the proceeding, may claim any relief against an applicant, other than relief of a type referred to in rule 88.

194. Multiple counterclaims

Rule 92(2) and (3) applies, with the necessary modifications, to diversity in the relief claimed by way of set-off or counterclaim under rule 192 or a cross-application under rule 193.

195. Counterclaim against person not a party

(1) A defendant to an action, by counterclaim in that action, may claim relief from a plaintiff together with any other person.

(2) A defendant raising a counterclaim under subrule (1) is to –

(a) add to the title of the defence a further title similar to the title in the statement of claim, setting out the names of all the persons who, if the counterclaim were to be enforced by cross-action, would be defendants; and

(b) deliver the defence to any defendant to the counterclaim who is a party to the action within the period limited by these rules; and

(c) serve the defence, endorsed with a notice directed to that person in accordance with the prescribed form, on any defendant to the counterclaim who is not a party to the action in the same manner as a writ.

196. Cross-application against person not a party

(1) A respondent to an originating application by application in the proceeding may claim relief from an applicant together with any other person.

(2) A respondent making an application under subrule (1) is to –

(a) add to the title of the application a further title similar to the title in the originating application, setting out the names of all the persons who, if the cross-application were to be made by originating application, would be respondents; and

(b) serve a notice directed to that person in accordance with the prescribed form, on any respondent to the cross-application who is not a party to the proceeding in the same manner as an originating application.

197. Procedure for counterclaim or cross-application against a person not a party

(1) A person served with a defence and counterclaim or cross-application who is not already a party to the action is to file a notice of appearance.

(2) The period limited for the filing of a notice of appearance is not less than that prescribed by rule 98 or 99 as if the person to whom the notice required by rule 196(2)(b) is directed was a

defendant named in a writ or a respondent to an originating application.

(3) A person to whom subrule (1) applies, other than a person served with a cross-application –

(a) may be proceeded against as if served with a writ in an action; and

(b) is to deliver a defence to the counterclaim within the appropriate period as if the defence and counterclaim were a statement of claim.

198. Inconvenient counterclaims and cross-applications

(1) On the application of a party to a counterclaim or cross-application, the Court or a judge may order that the counterclaim or cross-application be –

(a) struck out or disposed of separately if it cannot be conveniently disposed of in the pending action; or

(b) excluded from the proceeding if it ought to be disposed of in a separate action or application.

(2) In either case referred to in subrule (1), the Court or judge may make any appropriate consequential order.

199. Counterclaim or cross-application if action stayed

A counterclaim or cross-application may proceed even though the proceeding of the plaintiff or applicant has been stayed, discontinued or dismissed.

200. Judgment for balance

If a counterclaim is established as a defence against the plaintiff's claim and the balance is in favour of the defendant, the Court or a judge may –

(a) give judgment for the plaintiff on the claim and the costs of the claim, and for the defendant on the counterclaim and the costs of the counterclaim; or

(b) give judgment for the defendant for the balance and costs; or

(c) otherwise adjudge to the parties any relief as they may be entitled to on the merits of the case.

Division 15 – Third and subsequent party and co-defendant procedure

201. Interpretation of Division 15 of Part 7

In this Division –

defendant includes a defendant to a counterclaim;

plaintiff includes a plaintiff to a counterclaim;

third party means a party to whom a third party notice is directed;

third party notice means a notice issued under rule 202.

202. Third party notice

(1) Subject to subrule (2), a defendant who claims as against any person not already a party to the action to be entitled to contribution or indemnity or any relief or remedy relating to, or connected with, the original subject matter of the action, may file and serve on that person a third party notice directed to that person.

(2) A defendant may file and serve a third party notice –

(a) without leave within 30 days after delivering the defence; and

(b) at any other time with the leave of the Court or a judge.

203. Form, issue and service of notice

(1) A third party notice is to –

(a) state the nature and grounds of the claim or the nature of the question or issue sought to be determined; and

(b) state the nature and extent of any relief or remedy claimed; and

(c) be in accordance with the prescribed form; and

(d) limit a period for appearance by the third party, not less than that prescribed by rule 98 or 99, as if the third party were a defendant named in a writ; and

(e) be lodged at the registry with as many copies as the defendant requires to be sealed.

(2) A third party notice is to be served in the same manner as if it were a writ.

(3) A copy of the writ and a copy of any pleadings delivered in the action are to be served with the third party notice.

204. Effect of service of third party notice

On being served with the third party notice, the third party becomes a party to the action with the same rights in respect of the defence against the claim and otherwise as if sued by the defendant in the ordinary way.

205. Appearance

A third party is to –

(a) file a notice of appearance in accordance with the prescribed form within the

period specified for that purpose in the third party notice; and

(b) serve the notice on the defendant who filed the third party notice.

206. Default by third party

A third party who fails to file a notice of appearance or to file and deliver any pleading which the third party has been ordered to file and deliver is taken to –

(a) admit the validity of, and is bound by, any judgment given in the action, whether by consent or otherwise; and

(b) admit liability in respect of any contribution, indemnity or other relief or remedy claimed by the third party notice.

207. Default by third party before trial

(1) A defendant is entitled to enter judgment against a third party to the extent of any contribution or indemnity claimed in the third party notice or, by leave of the Court or a judge, to enter any judgment in respect of any other relief or remedy claimed as the Court or judge directs if –

(a) the third party fails to file a notice of appearance or to file and deliver any pleading that he or she has been ordered to file and deliver; and

(b) judgment by default is entered against the defendant giving the notice; and

(c) the defendant has satisfied that judgment or obtains the leave of the Court or a judge to proceed under this subrule without having satisfied that judgment.

(2) The Court or a judge may set aside or vary a judgment obtained under subrule (1) on any terms as are just.

208. Third party directions

(1) If a third party files a notice of appearance, the third party, a plaintiff or a defendant may apply to a judge for directions.

(2) On an application for directions, the judge may –

(a) if the liability of the third party to the defendant giving the notice is established, give judgment for the defendant; or

(b) order that any claim or question stated in the third party notice be tried in a particular manner; or

(c) grant the third party leave to defend the action, either alone or jointly with any defendant, or to attend and take part at the trial; or

(d) make any orders and give any directions –

(i) as are necessary to ensure that all questions in the action are determined; and

(ii) as to the extent to which the third party is to be bound by any judgment or decision in the action.

(3) Any directions given under this rule may be –

(a) given either before or after any judgment has been entered or given for the plaintiff against the defendant; and

(b) varied or rescinded.

(4) The Court or a judge may set aside a third party proceeding at any time.

209. Judgment in third party proceedings

(1) At or after the trial of an action in which a third party notice has been given, the Court may –

(a) direct the entry of any judgment in the third party proceeding; and

(b) grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to an action commenced by the defendant.

(2) If an action in which a third party proceeding has been given is decided otherwise than by trial, the Court or a judge, on application, may –

(a) make any order in the third party proceeding; and

(b) grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to an action commenced by the defendant.

(3) Notwithstanding subrules (1) and (2), execution is not to issue against a third party without leave of the Court or a judge until after satisfaction by the defendant of the judgment against the defendant.

210. Fourth and subsequent parties

(1) A third party may issue and serve a notice directed to any person not already a party to the action against whom the third party claims to be entitled to –

(a) contribution or indemnity; or

(b) any relief or remedy relating to, or connected with, the original subject matter of the action.

(2) If a person served with a notice under subrule (1) makes a claim referred to in that subrule against another person not already a party, this Division has effect as regards any further person so served, and so on successively.

(3) The provisions of this Division relating to the rights and procedure between the defendant and

the third party apply as between the parties to a notice issued under this rule as if –

(a) the party issuing and serving the notice were a defendant; and

(b) the party to whom the notice is directed were a third party; and

(c) the notice were a third party notice.

211. Codefendants

(1) A defendant in an action may file and serve on another defendant in that action a notice claiming contribution, indemnity or any relief or remedy relating to, or connected with, the original subject matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff.

(2) A defendant in an action may file and serve on another defendant in that action a notice specifying any question or issue relating to, or connected with, the original subject matter which –

(a) is substantially the same as a question or issue arising between the plaintiff and the defendant making the claim; and

(b) should properly be determined not only as between the plaintiff and the defendant making the claim, but as between the plaintiff and that defendant

and another defendant, or between any of them.

(3) A notice of appearance is not required to be filed to a notice under subrule (1) or (2).

(4) The same procedure is to be adopted for the determination of a claim raised by a notice under subrule (1) or (2) as if the defendant to whom the notice is given were a third party.

212. Contribution between parties

(1) At any time before the trial of an action, a party to the action who, either as a third party or as one of 2 or more tortfeasors liable in respect of the same damage, may be held liable in the action to another party to contribute towards any debt or damages which may be recovered by the plaintiff in the action may make a written offer to that other party to contribute to a specified extent to the debt or damages.

(2) An offer may be absolute or conditional and limited or not as to the period for its acceptance.

(3) The party making the offer may reserve the right to bring the offer to the attention of the judge at the trial as if it were a payment into Court after all questions of liability and the amount of debt or damages have been determined.

(4) Subrule (3) applies notwithstanding that the offer was stipulated to be without prejudice to the defence whether as against the plaintiff, the party

to whom the offer is made or any other party to the action.

Division 16 – Interpleader

213. Interpretation of Division 16 of Part 7

In this Division –

applicant means an applicant for relief by interpleader;

claimant means a party making an adverse claim or a claim within the meaning of rule 214;

Sheriff includes any officer charged with the execution of process of the Court.

214. Relief by way of interpleader

Relief by way of interpleader may be granted if the applicant –

(a) is under liability for any real or personal property for, or in respect of which, the applicant is, or expects to be, sued by 2 or more parties making adverse claims to that property; or

(b) is the Sheriff and claim is made to any real or personal property taken or intended to be taken in execution under any process, or to the proceeds or value of that property by any person other than

the person against whom the process is issued.

215. Application for interpleader relief

(1) The applicant may file an application calling on any claimant to –

(a) appear and state the nature and particulars of his or her claim; and

(b) maintain or relinquish that claim.

(2) An applicant who is a defendant may file an application at any time after service of the writ.

216. Stay of action

If an application is made by a defendant in an action, the Court or a judge may stay all further proceedings in the action.

217. Matters to be proved

(1) Before relief by way of interpleader may be granted, the applicant is to satisfy the Court or a judge by affidavit or otherwise –

(a) that the applicant does not claim an interest in the subject matter in dispute, other than for charges or costs; and

(b) that the applicant is not colluding with any claimant; and

(c) that the applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or a judge may direct.

(2) Subrule (1)(c) does not apply where the Sheriff –

(a) has seized real or personal property; and

(b) has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under rule 224(4).

218. Adverse titles of claimants

An applicant is not disentitled to relief only because the titles of the claimants do not have a common origin and are adverse to, and independent of, one another.

219. Claimant appearing on an application

If a claimant appears in pursuance of an application, the Court or a judge may –

(a) order that the claimant be made a defendant to any action already commenced in respect of the matter in dispute in place of, or in addition to, the applicant; or

(b) order that an issue between claimants be stated and tried, directing which of the claimants is to be plaintiff and which is to be defendant; or

(c) with the consent of all claimants or on the request of any claimant if, having regard to the value of the matter in dispute, it is desirable so to do, dispose of the merits of their claims and decide them in a summary manner; or

(d) if the question is a question of law and the facts are not in dispute –

(i) determine the question without directing the trial of an issue; or

(ii) order that a special case be stated for the opinion of the Court.

220. Claimant not appearing on the application or failing to comply with order

(1) The Court or a judge may make an order declaring that a claimant and any person claiming under that claimant be barred against the applicant and any person claiming under the applicant if the claimant –

(a) does not appear on the hearing of the application; or

(b) neglects or refuses to comply with any order made.

(2) An order under subrule (1) does not affect the rights of claimants as between themselves.

221. Order for sale of goods seized in execution

The Court or a judge may –

(a) order the sale of the whole or part of any real or personal property seized in execution by the Sheriff and to which any claimant claims to be entitled by way of security; and

(b) give directions as to the application of the proceeds of the sale.

222. Discovery, evidence and trial

Parts 13, 19 and 22 apply with any necessary modifications to proceedings to which this Division applies.

223. Interpleader orders in several proceedings

The Court or a judge may make one interpleader order in several proceedings and that order is binding on the parties in all those proceedings.

224. Claim to property taken in execution

(1) A claim to, or in respect of, real or personal property taken in execution under the process of the Court is to be in writing.

(2) On receipt of a claim, the Sheriff is to give notice of the claim to the execution creditor as soon as possible.

(3) Within 4 days after receiving a notice, the execution creditor is to give notice to the Sheriff that the execution creditor admits or disputes the claim.

(4) If the execution creditor admits the claim and gives notice under subrule (3) –

(a) the execution creditor is only liable to the Sheriff for any fees and expenses incurred before receiving the notice; and

(b) the Sheriff may withdraw from possession of the property claimed and may apply to a judge for an order protecting the Sheriff from any action in respect of the seizure and possession of the property.

(5) On an application under subrule (4)(b) –

(a) the claimant is entitled to be heard; and

(b) the judge may make any order as may be just.

(6) The Sheriff may make an application under rule 215 if the execution creditor –

(a) fails to give notice under subrule (3) admitting the claim; or

(b) gives notice under that subrule disputing the claim.

225. Application to Crown

This Division applies to a claimant who is the Crown or any officer, servant or agent of the Crown.

Division 17 – Pleadings

226. Form of pleadings

A pleading is to be –

(a) printed or, with the leave of the registrar, handwritten legibly in ink; and

(b) marked on the face with –

(i) the title of the action; and

(ii) the date on which the pleading is filed and delivered; and

(iii) a description of the pleading; and

(c) signed by –

(i) the party; or

(ii) counsel for the party; or

(iii) the practitioner for the party; or

(iv) the practitioner who is the agent for the practitioner for the party.

227. Statements in pleadings

(1) A pleading is to –

(a) be as brief as the nature of the case allows; and

(b) contain only a statement of all the material facts in summary form on which the party relies but not the evidence by which those facts are to be proved.

(2) Unless the facts to be pleaded are able to be stated concisely and explicitly in one paragraph, a pleading is to be divided into paragraphs numbered consecutively and each separate allegation is to be contained in a separate paragraph.

(3) Every pleading is to be expressed so as to give reasonably explicit notice to any other party of all grounds of action or all defences on which the party pleading intends to rely at the trial.

(4) A pleading need not allege any matter of fact which the law presumes in favour of the party pleading or as to which the burden of proof lies on the other side unless the matter has first been specifically denied.

228. Requirement of further pleading

(1) Subject to subrule (2), pleadings are to continue until the substantial matter in dispute between the parties has been definitively shown by the pleadings.

(2) A party who in a pleading subsequent to a defence or to a reply to a counterclaim would, if he or she were to deliver the pleading, merely

deny or not admit the facts alleged in the immediately preceding pleading is not to deliver any such pleading.

(3) At the expiration of the period limited for the delivery of any such pleading –

(a) every material fact alleged in the immediately preceding pleading is taken to have been denied; and

(b) issue is taken to have been joined on every allegation; and

(c) the pleadings as between the relevant parties are closed.

229. Relief claimed

(1) A statement of claim and a counterclaim –

(a) are to state the specific relief claimed, whether singly or in the alternative; and

(b) need not ask for general or other relief, which may be given as if it had been asked for.

(2) If a party seeks relief in respect of several distinct matters founded on separate and distinct grounds, those grounds are to be stated separately and distinctly.

230. Inconsistent pleading

(1) A party may claim relief on 2 or more inconsistent sets of facts or rights in the alternative but is to show on what facts or rights each claim is founded.

(2) A party may plead, cumulatively or in the alternative, any number of separate defences and may plead several distinct defences founded on separate and distinct facts but is to specify on what facts each defence is founded.

231. Technical objection

A party must not raise an objection to any pleading on the ground of any alleged want of form.

232. Denial to be substantial answer

(1) A denial by a party in a pleading of an allegation of fact in a previous pleading of the opposite party –

(a) must not be evasive; and

(b) must answer the point of substance.

(2) A mere denial of a debt or liquidated demand in money is not sufficient.

(3) A denial by a party in a pleading of an allegation of fact with divers circumstances is not sufficient.

233. Pleading not to raise new ground

A pleading is not to raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party except by way of amendment.

234. Contents of document

If the contents of a document are material, it is sufficient in a pleading to state their effect as concisely as possible unless the precise words of the whole or a part of the document are material.

235. Effect of denial of contract

A bare denial of any contract, promise or agreement alleged in a pleading –

(a) is a denial of that contract, promise or agreement or of the facts from which it may be implied; and

(b) is not a denial of the legality or sufficiency in law of the contract, promise or agreement.

236. Conditions precedent

(1) Subject to subrule (2), an averment of the performance or occurrence of any condition precedent necessary for the case pleaded is to be implied in a pleading.

(2) A condition precedent, the performance or occurrence of which is intended to be contested, is to be distinctly pleaded.

237. Allegation of implied contract or relationship

If a contract or relationship is to be implied from a series of letters, conversations or from a number of circumstances, it is sufficient to allege the contract or relationship as a fact and to refer generally to the letters, conversations or circumstances without setting them out in detail.

238. Allegation of malice, intent or knowledge

It is sufficient to allege malice, fraudulent intention, knowledge or other state of mind as a fact without setting out the circumstances from which it is to be inferred.

239. . . . . .

240. Allegation of notice

In an action, if it is material to allege notice to any person, it is sufficient to allege the notice as a fact unless its form or precise terms or the circumstances from which it is to be inferred are material.

241. Account stated

(1) In an action on a stated or settled account, the account is to be pleaded with particulars.

(2) A statement of account relied on by way of evidence or admission of any other cause of action which is pleaded is not to be alleged in a pleading.

242. Amount of unliquidated damages

The amount of any unliquidated damages claimed is to be stated in a pleading only if it does not exceed $50 000.

243. Denial of allegations to be pleaded

(1) Unless otherwise provided in these rules, a party must not generally deny or refuse to admit the facts alleged in a pleading or any part of a pleading but must deal specifically with each allegation of fact which the party does not admit.

(2) A party is not required to plead to facts alleged by way of particulars of damage.

(3) Unless expressly admitted, particulars of damage are put in issue in all cases.

(4) A refusal to admit a fact alleged in a pleading must identify the fact specifically.

(5) In an action for a debt or liquidated demand –

(a) a mere denial of the debt is not permitted; and

(b) a defence in denial must deny the matters of fact from which liability for the debt or liquidated demand is alleged to arise.

(6) In an action on a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact such as the drawing, making, endorsing, accepting, presenting or notice of dishonour.

244. Plea of title unnecessary

(1) A defendant in an action for the recovery of land who is in possession of the land personally or by tenant is not required to plead title unless –

(a) the defence depends on an equitable estate or right; or

(b) the defendant claims relief on any equitable ground against any right or title asserted by the plaintiff.

(2) It is a defence for the defendant to state that he or she is in possession of the land.

(3) A statement that the defendant is in possession of the land is a denial of the allegation of fact contained in the statement of claim.

(4) A defendant in an action for the recovery of land who is in possession personally or by tenant may rely on any ground of defence.

245. No plea in abatement

A plea or defence is not to be pleaded in abatement.

246. Representative capacity and constitution of partnership to be specifically denied

A party wishing to deny the right of another party to claim in a representative or other special capacity or to deny the alleged constitution of a partnership is to do so specifically.

247. Plea not to be used

A party is not to use the plea "Not guilty by Statute".

248. Demurrer not to be pleaded

A party is not to plead a demurrer.

249. Points of law may be raised by pleadings

(1) A party may raise any point of law by a pleading.

(2) A point of law raised by a pleading is to be disposed of at or after the trial.

(3) With the consent of the parties, or by order of the Court or a judge, a point of law raised by a pleading may be set down for hearing and disposed of before the trial.

(4) If the decision on a point of law disposes of a whole action or a distinct cause of action within the action, the Court or judge may give judgment on that whole action or distinct cause of action.

250. Allegations not denied are admitted

(1) Subject to rule 228(2), an allegation of fact in a pleading which is not admitted or denied, either specifically or by implication, is taken to be admitted except as against a person under disability.

(2) A fact is taken as being denied by implication only if the specific denial of the fact carries with it the denial of another fact.

(3) A party who is pleading and intends to prove facts different from those pleaded by the opposite party must not merely deny or not admit those facts but must plead the facts intended to be proved.

251. Pleading to avoid surprise

In any pleading subsequent to a statement of claim, a party is to plead specifically any fact or matter that –

(a) is alleged to make any claim or defence of the opposite party not maintainable; and

(b) if not pleaded specifically, may take the opposite party by surprise; and

(c) raises a question of fact not arising out of the preceding pleading.

252. Defence arising after action commences

(1) A ground of defence arising after the commencement of an action but before the defence is delivered may be raised in a defence.

(2) A ground of defence to a set-off or counterclaim arising after it is delivered but before a reply is delivered may be raised in a reply.

(3) If a ground of defence arises after the period during which it may be raised in a defence or a reply under subrule (1) or (2), the defendant or plaintiff may deliver a further defence or reply setting out the ground –

(a) within 8 days after that period has elapsed; or

(b) at any subsequent time, by leave of the Court or a judge.

(4) If a defence which arises after the commencement of an action is raised in accordance with this rule, the plaintiff may file and deliver a notice confessing to the defence, specifying the paragraphs of the defence by which it is raised.

(5) At the expiration of 7 days after the delivery of the confession, the plaintiff may sign judgment for costs up to the time of the pleading of the defence, unless the Court or a judge otherwise orders.

253. Further particulars of pleading

(1) The Court or a judge may order at any time the delivery of –

(a) a further and better statement of the nature of the claim or defence; or

(b) further and better particulars of any matter stated in any pleading.

(2) A party is to apply for particulars by letter before seeking an order for them.

(3) The Court or a judge is not to make an order for the delivery of particulars of a claim or of any matter alleged in a statement of claim or counterclaim before the delivery of a defence to that claim or counterclaim unless the Court or judge considers it necessary or desirable.

(4) The party at whose instance an order is made under subrule (1) has the same period for pleading after the delivery of the particulars as that party had at the time the application by letter was made.

253A. Plaintiff to advise defendant of nature of injuries, &c.

(1) The plaintiff in an action for damages for personal injuries is to advise the defendant in writing of the following:

(a) the nature of the plaintiff's injuries;

(b) the nature of any secondary illnesses suffered by the plaintiff;

(c) the name of each hospital that the plaintiff has attended in consequence of the injuries;

(d) the name and address of each medical practitioner who has treated the plaintiff for the injuries, other than as part of his or her hospital treatment;

(e) any expenses incurred as a result of the injuries;

(f) the nature of employment or self-employment that the plaintiff claims he or she would have been likely to engage in had it not been for the injuries;

(g) the estimated gross annual income for each category of employment or self-employment referred to in paragraph (f);

(h) whether the plaintiff's claim is that the injuries sustained impact totally or partially on that earning capacity.

(2) The plaintiff is to advise the defendant of the matters referred to in subrule (1) within 50 days after the close of pleadings or within such other time as the parties may agree or the court or a judge may order.

254. Joinder of issue on particular paragraph or fact

(1) Subject to rule 228(2), in any pleading subsequent to a defence, a party may join issue on an allegation of fact alleged in the immediately preceding pleading by pleading the joinder of issue on any particular paragraph of, or allegation in, that preceding pleading.

(2) A joinder of issue is a denial of the fact or facts alleged in the paragraph or of the particular allegation on which issue is joined.

(3) If a reply contains both a reply to a defence and a defence to a counterclaim, this rule applies only to –

(a) an allegation of fact in the defence; and

(b) any allegation of fact in the counterclaim that is only a repetition of an allegation in the defence on which issue is joined.

255. Joinder of issue on part of immediately preceding pleading

(1) A party who, subsequent to the delivery of a defence or a reply, admits some of the facts alleged in the immediately preceding pleading and denies or does not admit other of those facts may join issue on that pleading, excepting from the joinder of issue the facts admitted.

(2) The joinder of issue is an admission of the facts excepted from the joinder of issue and a denial of all other material facts alleged in the pleading.

(3) On the delivery of a pleading containing a joinder of issue, the pleadings between the relevant parties are closed.

256. No joinder of issue on a denial or refusal to admit

A party is not to plead a joinder of issue on a denial of, or refusal to admit, any fact alleged in any defence or subsequent pleading.

257. Default in delivering reply or subsequent pleading

(1) Subject to rule 228(2), if a party does not deliver a reply or subsequent pleading within the period limited –

(a) the pleadings are closed; and

(b) any material statement of fact in the pleading last delivered is taken to be denied.

(2) Subrule (1) does not apply to a defence to a counterclaim.

(3) If a plaintiff fails to deliver a reply in answer to a counterclaim within 21 days, or any other period the Court or a judge orders, after the delivery of the counterclaim, any statement of fact contained in the counterclaim is taken to be admitted.

258. Striking out certain matters

(1) The Court or a judge may order to be struck out or amended in any endorsement or pleading any matter that –

(a) may be unnecessary or scandalous; or

(b) may tend to prejudice or delay the fair trial of the proceeding.

(2) If the document which contains the matter to be struck out or amended is filed, the Court or a judge may order that the document be removed from the file.

(3) If an order is made under subrule (1), the Court or judge may order the costs of the application to be paid as between solicitor and client.

259. Striking out pleading

If a pleading does not disclose a reasonable cause of action or answer or shows that the cause of action or defence is frivolous or vexatious, the Court or a judge may order –

(a) that the action be stayed or dismissed or the pleading be struck out; and

(b) that judgment be entered accordingly.

Division 18 – Building disputes

260. Application of Division 18

(1) This Division applies to proceedings relating to, or arising out of, any or all of the following:

(a) the design, carrying out, supervision or inspection of any building work or engineering work;

(b) the performance by a building expert or engineering expert of any other services with respect to any building work or engineering work;

(c) any certificate, advice or information given or withheld with respect to any building work or engineering work.

(2) This Division applies only to proceedings in which a party alleges against another party 3 or more instances in which any of the following has occurred:

(a) a failure to comply with any obligation under a contract, specification, plan, drawing or direction;

(b) defective performance with respect to an obligation under paragraph (a);

(c) defective workmanship;

(d) an entitlement to payment for work done, services provided or materials supplied.

(3) The Court or a judge may order that this Division applies in proceedings other than those referred to in subrule (1).

(4) If the Court or judge makes an order under subrule (3), the order is to specify when the steps required by this Division are to be taken.

(5) This Division does not apply to proceedings on a claim for damages in respect of the death or personal injury of any person.

261. Delivery of schedule

(1) The party making the allegations is to deliver to all other parties a schedule containing 7 columns headed respectively, from left to right as follows:

(a) column 1, item number;

(b) column 2, provision of contract, relied on in support of item;

(c) column 3, nature of allegation;

(d) column 4, amount claimed;

(e) column 5, response to allegation;

(f) column 6, provision of contract relied on in response to item;

(g) column 7, response to amount claimed.

(2) The party making the allegations is to complete the first 4 columns as follows:

(a) in column 1, by numbering the items in sequence and relating each item to an allegation;

(b) in column 2, by identifying any contractual or other documentary provision relied on in respect of the item, preferably by date, clause and page number;

(c) in column 3, by describing briefly the item and substance of the allegation sufficiently to identify the item and by specifying the basis of the allegation in respect of it;

(d) in column 4, by specifying the amount claimed in respect of the item and, if applicable, the unit rate and the number of units to which the rate is applied.

(3) The schedule is to be delivered –

(a) with the first pleading in which the allegations are made; or

(b) if an allegation is made under rule 260(2)(d), within 14 days after the entitlement is disputed.

(4) The party delivering the schedule may add to or vary the format of the schedule if the addition or variation is likely to facilitate the clearer definition of the precise matters of dispute.

262. Return of schedule

(1) A party to whom a schedule is delivered under rule 261 is to complete the last 3 columns in the schedule as follows:

(a) in column 5, by answering concisely each item so as to disclose clearly the extent of any concession or denial and the basis of that denial;

(b) in column 6, by identifying any contractual or other documentary provision relied on by way of answer to the item, preferably by date, clause and page number;

(c) in column 7, by dealing with the quantum of the amount claimed including any rate or number of units.

(2) The schedule is to be returned to the party who delivered it –

(a) with the first pleading to the allegations; or

(b) if an allegation is made under rule 260(2)(d), within 14 days after the delivery of the schedule.

263. Completion of schedule

(1) The answer in respect of each item of the schedule referred to in rules 261 and 262 is to be –

(a) specific to that item; and

(b) read subject to any pleading which applies generally to the whole of the claim or to particular components of it.

(2) It is not necessary to repeat in the schedule a pleading referred to in subrule (1)(b).

(3) The completion by the recipient of column 7 of the schedule –

(a) does not prejudice a denial of liability in respect of that item; or

(b) is not an admission of liability for any sum in respect of that item.

(4) The due completion and delivery of a schedule constitutes the provision of sufficient particulars of each party's pleading in respect of each item dealt with by the schedule, subject to either party's entitlement to ask for further particulars if further particulars are appropriate to inform that party of the nature of the case to be met.

Division 18A – Defamation actions

263A. Pleadings to give necessary particulars

(1) A pleading in a defamation action must give such particulars of any claim, defence or other matter pleaded by the party as are necessary to enable the opposite party to identify the case that the pleading requires him or her to meet.

(2) The particulars to be given must be set out in the pleading or, if that is inconvenient, set out in a separate document referred to in the pleading and filed with the pleading.

263B. Allegations in statements of claim generally

(1) A statement of claim seeking relief in relation to the publication of defamatory matter must not contain any allegation that the matter or its publication was false, malicious or unlawful.

(2) A statement of claim seeking relief in relation to the publication of defamatory matter must –

(a) subject to subrule (3), specify each imputation on which the plaintiff relies; and

(b) allege that the imputation was defamatory of the plaintiff.

(3) A plaintiff in proceedings for defamation must not rely on 2 or more imputations alleged to be made by the defendant by means of the same publication of the same matter unless the imputations differ in substance.

(4) The particulars required by rule 263A(1) in relation to a statement of claim seeking relief in relation to the publication of defamatory matter must include the following:

(a) particulars of any publication on which the plaintiff relies to establish the cause

of action, sufficient to enable the publication to be identified;

(b) particulars of any publication, or circulation or distribution, of the matter complained of on which the plaintiff relies on the question of damages, sufficient to enable the publication, circulation or distribution to be identified;

(c) if the plaintiff alleges that the matter complained of had a defamatory meaning other than its ordinary meaning, particulars of the facts and matters on which the plaintiff relies to establish that defamatory meaning, including the following:

(i) full and complete particulars of the facts and matters relied on to establish a true innuendo;

(ii) the class of persons, or the name of each person, to whom those facts and matters were known;

(d) if the plaintiff is not named in the matter complained of –

(i) particulars of the identification of the plaintiff in the matter complained of; and

(ii) the class of persons, or name and address of each person, to whom any such particulars were known;

(e) particulars of each part of the matter complained of that is relied on by the plaintiff in support of each pleaded imputation.

(5) The following documents must be filed and served with a statement of claim, or amended statement of claim, seeking relief in relation to the publication of defamatory matter and must be referred to in the statement of claim or amended statement of claim:

(a) a legible photocopy of the original publication or, in the case of an internet, email or other computer-displayed publication, a printed copy of the original publication;

(b) a typescript, with numbered lines, of –

(i) if the original publication is in English, the text of the original publication; or

(ii) if the original publication is not in English, a translation into English of the text of the original publication.

(6) The particulars required by rule 263A(1) in relation to a statement of claim seeking relief in relation to the publication of defamatory matter about a corporation must include particulars of the facts, matters and circumstances on which the plaintiff relies to establish that the corporation is not precluded from asserting a cause of action for defamation.

(7) The plaintiff must give –

(a) particulars of facts, matters and circumstances on which the plaintiff will rely in support of a claim for aggravated damages; and

(b) particulars of facts, matters and circumstances on which the plaintiff will rely in support of a claim for exemplary damages; and

(c) particulars of any claim the plaintiff makes –

(i) by way of special damages; or

(ii) for general loss of business or custom.

263C. Defamation defences generally

(1) Subject to rules 263D to 263L, a defendant in proceedings for defamation must plead a defamation defence specifically.

(2) If the plaintiff in defamation proceedings complains of 2 or more imputations, the pleading of any of the following defences must specify each imputation to which the defence is pleaded:

(a) a defence under section 15 of the *Defamation Act 1957*;

(b) a defence under section 25 or 26 of the *Defamation Act 2005*;

(c) a defence of justification at common law.

(3) Unless the court or a judge orders otherwise, the particulars of a defamation defence required by rule 263A(1) must include particulars of the facts, matters and circumstances on which the defendant relies to establish –

(a) that any imputation, notice, report, comment or other material was, or related to, a matter of public interest; or

(b) that any imputation was published under qualified privilege; or

(c) that any imputation or contextual imputation was true or was a matter of substantial truth; or

(d) that any material being proper material for comment was a matter of substantial truth.

(4) If a defendant in proceedings for defamation intends to make a case in mitigation of damages by reference to one or more of the following, the defendant must give particulars of the facts, matters and circumstances on which the defendant relies to make that case:

(a) the circumstances in which the publication complained of was made;

(b) the reputation of the plaintiff;

(c) any apology for, or explanation, correction or retraction of, any imputation complained of;

(d) any recovery proceedings, receipt or agreement to which section 38(1)(c), (d) or (e) of the *Defamation Act 2005* applies.

(5) If a defendant in proceedings for defamation intends to show, in mitigation of damages, that any imputation complained of was true or was a matter of substantial truth, the defendant must –

(a) give particulars identifying the imputation and stating that intention; and

(b) give particulars of the facts, matters and circumstances the defendant relies on to establish that the imputation was true or was a matter of substantial truth.

263D. Defence of justification

(1) Subject to rule 263C(2) –

(a) a defence of justification under section 15 of the *Defamation Act 1957* is sufficiently pleaded if it alleges that the imputation in question was true; and

(b) a defence of justification under section 25 of the *Defamation Act 2005* or at common law is sufficiently pleaded if it alleges that the imputation in question was substantially true.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence of justification under section 15 of the *Defamation Act 1957*, under section 25 of the *Defamation Act 2005* or at common law must, unless the court orders otherwise, include particulars of the facts, matters and circumstances on which the defendant relies to establish that the imputation in question was true or substantially true.

263E. Defence of contextual truth

(1) Subject to rule 263C(2), a defence under section 26 of the *Defamation Act 2005* is sufficiently pleaded if it –

(a) specifies one or more imputations on which the defendant relies as being contextual to the defamatory imputation in question; and

(b) alleges that each contextual imputation on which the defendant relies was substantially true; and

(c) alleges that the defamatory imputation in question did not further harm the reputation of the plaintiff because of the contextual imputations on which the defendant relies.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence of contextual truth under section 26 of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which

the defendant relies to establish that the contextual imputations on which the defendant relies are substantially true.

263F. Defence of absolute privilege

(1) This rule applies to a defence of absolute privilege –

(a) under section 27 of the *Defamation Act 2005*; and

(b) at common law.

(2) A defence to which this rule applies is sufficiently pleaded if it alleges that the matter complained of was published under absolute privilege.

(3) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence to which this rule applies must include particulars of the facts, matters and circumstances on which the defendant relies to establish that the imputation or matter complained of was published under absolute privilege.

263G. Defence for publication of public documents

(1) In this rule –

public document has the same meaning as in section 28 of the *Defamation Act 2005*.

(2) A defence under section 28 of the *Defamation Act 2005* is sufficiently pleaded if it alleges that the matter complained of was contained in –

(a) a public document or a fair copy of a public document; or

(b) a fair summary of, or a fair extract from, a public document.

(3) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence under section 28 of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that the matter complained of was contained in –

(a) a public document or a fair copy of a public document; or

(b) a fair summary of, or a fair extract from, a public document.

263H. Defence of fair report of proceedings of public concern

(1) A defence under section 29 of the *Defamation Act 2005* is sufficiently pleaded if –

(a) it alleges that the matter complained of was, or was contained in, a fair report of any proceedings of public concern; or

(b) it alleges that –

(i) the matter complained of was, or was contained in, an earlier published report of proceedings of public concern; and

(ii) the matter complained of was, or was contained in, a fair copy of, a fair summary of or a fair extract from the earlier published report; and

(iii) the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence under section 29 of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish –

(a) that the matter complained of was, or was contained in, a fair report of any proceedings of public concern; or

(b) that –

(i) the matter complained of was, or was contained in, an earlier published report of proceedings of public concern; and

(ii) the matter complained of was, or was contained in, a fair copy of, a fair summary of or a fair extract

from the earlier published report; and

(iii) the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair.

263I. Defence of qualified privilege

(1) This rule applies to –

(a) a defence of qualified privilege under section 30 of the *Defamation Act 2005*; and

(b) any other defence of qualified privilege other than –

(i) a defence under section 16 of the *Defamation Act 1957* or section 28, 29 or 31 of the *Defamation Act 2005*; or

(ii) a defence of fair comment at common law.

(2) A defence to which this rule applies is sufficiently pleaded if it alleges that the matter complained of was published under qualified privilege.

(3) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence to which this rule applies must include particulars of the facts, matters and circumstances on which the defendant relies to establish that the imputation

or matter complained of was published under qualified privilege.

263J. Defence of honest opinion

(1) A defence under section 31 of the *Defamation Act 2005* is sufficiently pleaded if –

(a) it alleges that the matter complained of was an expression of opinion –

(i) of the defendant, rather than a statement of fact; or

(ii) of an employee or agent of the defendant, rather than a statement of fact; or

(iii) of a commentator, other than the defendant or an employee or agent of the defendant, rather than a statement of fact; and

(b) it alleges that the opinion related to a matter of public interest; and

(c) it alleges that –

(i) the opinion was based on proper material and no other material; or

(ii) the opinion was an opinion based to some extent on proper material and represented an opinion that might reasonably be based on that material to the extent to which it was proper material.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence under section 31 of the *Defamation Act 2005* must include –

(a) particulars identifying the material on which it is alleged that the matter alleged to be an opinion was an opinion and identifying to what extent that material is alleged to be proper material; and

(b) particulars of the facts, matters and circumstances on which the defendant relies to establish that the material alleged to be proper material was proper material; and

(c) if the defendant relies on a defence under section 31(2) of that Act, particulars identifying the employee or agent of the defendant whose opinion it is alleged to be; and

(d) if the defendant relies on a defence under section 31(3) of that Act, particulars identifying the commentator whose opinion it is alleged to be.

263K. Defence of fair comment

(1) A defence of fair comment at common law is sufficiently pleaded if it alleges that the matter complained of was a comment that –

(a) was based on –

(i) true fact; or

(ii) material that was published under privilege; and

(b) related to a matter of public interest; and

(c) was made honestly by the defendant.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence of fair comment at common law, or a defence under section 14 of the *Defamation Act 1957*, must include –

(a) particulars identifying the material on which it is alleged that the matter alleged to be a comment was a comment and identifying to what extent that material is alleged to be based on true fact or material that was published under privilege; and

(b) particulars of the facts, matters and circumstances on which the defendant relies to establish that –

(i) the material alleged to be true fact was true fact; or

(ii) the material alleged to be published under privilege was published under privilege.

263L. Defence of innocent dissemination

(1) A defence under section 32 of the *Defamation Act 2005* is sufficiently pleaded if it alleges that –

(a) the defendant published the matter complained of merely in the capacity, or as an employee or agent, of a subordinate distributor; and

(b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and

(c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence under section 32 of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that –

(a) the defendant published the matter complained of merely in the capacity, or as an employee or agent, of a subordinate distributor; and

(b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and

(c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant.

263M. Defence of triviality

(1) A defence under section 9(2) of the *Defamation Act 1957* or section 33 of the *Defamation Act 2005* is sufficiently pleaded if it alleges that the circumstances of publication of the matter complained of were such that the plaintiff was unlikely to sustain any harm.

(2) Without limiting rule 263C, the particulars required by rule 263A(1) for a defence under section 9(2) of the *Defamation Act 1957* or section 33 of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that the circumstances of publication of the matter complained of were such that the plaintiff was unlikely to sustain any harm.

263N. Particulars concerning grounds that defeat defamation defences

If a plaintiff intends to meet a defamation defence by –

(a) alleging that the defendant was actuated by express malice in the publication of the matter complained of; or

(b) relying on any matter which, under the *Defamation Act 2005*, defeats the defence –

the particulars required by rule 263A(1) in relation to the reply must include particulars of the facts, matters and circumstances on which the plaintiff relies to establish that allegation or matter of defeasance.

Division 19 – Filing and delivery of pleadings

264. Filing and delivery of pleading

(1) Delivery of a pleading is to be effected –

(a) by delivering it to the address for service of the party to whom it is directed; or

(b) if that party does not have an address for service, by filing it in the registry; or

(c) by serving it on that party.

(2) A party who delivers a pleading to another party must file a copy of the pleading as soon as practicable after delivery.

265. Delivery of statement of claim

(1) If a writ is endorsed with a statement of claim –

(a) a further statement of claim is not to be filed or delivered; and

(b) the endorsement on the writ is taken to be the statement of claim.

(2) Subject to subrule (1), a plaintiff is to file and deliver to each defendant a statement of claim –

(a) when the writ is served on the defendant; or

(b) at any time after service of the writ but before the expiration of 21 days after the defendant files a notice of appearance.

(3) If a plaintiff who is required to deliver a statement of claim does not do so within the period of time allowed, the defendant, at the expiration of that period, may apply to the Court or a judge to dismiss the action with costs, for want of prosecution.

(4) On the hearing of the application, the Court or a judge, if a statement of claim has not been delivered, may –

(a) order the action to be dismissed accordingly; or

(b) make such other order on such terms as the Court or judge thinks just.

266. Filing and delivery of defence

(1) Unless a plaintiff has made an application for judgment under Division 3 of Part 11, the defendant is to file and deliver a defence to a statement of claim within 21 days after whichever of the following is the later:

(a) after the time of the delivery of the statement of claim;

(b) after the time limited for filing a notice of appearance.

(2) If an application under rule 356 is dismissed or an order is made under rule 359(4) granting leave to defend, the defendant is to file and deliver a defence within –

(a) 8 days after the making of the order; or

(b) any other period fixed by the order.

(3) If a statement of claim is filed in default under rule 353(2), the defendant, after filing a notice of appearance, may file and deliver a defence within 8 days after filing of the statement of claim.

267. Delivery of defence to counterclaim, reply and subsequent pleadings

(1) A defence to a counterclaim is to be filed and delivered within 21 days after delivery of the counterclaim.

(2) A reply or subsequent pleading is to be filed and delivered within 21 days after delivery of the immediately preceding pleading.

PART 8 – PAYMENT INTO AND OUT OF COURT

268. Payment into Court by defendant

(1) A defendant may pay into Court a sum of money –

(a) in satisfaction of a claim; or

(b) if several causes of action are joined in one action, in satisfaction of one or more of the causes of action.

(2) A payment into Court is to be made –

(a) after the defendant files an appearance and on or after the day on which the defendant gives notice of the payment to the plaintiff; and

(b) before the commencement of the trial.

(3) If a defence sets up tender before action, the defendant is to bring into Court the sum of money alleged to have been tendered.

(4) A notice of the payment under subrule (2) –

(a) is to be in accordance with the prescribed form; and

(b) with the leave of the Court or a judge, may be modified or withdrawn or delivered in an amended form.

(5) At any time before the commencement of the trial, the defendant may increase the amount paid

into Court and deliver a notice to the plaintiff to that effect.

269. Acceptance by plaintiff of money paid into Court

(1) Subject to rule 270, within 14 days after the receipt of a notice of money paid into Court or before the commencement of the trial, whichever is the earlier, a plaintiff may accept the whole or a part of the money specified in the notice in satisfaction of the claim or any cause of action to which the money relates.

(2) If a plaintiff accepts money paid into Court, the plaintiff is to notify the defendant in writing.

(3) On giving the defendant notice of acceptance, the plaintiff is entitled, except as otherwise provided by these rules or in the case of a person under disability subject to rule 299, to payment of –

(a) the money accepted; and

(b) any interest earned on the money since it was paid into Court.

(4) The registrar is to pay the money to the plaintiff or, on the plaintiff's written authority, to the plaintiff's practitioner.

(5) On payment to the plaintiff, all further proceedings in the claim or cause of action to which the money relates are stayed.

(6) Unless the Court or a judge otherwise orders, a plaintiff may tax any costs incurred to the time

of acceptance of money paid into Court and may sign judgment for those taxed costs if the plaintiff –

(a) accepts money paid into Court in satisfaction of the claim; or

(b) accepts money paid into Court in respect of one or more specified causes of action and gives notice abandoning the other cause or causes of action.

(7) The plaintiff must not –

(a) tax any costs until 7 days after receiving payment of the money; or

(b) sign the judgment until 2 days after the taxation of those costs.

(8) With the leave of a judge, a plaintiff in an action for defamation who accepts a payment into Court may make in open court a statement in terms approved by the judge.

(9) This rule does not apply to an admiralty action or to any cause of action to which a defence of tender before action is pleaded.

270. Part of money paid into Court taken out

(1) If part of any money paid into Court is accepted under rule 269, the money remaining in Court is not to be paid out except –

(a) in accordance with the terms of a memorandum signed by every party to the action or their practitioners; or

(b) under an order of the Court or a judge.

(2) An order referred to in subrule (1)(b) may be made at any time.

271. Interest

Any interest earned on money paid into Court since the payment of the money vests in the defendant if –

(a) the plaintiff does not notify the defendant of acceptance in accordance with rule 269 or, if the plaintiff is a person under disability, the plaintiff's acceptance is not approved by the Court or a judge under rule 299; and

(b) judgment is given for the plaintiff in the action.

272. Payment into Court by more than one defendant

(1) Any one or more of several defendants sued jointly or in the alternative may pay money into Court under rule 268.

(2) If one or more, but not all, of several defendants sued jointly or in the alternative pay money into Court –

(a) the defendant or defendants by whom the payment is made are to give notice of the payment to the other defendant or defendants; and

(b) within 14 days after receiving the notice or before the commencement of the trial, whichever is the earlier, the plaintiff may accept the whole sum or any one or more of the sums specified in the notice in satisfaction of the claim, or in satisfaction of the cause of any action to which the money relates.

(3) If the plaintiff accepts a payment, he or she is to give notice in writing of that acceptance to each defendant who joined in making the payment.

(4) On acceptance of a payment, all further proceedings in the action or in respect of each specified cause of action to which the money relates are stayed.

(5) Any money accepted is not to be paid out except under an order of the Court or a judge dealing with the whole costs of the action or each specified cause of action.

(6) If money is paid into Court in an action for defamation by one or more, but not all, of several defendants –

(a) the plaintiff, within 14 days after the receipt of a notice of the money paid into Court, may elect to accept the sum paid into Court in satisfaction of the claim

against the defendant or defendants making the payment; and

(b) the plaintiff may continue with the action against any other defendant or defendants, but the sum paid into Court and any interest is to be set off against any damages awarded to the plaintiff against the defendant or defendants against whom the action is continued.

(7) The plaintiff is to give notice in writing of acceptance under subrule (6)(a) to all defendants.

(8) On giving notice, the plaintiff is entitled, except as otherwise provided by these rules or in the case of a person under disability subject to rule 299, to receive payment of –

(a) any sum of money accepted in satisfaction of the claim or in satisfaction of the cause of action to which the money relates; and

(b) any interest earned on the money since its payment into Court.

(9) The costs of the plaintiff as against a defendant whose payment into Court was accepted are to be in the discretion of the Court or a judge.

273. Compensation recovery

(1) This rule applies if a defendant or the insurer of a defendant is, in relation to the plaintiff's cause of action –

(a) for the purposes of Division 4 of Part 3.14 of the *Social Security Act 1991* of the Commonwealth, a compensation payer or potential compensation payer; or

(b) a compensation payer within the meaning of the *Health and Other Services (Compensation) Act 1995* of the Commonwealth.

(2) A defendant making a payment into Court may –

(a) endorse the notice of payment into Court with a statement in writing that this rule applies to the payment; or

(b) file and serve such a statement.

(3) If a defendant makes a payment under subrule (2) and a plaintiff accepts the payment –

(a) the registrar, on behalf of the defendant, is to give notice in accordance with section 1173 of the *Social Security Act 1991* of the Commonwealth; and

(b) a payment out is not to be made until –

(i) a recovery notice has issued under section 1174 of the *Social Security Act 1991* of the Commonwealth; or

(ii) the Secretary gives notice that a recovery notice under that section is not to be issued; and

(c) the amount paid in is to be paid out in satisfaction of the amount specified in the recovery notice and any balance is to be paid to the plaintiff.

274. Payment into Court on counterclaim

Any defendant to a counterclaim may pay money into Court in accordance with this Part.

275. Payment into Court not to be pleaded

(1) Except in an action to which a defence of tender before action is pleaded or in which a plea under the *Defamation Act 1957* has been raised –

(a) a statement of the fact that money has been paid into Court under this Part is not to be inserted in any pleading; and

(b) communication of that fact is not to be made to the judge or jury at the trial of the action until all questions of liability and of the amount of debt or damages are determined.

(2) In exercising any jurisdiction as to costs, the Court or a judge is to take into account the fact that a payment into Court has been made and the amount of the payment.

276. Payment out of Court

(1) Money paid into Court under an order of the Court or a judge is not to be paid out of Court, otherwise than under an order of the Court or a judge.

(2) Notwithstanding subrule (1), if a defendant has paid money into Court under an order under Division 3 of Part 11 before the delivery of a defence, the defendant –

(a) unless the Court or a judge otherwise orders, may appropriate by notice in writing the whole or any part of that money and any additional payment, if necessary, to the whole or any specified part of the plaintiff's claim; or

(b) if the defendant has pleaded tender before action, may appropriate by that defence the whole or any part of the money in Court as payment into Court of the money alleged to have been tendered.

(3) Any money appropriated under subrule (2) is taken to be money paid into Court under this Part or money paid into Court with a plea of tender.

277. Notice of payment into Court under an order

(1) If the Court or a judge orders that a person pay money into Court, the order is to specify –

(a) the parties to whom notice of the payment is to be given; and

(b) the manner in which notice is to be given.

(2) As soon as possible after a person makes a payment under an order, the person is to give notice of the payment to any party, and in any manner, specified in the order.

278. Payment out in the case of small intestate estates

The Court or a judge may direct that a fund or share of a fund be paid to any spouse, child, parent or sibling of a deceased person who would be entitled to a grant of administration if –

(a) the estate of the deceased person who has died intestate is entitled to a fund in Court or a share of the fund not exceeding $20 000; and

(b) letters of administration of the estate are not granted; and

(c) the assets in the estate, including the fund or share of the fund to which the estate is entitled, do not exceed $20 000 in value.

PART 9 – OFFER OF COMPROMISE

279. Interpretation of Part 9

In this Part –

claim includes a counterclaim and a cross-application;

contribution claim means a claim to recover contribution from, or indemnity against, any person;

defendant includes –

(a) a respondent to an originating application; and

(b) a defendant by counterclaim; and

(c) a respondent by cross-application;

plaintiff includes –

(a) an applicant by originating application; and

(b) a defendant who has filed and served a counterclaim; and

(c) a respondent who has filed and served a cross-application.

280. Offer of compromise

(1) A party to any proceedings may make to another party to the proceedings an offer of compromise of a claim of that other party or a claim made against that other party.

(2) An offer of compromise is to be –

(a) lodged with the registrar; and

(b) served on the other party.

(3) An offer of compromise may be made by a defendant by offering to –

(a) pay a nominated sum of money, clear of costs, to the plaintiff; or

(b) pay a proportion, expressed as a percentage, of the plaintiff's claim; or

(c) give the plaintiff any relief that the defendant contends is sufficient to dispose of the whole action or one or more causes of action.

(4) An offer of compromise may be made by a plaintiff by offering to –

(a) accept a nominated sum of money clear of costs; or

(b) accept a nominated sum of money clear of costs after giving credit to the defendant for any set-off or counterclaim raised by the defendant against the plaintiff; or

(c) concede a proportion, expressed as a percentage, of the plaintiff's claim; or

(d) accept any relief that the plaintiff contends is sufficient to dispose of the whole action or one or more causes of action.

(4A) An offer of compromise is to include a term as to costs as provided by rule 281(c).

(5) A party may make –

(a) more than one offer of compromise; and

(b) an offer of compromise to more than one party.

(6) A party may make an offer of compromise at any time before the commencement of the trial in respect of the claim to which it relates.

(7) An offer of compromise is open for any period, not less than 14 days after service of the offer, specified in the offer.

(8) An offer of compromise may be made by or to 2 or more plaintiffs or defendants jointly.

281. Form of offer

An offer of compromise –

(a) is to be in writing; and

(b) is to contain the following:

(i) the title of the proceeding to which it relates;

(ii) the name of the party making the offer;

(iii) the name of the party to whom the offer is made;

(iv) a statement that it is served in accordance with this Part; and

(c) is to include an offer to pay or accept –

(i) the whole, or a stated proportion, of a party's costs on a specified scale; or

(ii) the whole, or a stated proportion, of a party's costs on a scale to be determined by the Court or a judge following acceptance of the offer; or

(iii) the whole, or a stated proportion, of a party's costs in a specified sum; or

(iv) no costs; and

(d) is to specify the cause or causes of action to which the offer relates; and

(e) is to state whether or not the offer is made in addition to any payment into Court previously made by the offerer under Part 8.

282. Acceptance of offer of proportion of unliquidated sum

Unless the Court or a judge otherwise orders, if a claim is for an unliquidated sum, a party accepting an offer of compromise in the form of an offer to accept or concede a proportion of the claim is entitled to enter interlocutory judgment for the agreed proportion of damages to be assessed.

283. Acceptance of offer

(1) A party to whom an offer of compromise is made may accept the offer by serving notice of acceptance in writing on the party who made the offer before whichever is the earlier of the following:

(a) the expiration of any period specified in the offer or, if no period is specified, the expiration of 14 days after service of the offer;

(b) the delivery of a verdict or judgment in respect of the claim to which the offer relates.

(2) An offer of compromise must not be withdrawn during the period within which it may be accepted unless the Court or a judge otherwise orders.

(3) An offer of compromise is open to be accepted within the period referred to in subrule (1) even if during that period the party on whom the offer

is served makes an offer of compromise to the party who served the first offer, whether or not the second offer is made in accordance with this Part.

284. Costs

(1) Where an offer of compromise to which rule 281(c)(i) applies is accepted, the party to whom costs are payable may tax costs after the expiry of 7 days after the date of acceptance.

(2) Where an offer of compromise to which rule 281(c)(ii) applies is accepted, the party to whom costs are payable must apply to the Court or a judge within 14 days after the date of acceptance for a determination of the scale on which costs are to be paid.

(3) Where an offer of compromise is made under rule 280(3)(a) or rule 280(4)(a) and the party to whom it is made wishes to accept it but not the term relating to costs under rule 281(c), that party may accept the nominated sum but must apply to the Court or a judge within 14 days after the date of acceptance for a determination of that party's entitlement to recover, or liability to pay, costs.

(4) A term in an offer of compromise that purports to negative or limit the effect of this rule or rule 281(c) is of no effect for any purpose under this Part.

(5) A party to whom costs are payable under this rule may, unless the Court or a judge orders

otherwise, sign judgment for the taxed costs after the expiration of 2 days after the conclusion of the taxation.

285. Offer of compromise to be without prejudice

An offer of compromise made in accordance with this Part is made without prejudice unless the offer provides otherwise.

286. Disclosure of offer to Court

(1) A statement of the fact that an offer of compromise has been made must not be contained in any pleading or affidavit.

(2) Except as provided by rule 288(3), communication of an offer of compromise that is not accepted must not be made to the judge or jury at the trial of the proceeding to which the offer relates until all questions of liability and the relief to be granted are determined.

(3) This rule applies only to an offer of compromise made without prejudice.

287. Party under disability

A person under disability may make or accept an offer of compromise, but an acceptance of the person's offer and an acceptance by the person of an offer are not binding until the Court approves the compromise.

288. Failure to comply with accepted offer

(1) If a party to an accepted offer of compromise fails to comply with the terms of the offer within 14 days of its acceptance, the other party, at his or her election, is entitled to –

(a) judgment in terms of the offer together with costs in accordance with rule 284 and costs of the judgment; or

(b) if the party in default is the plaintiff, an order that the proceeding be dismissed and the plaintiff pay the defendant's costs; or

(c) if the party in default is the defendant, an order that the defence be struck out and the defendant pay the plaintiff's costs.

(2) Subrule (1) does not apply –

(a) to an offer by a party to accept or concede a proportion of the other party's claim; or

(b) if, for any special cause, the Court or a judge otherwise orders.

(3) If a party to an accepted offer of compromise fails to comply with the terms of the offer, the Court or a judge may make any order or give any judgment that the Court or judge thinks fit concerning the continuation of any proceeding, claim or counterclaim that is not the subject of the accepted offer.

(4) The Court or a judge may set aside a judgment entered under subrule (1)(b) or (c) on any terms that the Court or judge thinks fit.

289. Costs in relation to failure to accept offer

(1) Unless the Court or a judge otherwise orders, a plaintiff is entitled to an order for costs against the defendant taxed on a solicitor-client basis if –

(a) the plaintiff has made an offer of compromise in accordance with this Part; and

(b) the defendant has not accepted the offer at the time of the judgment; and

(c) the judgment is no less favourable to the plaintiff than the terms of the offer.

(2) Unless the Court or a judge otherwise orders, a plaintiff is entitled to an order for costs against the defendant, up to and including the day on which an offer of compromise was served, on a party and party basis and the defendant is entitled to an order for costs against the plaintiff in respect of the claim after service of the offer on a party and party basis if –

(a) the defendant has made the offer in accordance with this Part; and

(b) the plaintiff has not accepted the offer at the time of the judgment; and

(c) the judgment is no more favourable to the plaintiff than the terms of the offer.

(3) Subrules (1) and (2) do not apply unless the Court or judge is satisfied that the party making the offer was at all material times willing and able to carry out his or her part of the offer.

(4) For the purposes of this rule, the Court or judge is to disregard any amount of interest awarded to the plaintiff in relation to the period after the day on which the offer was served.

(5) For the purposes of subrule (4), the Court or judge may be informed of the fact that an offer of compromise has been served and of the date of service, but not of the terms of the offer.

290. Multiple defendants

If 2 or more defendants are alleged to be jointly, or jointly and severally, liable to the plaintiff in respect of a debt or damages and a right of contribution or indemnity is alleged to exist between the defendants, the consequences as to costs referred to in rule 289 do not apply to an offer of compromise unless –

(a) in the case of an offer made by the plaintiff, the offer is made to all the defendants and is an offer of compromise of the claim against them all; or

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

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

(ii) if the offer is made by 2 or more defendants, by the terms of the offer the defendants making the offer are jointly and severally liable to the plaintiff for the whole amount of the offer.

291. Offer to contribute

(1) If in any proceeding a defendant makes a contribution claim in respect of any claim for a debt or damages made by the plaintiff in the proceeding, a party to the contribution claim may serve on any other party to the contribution claim an offer to contribute toward a compromise of the claim made by the plaintiff on any terms specified in the offer.

(2) The Court or a judge may take an offer to contribute into account in determining whether the party on whom the offer to contribute was served is to pay the whole or a part of –

(a) the costs of the party making the offer; or

(b) any costs which the party making the offer is liable to pay to the plaintiff.

(3) Rules 286 and 287 apply, with any necessary modification, to an offer to contribute as if it were an offer of compromise.

PART 10 – PARTIES

Division 1 – Persons under disability

292. Person under disability as party

(1) A person under disability, by litigation guardian, may –

(a) sue as a plaintiff; or

(b) make an application; or

(c) defend a proceeding.

(2) A person under disability is not to file a notice of appearance otherwise than by litigation guardian.

(3) An order for the appointment of a litigation guardian for a person under disability is not necessary.

(4) Subject to any order of the Court or a judge, a person authorised under the *Guardianship and Administration Act 1995* to conduct proceedings in the name, or on behalf, of a represented person, is entitled to be litigation guardian of the person under disability in any proceeding to which the authority extends.

293. Appointment of litigation guardian

(1) Subject to rule 295, the name of a person is not to be used in any proceeding as litigation guardian of any party under disability unless –

(a) the person has signed a written authority for that purpose; and

(b) that authority has been filed in the registry.

(2) A practitioner who files a notice of appearance for a person under disability is to make and file an affidavit at the same time.

(3) The affidavit is to be in accordance with the prescribed form.

294. Persons not to be litigation guardian

A corporation or a person residing out of the jurisdiction of the Court must not be a litigation guardian unless the corporation or person –

(a) has been appointed as litigation guardian by the Court or a judge; or

(b) is authorised under the *Guardianship and Administration Act 1995* to conduct or defend a proceeding in the name, or on behalf, of a represented person.

295. Appointment by Court or judge of litigation guardian

If a person under disability does not have a litigation guardian, the Court or a judge may appoint as litigation guardian –

(a) an appropriate person, with that person's consent; or

(b) the Public Guardian under the *Guardianship and Administration Act 1995*.

296. Removal of litigation guardian

The Court or a judge may remove a litigation guardian.

297. Litigation guardian in proceedings in chambers

In proceedings in chambers under a judgment or order, the judge may require a litigation guardian to be appointed for a person under disability who is served with notice of the judgment or order.

298. Consent on behalf of person under disability

(1) In proceedings to which a person under disability is a party, any consent of the litigation guardian has the same effect as if the person under disability were not under disability and had given the consent.

(2) A consent given under subrule (1) is valid only if it is given –

(a) on behalf of a minor; or

(b) with the approval of the Court or a judge.

299. Compromise by person under disability

(1) Subject to the *Guardianship and Administration Act 1995*, in any proceeding, any settlement,

compromise, payment or acceptance of money paid into Court, so far as it relates to a claim for money by or on behalf of a person under disability, is not valid without the approval of the Court or a judge.

(2) If, before the start of a proceeding in which a claim for money is made by or on behalf of a person under disability, an agreement is reached for the settlement or compromise of the claim and the parties, by originating application, seek the approval of the Court or a judge of the settlement or compromise, the parties may apply for –

(a) that approval and any orders and directions necessary to give effect to the approval or as may be appropriate; or

(b) directions as to the further prosecution of the claim.

(3) An originating application concerning a claim under the *Fatal Accidents Act 1934* is to state the particulars mentioned in section 7 of that Act.

(4) Unless the Court or a judge otherwise orders, an application under this rule is to be supported by –

(a) an affidavit by the litigation guardian of the person under disability; and

(b) an affidavit by the applicant's practitioner as to the opinion of that practitioner –

(i) indicating any considerations relevant to the settlement or compromise; and

(ii) exhibiting copies of relevant material appearing in any medical report or hospital record relevant to the claim of the person under disability.

(5) An affidavit under subrule (4) is to be filed in a sealed envelope endorsed with –

(a) the title of the action; and

(b) the name of the deponent; and

(c) the date on which the affidavit was sworn; and

(d) a statement that the envelope contains the affidavit of the deponent.

(6) If the approval of the Court or a judge is sought under this rule –

(a) it is not necessary for the applicant to deliver a copy of any affidavit filed in support of the application to any other party; and

(b) that other party is not entitled to access the affidavit unless –

(i) the Court or a judge otherwise orders; or

(ii) the party filing the affidavit consents.

300. Control of money recovered by persons under disability

(1) Unless the Court or a judge otherwise directs, the following are to be paid to the Public Trustee:

(a) money recovered by or on behalf of, or adjudged, ordered or agreed to be paid to, or for the benefit of, a person under disability;

(b) money paid into Court and accepted by or on behalf of a person under disability.

(2) Subject to subrule (3), any money paid to the Public Trustee under this rule in respect of a person under disability is, subject to any direction of the Court or a judge, to be held in trust and applied by the Public Trustee in any manner the Public Trustee thinks fit for the maintenance and education or otherwise for the benefit of that person.

(3) If the Public Trustee is the administrator of the estate of a person under disability, any money paid to the Public Trustee under this rule in respect of that person is, subject to any direction of the Court or a judge, to be dealt with in any manner in which the Public Trustee is authorised or required to deal with the property of that person under the *Guardianship and Administration Act 1995*.

(4) If the Public Trustee holds any money in trust under subrule (2), the Public Trustee may at any time ask the Court or a judge –

(a) for directions as to the trust or its administration; or

(b) to vary any directions already given in relation to the trust; or

(c) to determine any question arising in relation to the trust.

(5) The Court or a judge may give any directions or determination it considers appropriate.

301. Costs of plaintiff under disability

(1) The costs of a plaintiff under disability in a proceeding to which rule 299 applies are to be taxed by the taxing officer as between party and party and as between practitioner and client.

(2) If, in relation to any proceeding, a taxation is required to be made under subrule (1), costs, other than those certified under that subrule, are not payable to the practitioner for any plaintiff in the proceeding.

(3) The taxing officer is to certify the respective amounts of the party and party and solicitor and client costs and any difference or proportion payable by the parties to the proceeding.

(4) If in any proceeding referred to in subrule (1) any sum is required under this rule to be paid to the Public Trustee, the taxing officer taxing any

costs under that subrule in relation to that proceeding is to notify the result of the taxation to the Public Trustee.

(5) If the practitioner of a plaintiff in any proceeding to which rule 299 applies indicates to the defendant that the practitioner is claiming from the client only party and party costs in the proceeding, the parties may agree on those costs without having them taxed if the application in respect of the proceeding discloses the amount of those costs.

(6) Notwithstanding that the parties have agreed upon party and party costs –

(a) any party has the right to have those costs taxed; and

(b) the Court or a judge may direct that those costs be taxed.

Division 2 – Executors, administrators and trustees

302. Application of Division 2 of Part 10

This Division applies to a proceeding relating to –

(a) the administration of the estate of a deceased person; or

(b) property subject to a trust; or

(c) the construction of an instrument including an Act.

303. Representation of unascertained persons

(1) The Court or a judge may appoint one or more persons to represent any person or class of persons, including an unborn person, who is or may be interested in or affected by a proceeding if –

(a) the person or class or a member of the class cannot be readily ascertained; or

(b) the person or class or a member of the class cannot be found; or

(c) the contingent right of any unborn person may be affected by the proceeding and it is desirable to have the proceeding determined before the person is born; or

(d) it is expedient in all the circumstances, including the amount involved and the degree of difficulty of the point to be determined, to make the appointment for the purpose of saving expense.

(2) A judgment or order binds any person or class represented by another person appointed under subrule (1) as if the person or each member of that class were parties.

304. Compromises

(1) This rule applies if a compromise of a proceeding is proposed and any person including an unborn or unascertained person interested in,

or who may be affected by, the compromise is not a party to the proceeding and –

(a) there is another person in the same interest before the Court who assents to the compromise or on whose behalf the Court or a judge sanctions the compromise; or

(b) the person who is not a party is represented by a person appointed under rule 303(1) and that person assents to the compromise.

(2) The Court or judge may approve a compromise and order that it is binding on any absent person if satisfied that –

(a) the compromise is for the benefit of the absent person; and

(b) to require service on that person would cause unreasonable expense or delay.

(3) An absent person is bound by an order under subrule (2) in accordance with its terms as if he or she were a party.

305. Beneficiaries

If a party sues or is sued as trustee or personal representative –

(a) it is not necessary to join as a party any person having a beneficial interest under the trust or in the estate; and

(b) a judgment or order in the proceedings binds that person as it does the trustee or personal representative.

306. Deceased person

(1) A person against whom a proceeding may be continued after the death of the plaintiff or applicant may apply to compel any person entitled to proceed to do so.

(2) On the hearing of an application, the Court or a judge may order that the person entitled to proceed do so within any period specified in the order.

(3) If a person entitled to proceed fails to comply with an order –

(a) judgment may be entered for the defendant with costs, if the proceeding is an action; or

(b) the application may be dismissed with costs, if the proceeding is not an action.

(4) Execution may issue for the costs as is provided for by rule 878.

Division 3 – Partners and sole proprietors

307. Application to proprietary clubs

For the purposes of this Division –

(a) the proprietors of a proprietary club are taken to be persons carrying on business in partnership; and

(b) the name of the club is taken to be a firm name.

308. Actions by and against firms and proprietary clubs

(1) Any 2 or more persons claiming, or being liable, as partners and carrying on business in Tasmania may sue or be sued in any firm name under which those persons carried on business in partnership at the time of the accrual of the cause of action.

(2) The proprietors of a proprietary club may sue and be sued in the name of the club.

309. Disclosure of partners' names

(1) Any partners bringing an action in their firm name, on demand in writing by or on behalf of a defendant, are to declare in writing the names and addresses of all the persons constituting the firm.

(2) If the plaintiffs comply with a demand under subrule (1), the action is to proceed in the name of the firm in the same manner and with the same consequences as if they had been named as the plaintiffs in the writ.

(3) If the plaintiffs fail to comply with a demand under subrule (1), on application of the party making the demand, the Court or a judge may

order that all proceedings in the action be stayed on any terms as are just.

(4) If the plaintiffs fail to comply with a demand under subrule (1) or if the party making that demand is not satisfied with the declaration made, the Court or a judge, on the application of that party, may order that –

(a) the plaintiffs provide a statement of the names and addresses of the persons who, at the time of the accrual of the cause of action, were partners in the firm; and

(b) the statement be provided in a particular manner; and

(c) the statement be verified on oath or otherwise.

310. Service

(1) If persons are sued as partners in a firm name, the writ may be served –

(a) on one or more of the partners; or

(b) on a person who, at the time of service, has the control or management of the partnership business at the principal place of business of the partnership within the jurisdiction.

(2) Service in accordance with subrule (1) is taken to be service on each of the members of the firm sued, whether or not any of the members of the firm are out of Tasmania.

(3) If a partnership is dissolved before the commencement of an action –

(a) the writ is to be served on every person within Tasmania sought to be made liable; and

(b) that service is taken to be service on any former partner out of Tasmania.

(4) Any person served with a writ is to be informed by notice in writing, given at the time of service, stating whether the person is served –

(a) as a partner; or

(b) as a person having the control or management of the partnership business; or

(c) as both.

(5) If a notice is not given under subrule (4), the person served is taken to have been served as a partner.

311. Appearance by partners

(1) If persons are sued as partners in the name of their firm –

(a) they are to appear individually in their own names; and

(b) the action is to continue in the name of the firm.

(2) A person served with a writ under rule 310(4)(b) is not to appear to the writ.

(3) A person served as a partner may file a notice of conditional appearance denying that he or she is a partner.

(4) A notice of conditional appearance does not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner files a notice of appearance in the ordinary form.

312. Execution of judgment against a firm

(1) If a judgment or order is against a firm, execution may issue against –

(a) any property of the partnership within the jurisdiction; or

(b) any person who –

(i) lodged a notice of appearance in his or her name; or

(ii) was individually served with the writ as a partner and failed to lodge a notice of appearance; or

(iii) admitted in a pleading to being, or having been at the material time, a partner; or

(iv) was adjudged by the Court or a judge to have been a partner at a material time.

(2) A party who obtains judgment or an order against a firm may issue execution, with the leave of the Court or a judge, against a person, other than a person referred to in subrule (1)(b), if the person is, or was at the material time, a member of the firm.

(3) On an application for leave under subrule (2) –

(a) if liability is not disputed, the Court or a judge may grant leave; or

(b) if liability is disputed, the Court or a judge may order that the liability of the person be tried and determined in any manner in which any issue of fact or question in an action may be tried and determined.

(4) Except as to the property of the partnership, a judgment or order against a firm does not affect a member of the firm who has not appeared and who was out of Tasmania when the writ was issued unless the member –

(a) has been made a party to the action; or

(b) has been served within Tasmania.

313. Application to actions between firms and members

This Division applies to an action –

(a) between a firm carrying on business in Tasmania and one or more of its members; and

(b) between firms carrying on business in Tasmania and having one or more members in common.

314. Persons trading under another name

A person who carries on business within the jurisdiction in a name other than his or her name may sue or be sued in that other name as if it were a firm name.

Division 4 – Societies

315. Interpretation of Division 4 of Part 10

In this Division –

formal codefendant means a person –

(a) joined as a codefendant as an officer of a society under rule 320(1) or whose name is added to a writ under an order made under rule 320(4) or rule 326(3)(b); and

(b) against whom remedy or relief is not sought otherwise than as a member of the society;

formal coplaintiff means a person –

(a) joined as a coplaintiff as an officer of a society under rule 320(1); and

(b) for whom remedy or relief is not sought otherwise than as a member of the society.

316. Application

The procedure provided for by this Division with respect to actions by or against a society is an optional procedure.

317. Members of society may sue

Any number of persons claiming as members of a society may sue in the name of the society if, at the time the cause of action on which the claim is grounded arose, the society carried out any of its objects within Tasmania.

318. Claims may be joined

A claim by an officer of a society may be joined with a claim in respect of the same matter on behalf of the members of the society.

319. Enforcement of claim

A person making a claim against a member or an officer of a society in respect of membership of the society or any liability incurred arising out of the conduct or management of the affairs of the society may enforce the claim by an action in which the society is named as a defendant.

320. Officer to be joined as coplaintiff or codefendant

(1) In an action in which a society is named as a party, an officer of the society is to be joined in the action as coplaintiff or codefendant with the society.

(2) More than one coplaintiff or codefendant may be joined.

(3) Each coplaintiff and codefendant is to be described in the writ and in the title of all subsequent proceedings by his or her office in the society.

(4) On the application of an officer or member of a society which is a defendant to an action, the Court or a judge may order the writ and any subsequent proceedings to be amended by adding the officer or member as a formal codefendant.

321. Claim against members

In an action under rule 319, the plaintiff may join a claim in respect of the same act, transaction or matter against any officer of the society in respect of which the officer could be sued alone.

322. Service of writ

A writ in an action in which a society is named as a defendant is to be served –

(a) on each officer joined as a formal codefendant; and

(b) if a claim is made against an officer of the society, on the officer.

323. Appearance by formal codefendant

A notice of appearance filed by a formal codefendant is taken to be entered on behalf of the society as well as on behalf of the formal codefendant.

324. Names to be supplied

(1) On demand in writing by a defendant, a formal coplaintiff is to declare in writing the names and addresses of all the persons constituting the society on whose behalf the action is brought.

(2) If a formal coplaintiff fails to comply with a demand under subrule (1) and no other formal coplaintiff complies with a similar demand, on the application of the defendant making the demand, the Court or a judge may direct all proceedings in the action to be stayed.

(3) A direction may be on any terms.

(4) If a formal coplaintiff complies with a demand under subrule (1), the action is to proceed –

(a) as if the persons declared had been named as plaintiffs in the writ; and

(b) in the names of the society and each coplaintiff.

325. Supply of names

On the application of a party to an action to which a society is a party, the Court or a judge may order –

(a) that –

(i) a formal coplaintiff or formal codefendant deliver to the applicant a statement of the name and address of each person who was a member of the society at the time of the accrual of the cause of action or at the time the writ was issued; and

(ii) the statement be verified on oath or otherwise; or

(b) that disclosure of each person who was a member of the society at the time of the accrual of the cause of action or at the time the writ was issued be made in some other manner.

326. Conditional appearance by formal codefendant

(1) A formal codefendant may file a notice of conditional appearance denying that he or she was an officer of the society at the time of service of the writ.

(2) If a formal codefendant files a notice of conditional appearance and another officer of the society who is also joined as a defendant files a notice of appearance, the action is to proceed as if the person who entered the conditional appearance had not been joined as a formal codefendant.

(3) If each formal codefendant files a notice of conditional appearance denying that he or she was an officer of the society at the time of service of the writ and each establishes that he or she was not an officer at that time, the Court or a judge, on the application of a party, may amend the writ by –

(a) striking out the name of each formal codefendant; and

(b) adding as formal codefendant any person alleged by the applicant to be an officer of the society or, if such an allegation is not made, any person alleged by the applicant to be a member of the society.

(4) On service of the writ and any order adding a person as a formal codefendant, the action is to proceed as if the person had been originally joined in the action as a formal codefendant.

327. Application to strike out conditional appearance

(1) A plaintiff may apply to strike out a notice of conditional appearance on the ground that the person filing it, at the time the writ was served,

was an officer or member of the society if the notice of conditional appearance –

(a) is filed by a formal codefendant and denies that he or she is an officer or member of the society and no formal codefendant files a notice of unconditional appearance; or

(b) is filed by a person joined as a defendant as an officer of the society but not as a formal codefendant and denies that he or she is an officer or member of the society.

(2) On the hearing of an application, the Court or a judge may direct the trial of an issue to determine the question whether or not the person filing the notice of conditional appearance was an officer or member of the society at the time of service of the writ.

(3) An issue under subrule (2) may be tried and determined in any manner in which any issue or question in an action may be tried and determined.

328. Judgment against society as plaintiff

In an action instituted under rule 317 in which judgment is given for the defendant, the judgment is to be entered –

(a) against the society as if it were a corporation; and

(b) against each formal coplaintiff.

329. Judgment against society as defendant

(1) If a society is the defendant to an action, judgment is not to be entered against it unless the cause of action is one in respect of which it would have been liable as principal were it a corporation.

(2) Subrule (1) does not apply to a judgment establishing the right of a person as a member of the society and restraining the exclusion of that person from the rights, benefits and privileges of membership.

(3) In an action instituted under rule 319 in which an officer of the society is joined in the action otherwise than as a formal codefendant and the claim referred to in that rule against the officer succeeds, judgment is to be entered against the officer.

(4) Subject to rule 331, in an action instituted under rule 319, judgment is to be entered against a society alone as if it were a corporation if –

(a) no officer of the society is joined in the action otherwise than as a formal codefendant, and judgment is given or is to be entered for the plaintiff; or

(b) an officer of the society is joined in the action otherwise than as a formal codefendant and the claim against the

officer fails, but judgment is given or is to be entered for the plaintiff.

330. Enforcement of judgment

(1) A judgment entered against an officer or member of a society may be enforced against him or her as if the society were not a party to the action.

(2) A judgment entered against a society may be enforced against the common property of the members of the society as if it were a corporation and the property were the property of the society.

331. Enforcement of judgment against members of society

(1) A plaintiff may apply for the leave of the Court or a judge to enforce a judgment against any past or present member of the society against whom judgment could have been recovered in respect of the same matter as that to which the judgment to be enforced relates in an action instituted by the plaintiff against that member.

(2) On an application under subrule (1), the Court or a judge –

(a) if the member does not dispute liability, may grant leave; or

(b) if the member disputes liability, may order that the question of the liability be tried and determined in any manner in

which an issue in an action may be tried and determined.

332. Judgment for injunction

In an action instituted under rule 319, if an injunction is granted or an order is made that any act be done or instrument be executed, the judgment or order may be enforced, with the leave of the Court or a judge, against any officer or member of the society, even though the officer or member is not a party to the action.

333. Claims against members otherwise than as members

(1) In an action in which a society is named as a defendant, a claim may be joined against a person who is a member or officer of the society in respect of any claim against the person, otherwise than as a member of the society, if the joinder is authorised by Division 12 of Part 7.

(2) If a claim is joined in accordance with subrule (1), the action, so far as it concerns that claim, is to proceed as if the person against whom the claim is made were the only defendant to the action.

334. Claims against officers

In an action in which a society is named as a defendant, a claim may be joined against a person otherwise than as an officer of the society

as an alternative claim against the same person as an officer of the society.

Division 5 – Representative proceedings

335. Application of Division

This Division applies to representative proceedings commenced under Part VII of the Act.

335A. Interpretation

A word or expression used in this Division and in Part VII of the Act has the same meaning in this Division as it has in that Part.

335B. Originating process

(1) In the heading of an originating process in representative proceedings, and in each document filed in support of the originating process, next to the name of the plaintiff or the applicant, the words "as a representative party under Part VII of the *Supreme Court Civil Procedure Act 1932*" are to be added.

(2) The originating process in representative proceedings is to be accompanied by a notice in accordance with the prescribed form.

335C. Opt-out notices

(1) In this rule –

opt-out date means the date fixed by the Court before which a group member may opt out of representative proceedings.

(2) If a group member opts out of representative proceedings in accordance with section 71(2) of the Act, the group member is to file and serve, on the relevant representative party, a notice in the prescribed form before the opt-out date.

(3) A representative party on whom a notice is served in accordance with subrule (2) must provide to each of the other parties to the proceedings, within 14 days after the opt-out date, a list of persons who have filed and served a notice in accordance with subrule (2).

335D. Procedural applications

An application under section 72, 83, 84 or 87 of the Act must be accompanied by an affidavit stating –

(a) the identity of each group member; and

(b) the postal address of each group member; and

(c) the means by which information may most effectively be given to the group members.

Division 5A – Representative defendants

336. Numerous defendants

In any proceeding in which 7 or more persons –

(a) are subject to the same or a common obligation; or

(b) have the same or a common interest in or in respect of, or are under the like obligations in respect of, a fund or other property; or

(c) otherwise have a common interest in any matter –

one or more of those persons may be sued or made respondent or may be authorised by the Court or a judge to defend the proceeding with respect to the obligation or interest on behalf, or for the benefit, of all persons subject to the obligation or having the interest.

Division 6 – Notice of constitutional matters

337. Interpretation of Division 6 of Part 10

In this Division,

State includes the Australian Capital Territory and the Northern Territory.

338. Notice of constitutional matter

(1) A party whose case raises a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903* of the Commonwealth, is to file a notice of a constitutional matter as soon as practicable, unless the Court or a judge directs another party to do so.

(2) A notice is to state specifically the nature of the matter and the facts showing that the matter is one to which subrule (1) applies.

339. Filing and service of notice

(1) Subject to subrule (3), a party filing a notice of a constitutional matter is to serve a copy of the notice on –

(a) each other party; and

(b) the Attorney-General of the Commonwealth, if that Attorney-General or the Commonwealth is not a party; and

(c) the Attorney-General of each State, if that Attorney-General or State is not a party.

(2) Unless the Court or a judge otherwise orders, the copy is to be served as soon as practicable after the notice is filed.

(3) A party is not required to serve an Attorney-General if the party takes steps that could reasonably be expected to cause the matters in

the notice to be brought to the attention of that Attorney-General.

(4) The party serving a copy of the notice is to file an affidavit of service as soon as practicable after service.

PART 11 – JUDGMENTS

Division 1 – Judgment by consent

340. Order for judgment by consent

(1) A judge may order that judgment be entered in terms consented to by each party to a proceeding.

(2) If the judge considers that an application for judgment by consent ought to be dealt with in open court, the judge is to adjourn into Court and order that the judgment be entered.

(3) Unless satisfied that it is proper to make an order that judgment be entered by consent, the Court or judge is not to make the order if it –

(a) affects the interests of a person under disability; or

(b) requires the exercise of a discretion by reference to matters other than those personal to the parties.

(4) A judgment entered by consent under this rule is to be in accordance with the prescribed form.

341. Judgment by consent on filing memorandum

(1) On the filing of a memorandum of consent signed by or on behalf of each party in a proceeding, the registrar may –

(a) enter judgment in accordance with that memorandum; or

(b) require that the matter be dealt with by a judge under rule 340.

(2) If the memorandum of consent so provides, a judgment entered by the registrar may include any or all of the following:

(a) a recital of an undertaking given by a party;

(b) a notation of an agreement between 2 or more of the parties;

(c) an order granting time for a party to do anything under the judgment;

(d) an order staying execution absolutely or on specified conditions or for a specified period;

(e) an order providing for the payment out of money paid into Court or the interest on that money;

(f) any provision as to costs.

(3) The registrar must not enter judgment if the matter –

(a) affects the interests of a person under disability; or

(b) requires the exercise of a discretion by reference to any matter other than a matter personal to the parties.

(4) A practitioner representing a party is to sign the memorandum on behalf of the party.

(5) If a party is acting in person and is not a practitioner, the registrar is not to enter judgment against that party in accordance with a memorandum unless –

(a) the party attends before the Principal Registrar, the Deputy Registrar, the Assistant Deputy Registrar or a district registrar and consents in writing to the judgment in person; or

(b) that written consent is attested by a practitioner acting on behalf of that party.

(6) A memorandum of consent and a judgment entered upon it under this rule are to be in accordance with the prescribed form.

Division 2 – Judgment in default of appearance or pleading

342. Interpretation of Division 2 of Part 11

In this Division,

defaulting defendant means a defendant who does not –

(a) appear to a writ within the period required by these rules; or

(b) file and deliver a defence within the period required by these rules.

343. Application of Division 2 of Part 11

This Division applies to any proceeding other than a proceeding by a mortgagee for possession of land.

344. Judgment not to be entered by party to marriage

(1) Judgment in default of appearance or defence is not to be entered in an action in tort brought by one party to a marriage against the other during the subsistence of the marriage, otherwise than with the leave of a judge given on an application.

(2) An application for leave is to be –

(a) filed after the time limited for appearance or for the delivery of a defence; and

(b) served on the defendant.

345. Default of appearance of person under disability

(1) If a defendant under disability has not appeared by litigation guardian, the plaintiff, before proceeding further in the action, is to apply to the Court or a judge for an order that a person be appointed as litigation guardian of the defendant.

(2) On an application under subrule (1), the Court or a judge may make an order appointing a litigation guardian if –

(a) the guardian is a person who may become a litigation guardian under Division 1 of Part 10; and

(b) the writ was duly served; and

(c) subject to any order to the contrary, after the expiration of the period limited by the writ for the filing of a notice of appearance, the application is served on the defendant in the same manner as the writ is required to be served.

(3) A litigation guardian appointed by an order has the same period for filing and serving a notice of appearance after the service of the order on the litigation guardian as if the order were the writ.

346. Proof of service and default

(1) Before proceeding on default of appearance by a defendant, the plaintiff is to file an affidavit of service of the writ on the defendant.

(2) Before proceeding on default of defence by a defendant –

(a) the plaintiff's practitioner personally must certify in writing to the registrar that the defendant has failed to deliver a defence within the time limited; or

(b) if the plaintiff is acting in person, the plaintiff must file an affidavit verifying the facts entitling him or her to enter judgment in default of defence.

347. Final judgment for liquidated demand

(1) If the plaintiff's claim is for a debt or liquidated demand only against a defaulting defendant, the plaintiff may enter final judgment against that defendant for the amount claimed, together with costs and –

(a) if the endorsement on the writ or the statement of claim contains a claim that the plaintiff is entitled, contractually or under any statute, other than the Act, to interest at a particular rate from a particular date on the amount of that claim, an amount representing the interest claimed calculated up until the day on which final judgment is entered; or

(b) if the endorsement on the writ or the statement of claim contains a claim that the plaintiff is entitled to interest under section 34(1) of the Act together with particulars of the basis of that claim and the date from which interest is claimed, an amount representing the interest claimed at the prescribed rate of interest calculated up until the day on which final judgment is entered.

(2) The costs referred to in subrule (1) are –

(a) if each defendant against whom the judgment is entered failed to appear –

(i) the amount for costs properly claimed in the writ; and

(ii) the costs of signing judgment in accordance with the Table in Part 3 in Schedule 1; and

(iii) if the taxing officer thinks fit, an additional sum for the costs of service of the writ; or

(b) in any other case, an amount to be taxed.

(3) A debt or liquidated demand referred to in subrule (1) is taken to include a claim pursuant to an Act or Commonwealth Act for the recovery of a sum of money that has been paid pursuant to an Act or Commonwealth Act.

348. Interlocutory judgment for unliquidated demand

(1) If a plaintiff's claim is for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages against a defaulting defendant, the plaintiff may enter interlocutory judgment against that defendant for damages to be assessed or for the return of the goods or the recovery of their value.

(2) If interlocutory judgment is entered against one or more defaulting defendants but not against all the defendants, the assessment of damages under that judgment is to proceed at the same time as the trial of the action or issue against the other defendant or defendants, unless the Court or a judge otherwise directs.

349. Liquidated demand, detention of goods and damages

If a plaintiff's claim against a defaulting defendant is for a liquidated demand and for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, the plaintiff may enter –

(a) final judgment against that defendant for the debt or liquidated demand in accordance with rule 347; and

(b) interlocutory judgment for damages to be assessed or for the return of the goods or the recovery of their value in accordance with rule 348.

350. Recovery of land and mesne profits

(1) If a plaintiff's claim is for the recovery of land against a defaulting defendant, or a defendant who files a notice of appearance stating that the defence is limited to part only of the land, the plaintiff may enter final judgment against the defendant for possession of the land, or of the part of the land to which the defence does not apply, and costs in accordance with rule 347(2).

(2) If the plaintiff is entitled to enter final judgment and has claimed mesne profits, arrears of rent, double value or damages concerning the land which is the subject of the judgment, the plaintiff may also enter judgment with respect to that claim in accordance with rule 348.

351. Judgment for part unanswered by defence

(1) If a defendant delivers a defence to part only of a plaintiff's alleged cause of action, the plaintiff, by leave of the Court or a judge, may enter final or interlocutory judgment for the part unanswered if –

(a) the part unanswered consists of a separate cause of action or is severable from the rest; and

(b) if the plaintiff's claim is for one or more of the following:

(i) a debt or liquidated demand;

(ii) pecuniary damages only;

(iii) the detention of goods, with or without a claim for pecuniary damages;

(iv) the recovery of land.

(2) If a defendant has a counterclaim, execution on a judgment entered under subrule (1) is not to issue without leave of the Court or a judge.

352. Default by any other party

If an issue arises in an action other than between plaintiff and defendant and a party to the issue does not deliver any pleading, the Court or a judge, on the application of the opposite party, may give any judgment as may be appropriate.

353. Default in actions not otherwise specially provided for

(1) In an action not provided for under this Division, the Court or a judge, on the application of the plaintiff, may give any judgment on the statement of claim to which the plaintiff is entitled against a defaulting defendant.

(2) If a statement of claim is not endorsed on the writ, the plaintiff is to file a statement of claim before making an application under subrule (1).

(3) In an action in which not all defendants are defaulting defendants and the cause of action is severable, the plaintiff may –

(a) at any time apply under subrule (1) against any defaulting defendant; or

(b) apply for judgment against any defaulting defendant at the trial of the action.

(4) . . . . . .

(5) An application for judgment is not to be made after the expiration of one year from the date on which the defendant became a defaulting defendant otherwise than with leave of the Court or a judge.

354. Effect of judgment by default

If judgment by default is entered under this Division against one or more of several defendants, the entry of judgment or the issue of

execution does not prejudice the plaintiff's right to proceed in the action against any other defendant.

355. Judgment by default set aside

Any judgment by default under these rules may be set aside or varied by the Court or a judge either unconditionally or on any terms the Court or a judge considers appropriate.

Division 3 – Summary judgment for plaintiff

356. Application by plaintiff for summary judgment

(1) If a statement of claim has been served on a defendant in an action and the defendant has appeared in the action, the plaintiff may apply to a judge for judgment against the defendant on the ground that the defendant –

(a) does not have a defence to a claim included in the writ or to a particular part of that claim; or

(b) does not have a defence to that claim or part, other than as to the amount of any damages claimed.

(2) This rule applies to any action begun by writ other than an action that includes a claim –

(a) for defamation, malicious prosecution or false imprisonment; or

(b) based on an allegation of fraud.

357. Manner of application

(1) An application under rule 356 is to be supported by an affidavit –

(a) verifying the facts on which the claim to which the application relates is based; and

(b) stating that, in the deponent's belief –

(i) there is no defence to that claim; or

(ii) there is no defence other than as to the amount of any damages claimed.

(2) Unless a judge otherwise directs, the hearsay rule does not apply to evidence in an affidavit made under subrule (1) if the party who adduces the evidence also adduces evidence of its source.

(3) The application and a copy of the affidavit are to be served on the defendant not less than 4 clear days before the return day of the application.

358. Judgment for plaintiff

(1) On the hearing of an application for summary judgment, the judge is to give any judgment for the plaintiff against the defendant on the claim or a part of the claim as may be just having regard to the nature of the remedy or relief claimed, unless –

(a) the judge dismisses the application; or

(b) the defendant satisfies the judge with respect to the claim or a part of the claim that there is an issue or question in dispute that ought to be tried; or

(c) the defendant satisfies the judge that for some other reason there ought to be a trial of the claim or a part of the claim.

(2) A judge who gives judgment for the plaintiff may also order a stay of execution on the judgment, either unconditionally or on any terms, until after the trial of any counterclaim raised by the defendant in the action.

359. Leave to defend

(1) A defendant may show cause against an application for summary judgment by affidavit or otherwise.

(2) Unless a judge otherwise directs, the hearsay rule does not apply to evidence in an affidavit made under subrule (1) if the party who adduces the evidence also adduces evidence of its source.

(3) On the hearing of an application, the judge may order a defendant showing cause or, if the defendant is a corporation, any officer of the corporation –

(a) to produce any document; or

(b) to attend and be examined on oath if it appears to the judge that it is desirable because of special circumstances.

(4) A judge is to grant leave either unconditionally or on any terms to defend the claim or a part of the claim if –

(a) there is an issue or question in dispute that ought to be tried; or

(b) for some other reason there ought to be a trial of the claim or a part of the claim.

360. Application for summary judgment on counterclaim

(1) Subject to subrule (2), if a defendant to an action has served a counterclaim on the plaintiff, other than a counterclaim that includes a claim of the type referred to in rule 356(2), the defendant may apply to a judge for judgment against the plaintiff on the ground that the plaintiff –

(a) does not have a defence to a claim made in the counterclaim or to a particular part of that claim; or

(b) does not have a defence to that claim or part, other than as to the amount of any damages claimed.

(2) Rules 357, 358 and 359 apply to an application under subrule (1) as if –

(a) a reference to the plaintiff and defendant were a reference to the defendant and plaintiff, respectively; and

(b) the words "any counterclaim raised by the defendant in the action" in

rule 358(2) were replaced with "the plaintiff's action".

361. Directions

(1) A judge may give any directions as to the further conduct of the action that may be necessary after the judge –

(a) orders that a defendant or plaintiff have leave, whether conditional or unconditional, to defend any action or counterclaim with respect to a claim or a part of a claim; or

(b) gives judgment for a plaintiff or defendant on a claim or a part of a claim and orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action.

(2) If the parties consent, a judge may direct that the claim in question and any other claim in the action be tried by a judge of an inferior court of civil jurisdiction.

362. Dismissal of application

(1) A judge may dismiss an application under rule 356 or 360 with costs if –

(a) the case is not within this Division; or

(b) the plaintiff or defendant knew that the party against whom judgment was sought relied on a contention that would entitle

that party to unconditional leave to defend.

(2) The judge may require the costs to be paid immediately.

363. Right to proceed with residue of action or counterclaim

(1) A plaintiff who obtains judgment under rule 356 against a defendant to an action may proceed with the action with respect to any remaining claim or part of a claim or against any other defendant.

(2) A defendant who obtains judgment under rule 360 against a defendant to a counterclaim may proceed with the counterclaim with respect to any remaining claim or part of a claim or against any other defendant to the counterclaim.

364. Judgment for delivery up of chattel

On an application under rule 356 or 360 relating to a claim for the delivery up of a specific chattel, the judge may order the party against whom judgment is given to deliver up the chattel without giving that party an option of retaining it on paying its assessed value.

365. Relief against forfeiture

A tenant has the same right to apply for relief after judgment has been given under this Division for the recovery of land on the ground

of forfeiture for non-payment of rent as if the judgment had been given after trial.

366. Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application under rule 356 or 360 may be set aside or varied by a judge on any terms the judge considers just.

Division 4 – Summary judgment for defendant

367. Defendant may apply for summary judgment

(1) Within 10 days after appearing, a defendant to an action may apply to a judge for summary judgment.

(2) A judge may do anything set out in subrule (3) if satisfied that –

(a) the action is frivolous or vexatious; or

(b) the defendant has a good defence on the merits; or

(c) the action should be disposed of summarily or without pleadings.

(3) A judge may –

(a) order that judgment be entered for the defendant, with or without costs; or

(b) order that the plaintiff proceed to trial without pleadings; or

(c) if all parties consent, dispose of the action finally and without appeal in a summary manner.

368. Plaintiff may show cause

The plaintiff may show cause against an application by affidavit, oral evidence or otherwise.

369. Judge may order examination of parties

On the hearing of an application, the judge may order a plaintiff or defendant, or in the case of a corporation any officer of the corporation –

(a) to produce any document; or

(b) to attend and be examined on oath.

370. Order directing action to proceed

If, on an application, an order is not made under rule 367(3), the judge –

(a) is to direct that the action proceed to trial; and

(b) may give any directions as to the further conduct of the action as may be given on an application for directions under rule 552; and

(c) may order the action to be set down for trial and define the issues that are to be tried.

Division 5 – Judgment on failure to prosecute or comply with an order

371. Judgment upon non-delivery of statement of claim

(1) If a plaintiff who is bound to deliver a statement of claim fails to do so within the time prescribed, the defendant may apply at the expiration of that time to the Court or a judge for an order dismissing the action with costs.

(2) If, on the hearing of an application, a statement of claim has not been delivered, the Court or a judge may –

(a) order that the action be dismissed; or

(b) make any other appropriate order.

372. Judgment upon failure to make discovery

If a party fails to comply with a provision of Part 13 or an order under that Part requiring the party to answer interrogatories, make discovery of documents or produce a document for the purpose of inspection or any other purpose, the Court or a judge may order –

(a) that the action or other proceeding be dismissed; or

(b) that judgment be entered or an order be made in the proceeding in favour of the opposite party.

373. Stay on non-payment of costs

If a plaintiff in an action dismissed for want of prosecution is ordered to pay any costs of the defendant and the plaintiff commences another action for the same, or substantially the same, cause of action before paying those costs, the Court or a judge, by order, may stay the further action until those costs are paid.

374. Setting aside judgment

The Court or a judge may set aside or vary –

(a) an order made under this Part; or

(b) any judgment or order entered, given or made on the failure of a party to –

(i) do any act or take any step required to be done or taken by these rules; or

(ii) comply with an order to do any act or take any step.

PART 12 – DISCONTINUANCE AND WITHDRAWAL

375. Withdrawal of appearance

(1) A party appearing in a proceeding may withdraw the notice of appearance with the leave of the Court or a judge.

(2) After the withdrawal of a notice of appearance, the proceeding is to continue as if the party withdrawing the notice had not appeared.

376. Discontinuance of action

(1) A plaintiff, by notice, may discontinue, wholly or in part, an action against a defendant –

(a) at any time before delivery of a defence; or

(b) after the delivery of a defence and before taking any other step in the action, other than making an interlocutory application.

(2) At any time before judgment, the Court or a judge may grant leave –

(a) to a plaintiff to discontinue, wholly or in part, an action against all or any of the defendants; or

(b) to a defendant to discontinue, wholly or in part, a counterclaim against all or any of the defendants to the counterclaim.

(3) Leave may be granted on any terms as may be just.

377. Discontinuance of originating application

(1) A proceeding or any part of a proceeding not commenced by writ may be discontinued –

(a) by leave of the Court or a judge; or

(b) with the consent of all other parties.

(2) Leave may be granted on any terms as may be just.

378. Costs of discontinuance

(1) A plaintiff or applicant who discontinues a proceeding wholly or in part is, subject to any order to the contrary, to pay –

(a) the defendant's or respondent's costs of the proceeding; or

(b) if the proceeding is partly discontinued, the costs arising from the matter discontinued.

(2) The costs referred to in subrule (1) or ordered to be paid by an order under rule 376(3) or rule 377(2) are to be taxed.

(3) If the costs are not paid within 4 days after taxation, the party to whom those costs are payable may enter judgment for those costs.

(4) A judgment under subrule (3) is to be in accordance with the prescribed form.

379. Discontinuance

(1) A discontinuance under rule 376 or 377 is not a defence or answer to any subsequent proceeding.

(2) A plaintiff or applicant may not discontinue a proceeding otherwise than under rule 376 or 377.

(3) A discontinuance is to be by notice in accordance with the prescribed form.

380. Subsequent proceeding stayed until costs paid

If a party discontinues a proceeding, wholly or in part, and is liable to pay the costs of another party and that party, before paying those costs, commences another proceeding against that other party concerning the same, or substantially the same, subject matter, the Court or a judge, by order, may stay the further proceeding until those costs are paid.

PART 13 – DISCOVERY AND INTERROGATORIES

Division 1 – Interpretation

381. Interpretation of Part 13

In this Part –

discoverable document – see rule 382;

document includes the following:

(a) any book, map, plan, graph or drawing;

(b) any photograph;

(c) any label, marking or writing which identifies or describes anything of which it forms a part or to which it is attached;

(d) any disk, tape, soundtrack, film, negative or other device in which sounds, data or visual images are embodied so as to be capable of being reproduced, with or without the aid of equipment;

(e) anything on which is marked a word, figure, letter or symbol which is capable of carrying a definite meaning to a person conversant with it.

Division 1A – Discovery and inspection of documents

382. Mutual discovery of documents

(1) For the purposes of this Division, but subject to any agreement between the parties or an order of the Court or a judge, the discovery obligation is a continuing obligation and the discoverable documents are documents –

(a) that are directly relevant to the issues raised by the pleadings; and

(b) of which, after a reasonable search, a party is aware; and

(c) that are, or have been, in that party's possession, custody or power.

(2) For subrule (1)(a), the documents must meet at least one of the following criteria:

(a) the documents are those on which the party intends to rely;

(b) the documents adversely affect the party's own case;

(c) the documents support another party's case;

(d) the documents adversely affect another party's case.

(3) For subrule (1)(b), in making a reasonable search, a party may take into account the following:

(a) the nature and complexity of the proceedings;

(b) the number of documents involved;

(c) the ease and cost of retrieving the document;

(d) the significance of any documents likely to be found;

(e) any other relevant matter.

383. Discovery by parties without order

(1) A party to an action, if requested by notice by any other party at any time after the pleadings between them are deemed to be closed, is to –

(a) make discovery by producing to the other party for inspection all discoverable documents in respect of which privilege is not claimed; and

(b) if the other party so requires in the notice, make and serve on the other party a list of all discoverable documents.

(2) Discovery is to be made –

(a) within 14 days after receipt of the notice; or

(b) within any further period as is agreed between the parties or allowed by the Court or a judge before the filing of the certificate of readiness or the making of

an order that the action be set down for trial, whichever occurs first.

(3) Subrule (1) does not apply to third or subsequent party proceedings, unless the Court or a judge otherwise orders.

(4) Subrule (1) does not require a defendant to an action –

(a) to recover a penalty recoverable under an enactment, to make discovery of any document; or

(b) to enforce a forfeiture, to make discovery of any document relating to the issue of forfeiture; or

(c) arising out of an accident on land due to a collision or apprehended collision involving a vehicle, to make discovery of any document unless the Court or a judge otherwise orders.

(5) Subrule (4) applies to a counterclaim as it applies to an action as if references to the defendant were references to the defendant to the counterclaim.

(6) On the application of any party required to make discovery of documents, the Court or a judge –

(a) may order a party to the action to make discovery of any document or class of document, or as to any of the matters in question, as may be specified in the order; or

(b) if discovery by a party is not necessary, or not necessary at that stage of the action, may order that there be no discovery of documents by that party, either at all or at that stage; or

(c) may dispense with or limit the discovery of documents.

(7) An application under subrule (6) is to be made before the expiration of the period within which discovery of documents in an action is required to be made.

(8) A party requiring discovery of documents to be made may serve on the party required to make discovery a notice requiring that party to make an affidavit verifying the list of discoverable documents.

(9) A notice under subrule (8) may be served at any time before the certificate of readiness is filed or an order that the action be set down for trial is made, whichever occurs first.

(10) Within 14 days after service on a party of a notice under subrule (8), the party is to –

(a) make and file an affidavit in compliance with the notice; and

(b) serve a copy of the affidavit on the party by whom the notice was served.

(11) Subject to section 11(9) of the Act, a party is not bound to make discovery as to any fact, communication or document in relation to which

that party would have been protected from making discovery before the commencement of the Act.

384. List and affidavit

(1) A list of documents is to –

(a) be in accordance with the prescribed form; and

(b) enumerate the documents in a convenient order and as briefly as possible; and

(c) describe each document or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable the document or bundle to be identified.

(2) A party claiming that a document is privileged from production is to make the claim in the list of documents with a statement of the grounds of the privilege.

(3) In an action against or by the Sheriff or an officer of the Sheriff in respect of any matter connected with the execution of the office held by that person, the affidavit verifying a list of documents made by the Sheriff or officer is to be made by the officer actually concerned.

(4) An affidavit verifying a list of documents is to be in accordance with the prescribed form.

385. Parties entitled to copy of list of documents

(1) A defendant who delivers a defence is entitled to obtain from a plaintiff making discovery a copy of any list of documents and any affidavit verifying the list served on –

(a) the plaintiff by any other defendant; or

(b) any other defendant by the plaintiff.

(2) If the defendant delivers a counterclaim joining another person with the plaintiff as defendant to the counterclaim, subrule (1) applies as if the defendant were the plaintiff and the plaintiff and the other person were the defendants.

(3) A third party who delivers a pleading is entitled to obtain from the defendant by whom the third party was joined and who is making discovery, a copy of any list of documents and any affidavit verifying the list served –

(a) by the plaintiff on that defendant; or

(b) on the plaintiff by that defendant.

386. Order for discovery

(1) Subject to subrules (2) and (3) and rules 387 and 389, the Court or a judge, on application by a party to any proceeding, may order any other party to –

(a) make and serve on any other party a list of the discoverable documents; and

(b) make and file an affidavit verifying the list and to serve a copy of the affidavit on the other party.

(2) An order under subrule (1) may be limited to certain documents or classes of documents or to certain of the matters in question in the proceeding.

(3) If an application is made under this rule by the insurer in an action arising out of a policy of marine insurance, the Court or a judge may make an order for the production of ship's papers if it is necessary or expedient to do so.

387. Order for determination of issue before discovery

If, on an application for an order under rule 386, it appears that any issue or question in the proceeding should be determined before any discovery of documents is made by the parties, the Court or a judge may order that the issue or question be determined first.

388. Order for discovery of particular documents

(1) If it appears to the Court or a judge that there are grounds for a belief that a discoverable document or class of discoverable documents may be, or may have been, in the possession of a party, the Court or a judge may order that party to make, file and serve an affidavit.

(2) An affidavit is to state –

(a) whether that document or any document of that class is, or has been, in his or her possession, custody or power; and

(b) if the document is not in his or her possession, custody or power, when he or she parted with it and what has become of it.

(3) An order may be made under subrule (1), notwithstanding that the party against whom it is made has made, or has been required to make, a list of documents or an affidavit verifying a list of documents.

389. Discovery to be ordered only if necessary

On the hearing of an application for an order under rules 386 or 388 the Court or a judge may –

(a) dismiss the application if discovery is not necessary; or

(b) adjourn the application if discovery is not necessary at that stage of the proceeding; or

(c) refuse to make the order if discovery is not necessary for disposing of the proceeding fairly or for saving costs.

390. Inspection of documents referred to in list

(1) A party who serves a list of documents on any other party is to –

(a) allow that other party to inspect, and take copies of, the documents referred to in the list at any reasonable time and on reasonable notice; and

(b) deliver copies of those documents to that other party on payment of the reasonable costs, or on written undertaking by a legal practitioner to pay the reasonable costs, of copying and delivering the documents.

(2) Subrule (1) does not apply to a document if the party serving the list has objected to producing the document.

391. Inspection of documents referred to in pleadings or affidavits

(1) A party to a proceeding may serve on any other party in whose pleading or affidavit reference is made to a document notice that the first-mentioned party intends to inspect that document.

(2) Within 4 days after being served with a notice under subrule (1), a party is to serve on the party giving that notice a notice stating –

(a) a place and time within 7 days after service at which the documents that the party served does not object to producing may be inspected; and

(b) which of the documents that party objects to producing and the grounds for that objection.

392. Order for production for inspection

(1) On the application of a party entitled to inspect any document under rule 390 or 391, the Court or a judge may make an order for production of the document for inspection.

(2) The Court or a judge, on the application of any party to a proceeding, may order any other party to permit the party applying to inspect a discoverable document.

(3) An application under subrule (2) is to be supported by an affidavit –

(a) specifying or describing each document of which inspection is sought; and

(b) stating the belief of the deponent that each document is a discoverable document of the other party.

393. Failure to comply with order concerning discovery

(1) A party who fails to comply with an order for discovery or production of documents is liable to attachment.

(2) Service on a party's practitioner of an order for discovery or production of documents is sufficient service to found an application for attachment if the party disobeys the order, but

the party may show, in answer to the application, that he or she did not have notice or knowledge of the order.

(3) A practitioner is liable to attachment if –

(a) he or she is served with an order for discovery or production of documents; and

(b) without reasonable cause he or she fails to give notice of the order to the client.

394. Order for production to Court

(1) The Court or a judge may order a party to produce to the Court or judge a discoverable document.

(2) The Court or judge may deal with any document produced under subrule (1) in any appropriate manner.

(3) An order for production is not to be made unless the Court or a judge is of opinion that the order is necessary for disposing of the proceeding fairly or for saving costs.

395. Determination of claim for privilege

If, on an application under this Division for production of a document for inspection, a party claims privilege from the production or objects to the production on any other ground, the Court or a judge may inspect the document to decide whether the claim or objection is valid.

396. Use in evidence

Unless the Court or a judge otherwise orders, a document is not to be received in evidence unless –

(a) it has been disclosed to the opposing party or parties in accordance with the provisions of this Division; or

(b) it has been disclosed in any certificate of readiness filed under rule 544 or joint letter of readiness filed under rule 545.

397. Revocation and variation of orders

An order made under this Division, including an order made on appeal, may be revoked or varied by a subsequent order of the Court or a judge at or before trial.

398. Admission and production of documents specified in list

(1) Subject to subrules (2) and (3) and any order to the contrary, a party on whom a list of documents is served is taken to admit –

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

(b) that a document described as a copy is a true copy.

(2) Subrule (1) does not apply to a document the authenticity of which has been denied in a pleading by a party on whom a list of documents is served.

(3) Subrule (1) does not apply to a document if, before the party has signed a certificate or joint letter of readiness or the proceeding has been set down for trial, whichever occurs first, the party on whom the list is served serves on the party whose list it is a notice stating that the authenticity of the document is not admitted and is required to be proved at the trial.

(4) Subrule (1) does not affect a party's right to object to the admission in evidence of a document.

(5) A party who serves a list of documents on any other party or who has under rule 544 or 545 signed a certificate of readiness or joint letter of readiness to which a list of documents is attached is taken to have been served with a notice requiring that party to produce at the trial any document specified in the list that is in his or her possession, custody or power.

(6) This rule applies to an affidavit made in compliance with an order under rule 388 as it does to a list of documents served under this Division.

Division 2 – Admissions and production of documents

399. Notice to admit documents

(1) At any time after discovery of documents and before the filing of a certificate of readiness or joint letter of readiness or the making of an order that the proceedings be set down for trial, whichever occurs first, a party to a proceeding may serve on any other party a notice requiring that other party to admit the authenticity of the documents specified in the notice.

(2) A party seeking to challenge the authenticity of a document specified in the notice, within 14 days after service, is to serve on the party by whom the notice was given a notice stating that the authenticity of the document is not admitted and is required to be proved at the trial.

(3) A party on whom the notice is served who fails to give a notice under subrule (2) in relation to a document is taken to have admitted the authenticity of that document unless the Court or a judge otherwise orders.

400. Notices to produce documents

Unless rule 398(5) applies, a party to a proceeding may serve on any other party a notice requiring that other party to produce the documents specified in the notice at the trial.

401. Notice to admit facts

(1) At any time before the filing of a certificate of readiness or joint letter of readiness or the making of an order under rule 416, a party to a proceeding by notice may call on any other party to admit, for the purposes of the proceeding, any fact specified in the notice.

(2) If a party to whom a notice is given fails to admit any fact specified within 14 days of receiving the notice, or within any further period allowed by the Court or a judge, the costs of proving that fact are to be paid by that party, regardless of the result of the proceeding, unless at the trial or hearing the Court or a judge certifies that the failure to admit was reasonable or otherwise orders.

(3) An admission under this rule is made only for the purpose of the particular proceeding, and is not to be used against the party on any other occasion or in favour of any person other than the party giving the notice.

(4) The Court or a judge may at any time allow any party to amend or withdraw any admission made on any terms as are just.

402. Admission of opposite case

A party to a proceeding, by a pleading or otherwise in writing, may admit the truth of the whole or any part of the case of any other party.

403. Order of Court during action

(1) At any stage of a proceeding in which an admission of fact has been made, a party may apply to the Court or a judge for any judgment or order on the admission that the party may be entitled to without waiting for the determination of any other question between the parties.

(2) On an application, the Court or a judge may make any order or give any judgment as may be appropriate.

Division 2A – Preliminary discovery and discovery from non-party

403A. Interpretation of Division 2A of Part 13

In this Division –

applicant means an applicant for an order under this Division;

description, in relation to a person, includes the name, place of residence, place of business, occupation and sex of the person and whether the person is an individual or a corporation;

possession includes custody and power.

403B. Privilege

An order made under this Division may not require the person against whom the order is made to produce any document or answer any

question which, on the ground of privilege, the person could not be required to produce or answer –

(a) in the case of an order under rule 403C or 403E, if the applicant had commenced a proceeding against the person; or

(b) in the case of an order under rule 403D or 403F, if the applicant had made the person a party to a proceeding to which the applicant is a party; or

(c) in the case of an order under rule 403FA, if the person had been served with a subpoena for production of the document at the trial of the proceeding in respect of which the order is made.

403C. Discovery to identify a defendant

(1) The Court or a judge may make an order under subrule (2) if –

(a) the applicant is unable to ascertain through reasonable inquiries the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this rule called "the person concerned"); and

(b) it appears that another person –

(i) has or is likely to have knowledge of facts tending to

assist in ascertaining such a description; or

(ii) has or is likely to have, or has had or is likely to have had, in that other person's possession any document or thing tending to assist in ascertaining such a description.

(2) The Court or a judge may order the person referred to in subrule (1)(b), or if that person is a corporation, the corporation by an appropriate officer, to –

(a) attend before the Court, a judge or an officer to be orally examined in relation to the description of the person concerned; or

(b) make discovery to the applicant of all documents which are or have been in his, her or its possession and which relate to the description of the person concerned.

(3) If the Court or a judge makes an order under subrule (2)(a), the Court or judge may order the person against whom, or the corporation against which, the order is made to produce on the examination any document or thing in his, her or its possession which relates to the description of the person concerned.

403D. Rule 403C applies in relation to party to proceeding

Rule 403C also applies, with any necessary modification, if –

(a) the applicant is a party to a proceeding and wishes to make a claim in the proceeding against a person who is not a party to the proceeding; and

(b) the applicant could properly have made the claim in the proceeding if the person had been a party.

403E. Discovery from prospective defendant

If –

(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 does not have sufficient information to enable a decision to be made as to whether or not to commence a proceeding in the Court to obtain that relief; and

(c) there is reasonable cause to believe that –

(i) that person has or is likely to have, or has had or is likely to have had, in that person's possession any document relating

to the question whether the applicant has the right to obtain the relief; and

(ii) inspection of the document by the applicant would assist in making the decision –

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

403F. Rule 403E applies in relation to party to proceeding

Rule 403E also applies, with any necessary modification, if –

(a) 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 relief against a person who is not a party; and

(b) the applicant could properly have claimed such relief in the proceeding if the person had been a party.

403FA. Discovery from non-party

(1) If it appears to the Court or a judge that a person who is not a party to a proceeding has or is likely to have, or has had or is likely to have had, in that person's possession any document that relates to any matter in question in the proceeding, the Court or judge may order that person to –

(a) make and serve on each party a list of the documents that are or have been in that person's possession that relate to any matter in question in the proceeding; and

(b) make and file an affidavit verifying the list and serve a copy of the affidavit on each party.

(2) An order under subrule (1) may be limited to certain documents or classes of documents or to certain of the matters in question in the proceeding.

(3) If an order is made under subrule (1), rules 384, 385, 388, 390, 391, 392, 393, 394, 395 and 398 apply, with any necessary modifications, as if the person against whom the order is made were a party to the proceeding.

(4) The Court or a judge may make an order under subrule (1) on condition that the applicant gives security for the costs and expenses of the person against whom the order is made.

(5) An order made under subrule (1) may be revoked or varied by a subsequent order of the Court or a judge at or before trial.

403G. Costs and expenses of compliance

(1) The Court or a judge may order the applicant to pay the amount of any reasonable loss or expense incurred by a person in complying with an order under this Division.

(2) If an order is made under subrule (1), the Court or a judge must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

403H. Costs orders in other proceedings

When an order is made under rule 403C or 403E, the Court or a judge may make an order that a party to other proceedings pay the costs of the applicant of and incidental to the application in respect of which that order was made.

Division 3 – Interrogatories

404. Interpretation of Division 3 of Part 13

In this Division,

party interrogating means a party to a proceeding issuing interrogatories under this Division.

405. Interrogatories

A party to a proceeding may deliver interrogatories in writing for the examination of an opposite party at any time before the filing of a certificate of readiness or joint letter of readiness, or the making of an order that the proceeding be set down for trial, whichever occurs first.

406. Matters for interrogatories

(1) A party may interrogate any opposite party to obtain –

(a) an admission of any fact which the party interrogating is required to prove on an issue against the opposite party; or

(b) an answer as to –

(i) any fact directly in issue between the parties; or

(ii) any fact, the existence or non-existence of which is relevant to the existence or non-existence of any fact directly in issue between the parties; or

(c) any fact, knowledge of which would inform the party interrogating of evidence of any fact directly in issue between the parties; or

(d) the name and address of any person who would be a necessary or proper party to the proceeding, if that information is required to make that person a party to the proceeding; or

(e) any other fact as to which discovery may have been obtained in a suit in equity before the commencement of the Act.

(2) . . . . . .

(3) An interrogatory which does not relate to any matter in question in the proceeding is irrelevant, even though it might be admissible on the oral cross-examination of a witness.

(4) This rule does not give a party the right to interrogate an opposite party with a view to finding out –

(a) a case for the party interrogating; or

(b) the name of any person intended to be called or who might be called by the opposite party as a witness and whose name is not a material fact in the proceeding; or

(c) the evidence of the opposite party; or

(d) the manner in which the opposite party intends to establish their case; or

(e) the line of facts, not being facts directly in issue, on which the opposite party intends to rely in support of their case; or

(f) the manner in which the opposite party intends to conduct the case at the trial.

(5) The fact that a party who is otherwise bound to answer an interrogatory is not able to do so without disclosing the evidence or name of a person who might be called as a witness does not excuse the party from answering the interrogatory.

407. . . . . .

408. Form of interrogatories

Interrogatories are to –

(a) be divided into paragraphs numbered consecutively; and

(b) if there is more than one opposite party, have a note at the foot stating which of the interrogatories each opposite party is required to answer.

408A. When leave is required

(1) A party interrogated may give notice to the party interrogating that some or all of the interrogatories will not be answered unless administered with the leave of the Court or a judge.

(2) A notice under subrule (1) is to –

(a) be in writing; and

(b) be given within 14 days after the interrogatories are delivered; and

(c) identify, by its distinctive number, each interrogatory that will not be answered unless administered with the leave of the Court or a judge.

(3) A party interrogated that gives notice under subrule (1) must, within 14 days after the

interrogatories are delivered, give the party interrogating a written answer or objection to each of the interrogatories that is not identified under subrule (2)(c).

(4) A party interrogated that does not give notice under subrule (1) must, within 14 days after the interrogatories are delivered, give the party interrogating a written answer or objection to each of the interrogatories.

(5) A party interrogating that is given notice under subrule (1) in respect of an interrogatory may apply to the Court or a judge for leave to administer the interrogatory.

(6) The Court or a judge may grant leave to a party to administer an interrogatory only if satisfied that –

(a) the interrogatory is necessary; or

(b) special reasons justify its administration.

(7) A party interrogated pursuant to leave granted under subrule (6) must, within 14 days after leave is granted, give the party interrogating a written answer or objection to each of the interrogatories.

(8) A party interrogated that objects under subrule (3), (4) or (7) to answering an interrogatory is not entitled to object to answering the interrogatory on the ground that the interrogatory is unnecessary.

(9) For the removal of doubt, if a party gives notice under subrule (1) in respect of an interrogatory, no obligation to answer the interrogatory arises other than pursuant to a grant of leave.

409. Answers to interrogatories and affidavit verifying

(1) A person required to answer interrogatories is to answer each interrogatory by a document identifying each separate interrogatory by its distinctive number followed by –

(a) the answer to that interrogatory; or

(b) the objection to answering it with a concise statement of the reasons for the objection.

(2) A person required to answer interrogatories is to –

(a) verify the answers and objections to interrogatories by an affidavit exhibiting a copy of the interrogatories and the answers and objections; and

(b) file the affidavit, and serve a copy of it on the party interrogating, within 14 days after the interrogatories are delivered.

(3 - 4) . . . . . .

(5) In an action against or by the Sheriff or a similar officer in respect of any matter connected with the execution of that person's office, the affidavit verifying answers to interrogatories is to be made by the officer actually concerned.

410. Application for order by person interrogating

(1) A party interrogating may apply to the Court or a judge for an order that the person interrogated –

(a) answer an interrogatory which the person interrogated has objected to answering in the affidavit; or

(b) answer further any other interrogatory that the person interrogated has not objected to answering.

(2) An application is to be made within 7 days after the day on which a copy of the affidavit required by rule 409(2) is served.

(3) On the hearing of an application, the Court or a judge may –

(a) . . . . . .

(b) order to be answered or answered further, by affidavit or oral examination, any interrogatory the Court or judge directs.

411. Failure to comply with order concerning interrogatories

(1) A party who fails to comply with an order that interrogatories be answered is liable to attachment.

(2) Service on a party's practitioner of an order that interrogatories be answered is sufficient service to found an application for attachment if the party disobeys the order, but the party may

show, in answer to the application, that he or she did not have notice or knowledge of the order.

(3) A practitioner is liable to attachment if –

(a) he or she is served with an order that interrogatories be answered; and

(b) without reasonable cause he or she fails to give notice of the order to the client.

412. Interrogatories to corporation

If a party to a proceeding is a corporation or a body of persons capable of suing or of being sued, any opposite party may deliver interrogatories to be answered by any officer of the corporation or a member of the body.

413. Use of answers to interrogatories

(1) At the trial of any proceeding a party may use in evidence any answer or any part of an answer to an interrogatory without putting in any other answer or the whole of the answer.

(2) The Court or a judge may consider all the answers and direct any of them to be put in evidence if of the view that they are so connected with those answers put in that the answers put in ought not to be used without them.

PART 14 – PRE-TRIAL DIRECTIONS

Division 1 – Case management

414. Application of Division 1 of Part 14

This Division applies to –

(a) a proceeding which –

(i) is of a class specified by a practice direction authorised by the Chief Justice as being a class of proceedings to which this Division is to apply; and

(ii) was commenced after the date on which the practice direction took effect; and

(b) an action in which a judge has granted leave to defend under rule 359; and

(c) an action in which a judge has given judgment under rule 358 and has ordered that execution of the judgment be stayed pending the trial of a counterclaim or the action; and

(d) an action in which a judge has declined to order judgment under Division 3 or 4 of Part 11; and

(e) any other proceeding in which a party requests in writing to the Principal Registrar that this Division apply to it, or

in which a judge, of his or her own motion, has so directed.

414A. Purpose of case management

The overarching purpose of case management is to ensure that proceedings are conducted and resolved justly and efficiently.

415. Directions hearing

(1) Unless a judge has already commenced a directions hearing, the Principal Registrar is to give notice to the parties of a directions hearing before a judge in the following cases:

(a) an action within rule 414(a), on the filing of a defence;

(b) an originating application within rule 414(a), on the first filing of an affidavit, other than an affidavit of service;

(c) a proceeding within rule 414(e), on the making of the request to the Principal Registrar.

(2) The purpose of a directions hearing is to eliminate any lapse of time, from the commencement of a proceeding to its final determination, that is not reasonably required for –

(a) the fair and just determination of the outstanding issues between the parties; and

(b) the preparation of the case for trial.

(3) A judge may make any order, as part of a directions hearing, to ensure that the proceeding is conducted and resolved justly and efficiently.

(4) Without affecting the generality of subrule (3), the judge may, when making an order under that subrule, take into account any matters relevant to the proceeding, including the following matters:

(a) the most suitable manner in which to deal with the proceeding, in a way that is proportionate to –

(i) the amount of money involved; and

(ii) the importance of the proceeding; and

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(b) the most efficient manner in which to deal with the proceeding which will not prevent the fair and just resolution of the dispute;

(c) the allocation of court resources taking into account other demands imposed on those resources by other proceedings.

(4A) Without affecting the generality of subrule (3), an order made under that subrule may –

(a) be inconsistent with, or dispense with or vary, any provisions of the rules in their application to the proceeding; and

(b) require the filing and service of statements of contentions including the material facts, the relief claimed, the grounds for that relief and responses thereto; and

(c) limit the bringing of interlocutory applications to those certified by a practitioner, or determined by a judge, as having a reasoned likelihood that the determination of the application will be productive in the just and efficient overall disposition of the proceeding; and

(d) require a practitioner to certify whether or not he or she has issued detailed written advice to his or her client –

(i) reciting the facts as known at that point in time; and

(ii) stating concisely the legal principles that apply; and

(iii) identifying issues of fact that are in dispute or are likely to be in dispute; and

(iv) identifying issues of law which are, or may be, controversial as to their application to the facts; and

(v) setting out the likely timetable for the conduct of the litigation; and

(vi) stating the likely cost of the litigation; and

(vii) providing a reasoned opinion as to the risks associated with the proceeding; and

(viii) mentioning the non-litigious avenues for dispute resolution which are reasonably available to the client; and

(e) refer the proceeding, or a matter arising in the proceeding, to mediation; and

(f) impose, or dispense with, limitations on the procedures for interrogation and the discovery of documents; and

(g) require the filing and service of witness lists and statements; and

(h) impose a timetable which ensures that the proceeding will be ready to be heard as soon as possible; and

(i) require a practitioner to forewarn his or her opposing parties of any likely non-compliance with rules or orders; and

(j) appoint a trial date; and

(k) limit the number of expert witnesses at a trial; and

(l) require the trial of any issue of fact or law before any other issue of fact or law is dealt with.

(5) A judge may –

(a) direct that a directions hearing be held by telephone, video link or other means; and

(b) give directions as to the manner in which such a hearing is to be conducted and the persons who are to attend it.

(6) Subject to subrule (7), when a directions hearing has commenced every interlocutory application is to be made under it by letter to the Principal Registrar and the other party stating the order or direction sought.

(7) Subrule (6) does not apply to the following types of application:

(a) for an injunction;

(b) for the appointment of a receiver;

(c) for judgment in default of defence under Division 2 of Part 11;

(d) for judgment under Division 3 or 4 of Part 11;

(e) to set aside any proceeding;

(f) to stay proceedings absolutely;

(g) to dismiss or discontinue an action;

(h) to transfer an action to an inferior court of civil jurisdiction;

(i) for the issue of a writ of attachment;

(j) for the committal of any person.

(8) At a directions hearing –

(a) subject to paragraph (d), a party and the practitioner or counsel for a party are to give any information and produce any documents the judge reasonably directs; and

(b) the judge may authorise information to be given or a document to be produced by a party under paragraph (a) without it being disclosed to another party; and

(c) if a direction under paragraph (a) is not complied with, the judge may cause the facts to be recorded in an order and those facts may be relied on at trial for the making of a special order as to costs; and

(d) any thing that is privileged from disclosure is not required to be given or produced otherwise than with the consent of the person having the benefit of that privilege.

(9) An affidavit is not to be used on a directions hearing, except by order of the Court or a judge.

416. Setting down for trial

(1) If a judge conducting a directions hearing is satisfied that the proceeding is ready to proceed to trial, the judge may make an order which –

(a) directs that the proceeding be set down for trial; and

(b) recites –

(i) the action taken at the directions hearing, whether by that judge or another judge, relevant to the trial; and

(ii) any amendment allowed to the pleadings; and

(iii) any admission or agreement made or refused by the parties; and

(c) controls the subsequent course of the proceeding unless the trial judge otherwise orders; and

(d) is to be taken out and filed by the registrar and delivered to each party.

(2) If a judge orders that a proceeding be listed for trial, the registrar is to list that proceeding for trial at a convenient time.

417. Costs of unnecessary applications

If a party files an interlocutory application seeking an order required to be made at a directions hearing, unless the Court or a judge for special reasons otherwise orders –

(a) that party may not recover any costs of the application; and

(b) the practitioner representing that party may not recover any costs of the application from that party; and

(c) that party or, if represented by a practitioner, that practitioner, must be ordered to pay the costs of any other party to the application.

Division 2 – Directions

418. Application of Division 2 of Part 14

This Division does not apply to a case to which Division 1 of this Part applies.

419. Application for directions

A party to a proceeding may make a general application for directions –

(a) after the appearance of any defendant or respondent sought to be affected by the application, if the proceeding is one in which the defendant or respondent is required to appear; or

(b) at any time in any other proceeding.

420. Circumstances of application

(1) If, at any time before the trial of a proceeding, a party makes an application to the Court or a judge for any order or direction, other than an application referred to in subrule (2) –

(a) the party is to make a general application for directions; or

(b) if the order or direction is sought by consent and an order is not required to be drawn up on the order or direction, the parties are to apply by a memorandum to the registrar who may make the order or direction sought.

(2) Subrule (1) does not apply to any of the following applications:

(a) for an injunction;

(b) for the appointment of a receiver;

(c) for judgment in default of defence under Division 2 of Part 11;

(d) for judgment under Division 3 or 4 of Part 11;

(e) to set aside any proceeding;

(f) to stay proceedings absolutely;

(g) to dismiss or discontinue the action;

(h) to transfer an action to an inferior court of civil jurisdiction;

(i) for the issue of a writ of attachment;

(j) for the committal of any person.

(3) A respondent to a general application for directions may apply for any relevant order or direction as to any interlocutory matter in the proceeding.

(4) In any case in which a general application for directions is made, each application before judgment, other than an application referred to in subrule (2), is to be made under that application.

(5) Any application for an order or direction made under the general application for directions subsequent to the first hearing of that general application is to be set down for further hearing on 2 clear days' notice given by letter to the other party stating the order or direction required.

421. Matters to be specified

A general application for directions is to –

(a) specify the matters as to which any order or direction is sought; and

(b) be served on each party who may be affected by the order or direction.

422. Affidavit not to be used

An affidavit is not to be used on the hearing of a general application for directions, except by order of the Court or a judge.

423. Adjournment

The directions hearing may be adjourned from time to time until the conclusion of the proceeding.

424. Costs of unnecessary application

(1) Unless the Court or a judge otherwise orders, the costs of an application made otherwise than by or under a general application for directions are not to be allowed to a party if the party could have made the application by or under a general application.

(2) An application by a party which might have been made at the first hearing of the general application for directions, if granted on any subsequent application, is to be granted at the costs of the party applying, unless the Court or a judge otherwise orders.

425. Order on hearing of application

(1) On the hearing of a general application for directions, the Court or a judge –

(a) is to make any order as may be appropriate in relation to the steps to be

taken in the proceeding and the costs of those steps; and

(b) may exercise any of the powers conferred by rule 550.

(2) On the hearing of a general application for directions in an action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage in which an application for a stay has not been made, the judge is to consider whether the power to stay the action under section 7A(2) of the *Married Women's Property Act 1935* ought to be exercised, whether or not that matter is raised by a party.

426. Variation of orders

An order made on a general application for directions, including an order made on appeal, may be revoked or varied by a subsequent order made at or before the trial.

PART 15 – AMENDMENT

427. Amendment of endorsement or pleadings

(1) At any time before judgment, the Court or a judge may grant leave to a party to amend any process or pleading in such a manner and on such terms as may be just.

(2) Subject to subrule (3), the pleadings may be amended as necessary for the purpose of determining the real questions in controversy between the parties.

(2A) The Court or judge, despite the expiry of any relevant limitation period after the day on which proceedings commenced, may grant leave under subrule (1) if it is satisfied that any other party to the proceedings would not, as a result of granting leave, be prejudiced in the conduct of his or her claim or defence in a way that could not be fairly met by an adjournment, an award of costs or otherwise.

(3) If, at the trial of a proceeding to which Division 1 of Part 14 applies, an application is made for leave to amend a pleading, the Court or judge, if the amendment would cause the postponement or adjournment of the trial, may refuse the application in order to protect the integrity of the case management system as it is implemented by these rules and to implement the requirement that trials proceed at the appointed time, notwithstanding that any injustice to another party may have been avoided by an order for costs or some other order.

(4) A party obtaining leave to amend a pleading, other than in the course of a trial which proceeds on the amended pleading, must amend the pleading within –

(a) any period fixed by the order; or

(b) if a period is not fixed, within 14 days of the order.

(5) If a party does not amend a pleading within the period required by subrule (4), the order granting leave to amend ceases to have effect on the expiration of that period, unless the Court or a judge extends the period.

428. Amendment of statement of claim without leave

A plaintiff may amend a statement of claim without leave once –

(a) if a defence has been delivered, within 10 days after the delivery of the defence or the last of the defences but before filing and delivering a reply; or

(b) if a defence has not been delivered, within 28 days after the filing of the last notice of appearance by a defendant.

429. Amendment of set-off or counterclaim without leave

A defendant who pleads a set-off or counterclaim may amend it once –

(a) if a reply has been delivered, within 10 days after the delivery of the reply or the last of the replies but before filing and delivering a rejoinder; or

(b) if a reply has not been delivered, within 28 days after the delivery of the defence pleading the set-off or counterclaim.

430. Amendment by consent

At any time up to the filing of the certificate of readiness, a party to an action may amend a pleading if all other parties consent.

431. Costs

The costs of, and occasioned by, any amendment made under this Division are to be borne by the party making the amendment, unless the Court or a judge otherwise orders.

432. Amended pleading may be disallowed

On the application of any party made within 8 days after the delivery of an amended pleading, the Court or a judge may –

(a) disallow the amendment or any part of it; or

(b) allow it subject to any terms as to costs or otherwise as may be just.

433. Mode of amendment

A party amending a process or pleading is to –

(a) deliver to the opposite party the process or pleading as amended and marked with the date of any order under which it is amended; and

(b) file a copy of the amended and dated pleading.

434. Amended pleading to meet amendment

(1) Subject to any order made under rule 427(1), if a party amends a pleading under rule 427(4), rule 428, 429 or rule 430 the opposite party is to plead to the amended pleading or amend its own pleading to meet the amended pleading within the later of –

(a) the period the opposite party then has to plead; or

(b) 8 days after the delivery of the amended pleading.

(2) If a party pleads before the delivery of an amendment and does not plead or amend as required by subrule (1), that party is taken to rely on the original pleading in answer to the amendment.

435. Clerical mistakes in judgments

Any clerical mistake or omission in a judgment or order may at any time be corrected by –

(a) the Court or a judge, on its or his or her own motion; or

(b) on application or consent memorandum to the registrar.

PART 16 – DETENTION, PRESERVATION AND INSPECTION OF PROPERTY

436. Preservation or interim custody of property

(1) If by any contract a prima facie case of liability is established and a right to be relieved wholly or partially from the liability is alleged as a matter of defence, the Court or a judge may make an order –

(a) for the preservation or interim custody of the subject matter of the litigation; or

(b) that the amount in dispute be brought into Court or otherwise secured.

(2) An application for an order under subrule (1) may be made by the plaintiff or applicant at any time after the right appears from the pleadings or by affidavit or otherwise.

437. Detention, preservation or inspection of property

(1) On the application of any party to a proceeding, the Court or a judge may make any order as may be just for the detention, preservation or inspection of any property whether or not in the possession, custody or power of a party that is the subject of the proceedings or as to which any question may arise in the proceedings.

(2) An order under subrule (1) may authorise a person to –

(a) enter on or into any land or building; and

(b) take any sample or make any observation or experiment that may be necessary or expedient for the purpose of obtaining full information or evidence.

(3) The Court or a judge may make an order under this rule on condition that the party applying for the order gives security for the costs and expenses of any person who is likely to be affected by the order.

438. Order for sale of perishable goods

(1) On the application of a party to a proceeding, the Court or a judge may make an order for the sale of any goods, including any shares in any company, that are –

(a) the subject of the proceeding, or as to which any question may arise in the proceeding; and

(b) of a perishable nature and likely to be injured by keeping them or which, for any other reason, it is desirable be sold at once.

(2) An order may provide by whom the goods are to be sold, the manner of sale and the terms on which they are to be sold.

439. Time of application

(1) An application under rule 437 or 438 may be made to the Court or a judge –

(a) if made by the plaintiff, at any time after the issue of the writ or notice to the defendant and any other person who is likely to be affected by the order; or

(b) if made by any other party, at any time after appearance by the party making the application.

(2) A party making an application to which subrule (1)(b) applies is to give the plaintiff and any other person likely to be affected by the order, notice of the application before making it.

440. Order for recovery of specific property

If an action is brought or a counterclaim is raised to recover specific property other than land from a party who does not dispute the title of the party seeking recovery and the first-mentioned party claims to retain the property by virtue of a lien or otherwise as security for any sum of money at any time after that claim appears, the Court or a judge may order –

(a) that the party claiming to recover the property pay into Court the amount of money in respect of which the lien or security is claimed and any further sum for interest and costs; and

(b) that on payment into Court being made, the property claimed be given up to the party claiming it.

441. Allowance of income of property

If any property is the subject of a proceeding and the property is likely to be more than sufficient to answer all the claims which ought to be provided for in the proceeding, the Court or a judge may allow to a party interested the whole or a part of the annual income of some or all of that property up to any time the Court or a judge directs.

442. Inspection by judge and jury

(1) A judge who may hear or try any proceeding, with or without a jury, or an appeal may inspect any property or thing concerning which any question may arise in the proceeding or appeal.

(2) Subrule (1) applies to inspection by a jury and the Court or a judge may make any order necessary to procure the attendance of the jury at the appropriate time and place in any manner the Court or judge thinks fit.

PART 17 – INJUNCTIONS

443. Injunction against wrongful act or breach of contract

(1) In any proceeding in which an injunction is claimed, the Court or a judge, on the application of a party made before or after judgment, may grant an injunction –

(a) to restrain any other party from repeating or continuing any wrongful act or breach of contract complained of; or

(b) to restrain any other party from committing any injury or breach of a similar contract relating to the same property or right; or

(c) to compel any other party to do any act.

(2) An injunction may be granted with or without conditions.

444. Application for order

An application for an order for an injunction may be made to the Court or a judge by any party *ex parte* or on notice.

445. Damages for injunction wrongly granted

(1) An interlocutory order for an injunction is to contain an undertaking by the party at whose instance it is granted to pay to the opposite party

any damages that the opposite party may sustain because of the injunction and that the Court or a judge thinks ought to be paid by the applicant.

(2) An application for an order for payment of damages is to be made to the Court.

(3) Damages may be ordered to be assessed in any manner in which damages may be assessed in an action.

PART 18 – RECEIVERS

446. Application

This Division applies to any receiver other than one appointed in relation to the property of a corporation.

447. Receiver to file consent

Unless the Court or a judge otherwise orders, a person is not to be appointed receiver unless his or her written consent to the appointment has been filed.

448. Security by and allowance to receivers

(1) Unless otherwise ordered, on the making of an order that a receiver be appointed, the person so appointed –

(a) before acting, is to give security to account and to pay the security as the Court or judge directs; and

(b) is entitled to a proper salary or allowance.

(2) Subject to rule 449 and any order, the security is to be –

(a) in a form authorised by Division 2 of Part 34; or

(b) by recognisance, in accordance with the prescribed form; or

(c) by bond, in accordance with the prescribed form.

449. Security does not exceed $10 000

(1) If the amount for which a receiver is to give security does not exceed $10 000, it may be given by an undertaking.

(2) An undertaking is to be –

(a) in accordance with the prescribed form; and

(b) executed by the receiver and each surety; and

(c) filed in the registry and kept as of record until it has been vacated.

450. Adjournment into chambers

If any order appointing a person as receiver is made in Court, the Court may –

(a) adjourn the proceedings into chambers so that the person may give any security required; and

(b) direct that, on the security being given, the order be drawn up.

451. Leaving and passing accounts and paying balances

If a receiver is appointed with a direction to pass accounts, the Court or a judge is to make an

order fixing the days on which the receiver is to –

(a) leave the accounts in the registry and pass the accounts; and

(b) pay the balance appearing due on any account left or any part of an account certified as proper to be paid.

452. Account on discharge of receiver

If a receiver is discharged before final accounts have been passed, the receiver is to leave those accounts in the registry –

(a) within any period directed by the order of discharge; or

(b) if there is no direction, within 21 days after the making of the order.

453. Death of receiver

If a receiver dies, a judge, on the application of a party to the proceeding, may order that the personal representative of the receiver leave in the registry, within a period specified in the order, all accounts up to the date of death, other than in respect of any period for which previous accounts have been produced.

454. Form of receivers' accounts

Any account to be left in the registry is to –

(a) satisfy the requirements concerning the accounts of receivers to whom the provisions of the Corporations Law of Tasmania apply; and

(b) be verified by an affidavit in accordance with the prescribed form.

455. Leaving account at registry

(1) On a receiver, or his or her personal representative, leaving accounts in the registry, the plaintiff or other person having the conduct of the proceeding is to obtain an appointment for passing the accounts.

(2) The result of a receiver's account or of an account of the personal representative of a deceased receiver is to be certified by a judge.

456. Failure to leave and pass accounts and pay balances

If a receiver fails to leave and pass accounts and pay any balances required by an order made under rule 457 and subsequent accounts are produced to be examined and passed, the judge before whom the receiver is to account may –

(a) disallow any salary claimed by the receiver; and

(b) charge the receiver interest at a rate not exceeding 14% a year on any balance unpaid during the period the balance remained in the hands of the receiver.

457. Consequences of default by receiver

(1) If a receiver or his or her personal representative fails to comply with any provision of this Part concerning accounts or any order made under this Part concerning accounts, the person in default and any party to the proceeding in which the appointment was made may be required to attend before a judge to show cause for the failure.

(2) On the attendance of a person before a judge, the judge may give any directions including the discharge of the receiver and appointment of another and payment of costs.

PART 19 – EVIDENCE

Division 1 – Evidence generally

458. Evidence of witnesses

Except as otherwise provided by any Act or these rules and subject to any order to the contrary or any agreement between the parties, evidence is to be given –

(a) orally, on the trial of an action; or

(b) orally or by affidavit on an assessment of damages or value consequent on a judgment by default; or

(c) by affidavit on the hearing of any application to the Court or to a judge in chambers.

459. Evidence by affidavit on the trial of an action

(1) At or before the trial of an action, the Court or a judge may order that evidence be given by affidavit.

(2) An order may be on any terms as may be appropriate.

(3) Subject to the terms of the order, any subsequent order and the giving of any notice under rule 463, a deponent is not subject to cross-examination and need not attend the trial for that purpose.

(4) Subject to the terms of the order, and any subsequent order –

(a) the party having the conduct of the proceedings is to file any affidavit on which that party proposes to rely and deliver a copy of it to the opposite party within 14 days; and

(b) the opposite party is to file any affidavit on which that party proposes to rely and deliver a copy of it to the other party within 14 days after the delivery of any affidavits of the party having the conduct of the proceedings; and

(c) the party who first filed an affidavit is to file any affidavit in reply on which that party proposes to rely and deliver a copy of it to the opposite party within 7 days of the delivery of the affidavits under paragraph (b); and

(d) any notice under rule 463 requiring the production of a deponent is to be served within 14 days after the expiration of the time allowed for filing affidavits in reply.

(5) An affidavit filed in reply is to be confined strictly to matters in reply.

460. Limitation of medical and expert evidence

The Court or a judge, at or before the trial of an action, may order or direct that the number of medical or expert witnesses who may be called

at the trial be limited as specified by the order or direction.

461. Limitation of plans in evidence

(1) Any plan, model, photograph, film, tape, disk, soundtrack or other device in which sounds, data or visual images are embodied is not receivable in evidence at the trial of an action unless –

(a) the parties agree to its admission into evidence without further proof after having been given an opportunity to inspect it –

(i) before the trial, at a time fixed by a judge; or

(ii) if no time is fixed by a judge, within a reasonable period before the commencement of the trial; or

(b) the Court or judge, at or before the trial, otherwise orders.

(2) A party may make an application for an order in the absence of any other party if the application is made before the trial.

(3) The Court or a judge is to determine any application for an order, whether made at or before the trial, on any materials and in any manner the Court or judge thinks fit.

(4) The Court or a judge may give directions on any application for an order, including directions that

notice of the application be given to another party.

(5) In this rule,

inspect includes the following, with or without the aid of equipment:

(a) to view data or visual images embodied in any device;

(b) to listen to sounds embodied in any device;

(c) to reproduce sounds, data or visual images embodied in any device.

462. Variation of orders

For sufficient reason, any order or direction under rule 459, 460 or 461, including an order made on appeal, may be varied or revoked by a subsequent order or direction at or before the trial which the defendant intends to adduce evidence.

463. Cross-examination of deponent

(1) A party seeking to cross-examine a deponent on an affidavit filed on behalf of an opposite party may serve on that opposite party a notice requiring the production of the deponent for cross-examination at the hearing of the proceeding.

(2) The affidavit is not to be used as evidence unless –

(a) the deponent is produced according to the notice; or

(b) the Court or a judge makes an order under subrule (4) exempting the deponent from attending for cross-examination; or

(c) the Court or a judge grants special leave for its use.

(3) A party served with a notice under subrule (1) may apply to the Court or a judge for an order exempting the deponent named in the notice from attending for cross-examination.

(4) On an application under subrule (3), the Court or a judge may make an order exempting a deponent from attending for cross-examination if the deponent's attendance is not necessary in the interests of justice having regard to –

(a) the circumstances of the case; and

(b) the subject matter of the proceeding; and

(c) the cost of procuring the attendance of the deponent.

(5) Unless the Court or a judge makes an order under subrule (4), the party on whom a notice under subrule (1) is served is entitled to compel the attendance of the deponent for cross-examination in the same way as that party may

compel the attendance of a witness to be examined.

(6) A party who produces a deponent for cross-examination is not entitled to demand the expenses of that attendance in the first instance from the party requiring the attendance.

464. Depositions not to be given in evidence

Except as otherwise provided by these rules or by order of the Court or a judge, a deposition is not to be given in evidence at the hearing or trial of a proceeding without the consent of the party against whom the deposition is offered, unless the deponent –

(a) is dead; or

(b) is beyond the jurisdiction of the Court; or

(c) is unable because of age or sickness or other infirmity to attend the hearing or trial.

465. Use of deposition on trial

Subject to the rules of evidence, a deposition certified under the hand of the person who took the examination or executed the commission is admissible without proof of the signature to the certificate.

466. Notice to use affidavit or deposition at trial

An affidavit or deposition filed or made before issue is joined in a proceeding is not to be received at the hearing or trial, unless –

(a) the special leave of the Court or a judge is obtained; or

(b) not later than 14 days after issue is joined, the party intending to use the affidavit or deposition gives notice to the opposite party of the intention to have it received.

467. Office copies admissible in evidence

A copy of any writ, record, pleading or document filed in the Court is admissible in evidence to the same extent as the original is admissible.

468. Verification of new trustee's consent to act

A written consent to act signed by a new trustee verified by the signature of his or her practitioner is sufficient evidence of the new trustee's consent to act.

469. . . . . .

470. Reading evidence

(1) Evidence taken in any proceeding may be read –

(a) on an *ex parte* application, by leave of the Court or a judge; or

(b) in any other case, on the party seeking to use the evidence giving 2 clear days' notice to each other party of the intention to read the evidence.

(2) Subrule (1) does not affect the right of a party to object to the admissibility of evidence taken in any proceeding.

471. Evidence in subsequent proceedings

Evidence taken at the hearing or trial of any proceeding may be used in any subsequent hearing or trial in the same proceeding.

472. Order to attend for examination or produce document

(1) In any proceeding, the Court or a judge may make an order for –

(a) a person to attend for examination; or

(b) a corporation to produce any document or thing specified in the order; or

(c) a person to attend and produce any document or thing specified in the order.

(2) An order under subrule (1) may be made to attend before, or produce to, any of the following:

(a) the Court;

(b) a judge;

(c) any officer of the Court;

(d) a judge of an inferior court;

(e) an examiner;

(f) a special referee;

(g) an arbitrator;

(h) any other person authorised to take evidence.

(3) An order under this rule does not require a person to produce any document which that person could properly object to produce on the ground of privilege.

(4) A person required to attend under an order under this rule is entitled to the same conduct money and payment for expenses and loss of time as on his or her attendance at a trial in Court.

(5) Any person who wilfully disobeys an order under this rule is guilty of contempt of court and may be dealt with accordingly.

473. Failure to make an affidavit

The Court or a judge may make an appropriate order under rule 472 on the application of a party to a proceeding who –

(a) requires the affidavit of any person; and

(b) has been unable to procure the making of an affidavit by that person.

474. Documents and exhibits

(1) Any document, exhibit or other thing admitted in evidence in a proceeding before the Court or a judge remains in the custody of the registrar until –

(a) the expiration of the time allowed for appeal; or

(b) if there is an appeal, until its determination.

(2) A party to a proceeding may take a copy of anything held in the custody of the registrar.

(3) The Court or a judge may allow anything held in the custody of the registrar to be released during the period referred to in subrule (1) on any conditions, and on any security for its production if it is required during that period, as the Court or judge thinks necessary.

(4) A Full Court may make any appropriate order with respect to anything held in the custody of the registrar and connected with an appeal before the Full Court.

Division 2 – Evidence by deposition

475. Interpretation of Division 2 of Part 19

In this Division –

examination means the taking of evidence on oath under –

(a) an order made under rule 476; or

(b) a commission or letter of request issued or made under such an order;

examiner means a person who takes evidence or is authorised to take evidence on an examination.

476. Order for depositions

(1) In any proceeding, the Court or a judge may make an order –

(a) for the examination of any person on oath at any place before –

(i) the Court or judge; or

(ii) any officer of the Court; or

(iii) a judge of an inferior court of civil jurisdiction; or

(iv) any other person; or

(b) that a commission be issued to any person, either in Tasmania or elsewhere, authorising that person to take the evidence on oath of any witness or person; or

(c) that a letter of request to examine witnesses be issued instead of a commission; or

(d) empowering a party to give in evidence any deposition taken, either unconditionally or subject to terms.

(2) An order is not to be made for the examination of a party to any proceeding in any case in which, because of section 194D of the *Evidence Act 2001*, an order for a commission to take the evidence of the party would not be made.

(3) An order for a commission to examine a witness and the commission are to be in accordance with the prescribed forms.

(4) An order for a letter of request and the letter of request are to be in accordance with the prescribed forms.

477. Examination

(1) A party obtaining an order under rule 476 is to provide the examiner with a copy of any document necessary to inform the examiner of the question in the proceedings to which the examination is to relate.

(2) The party obtaining an order under rule 476 is to provide the examiner with the order or a sealed copy of the order.

(3) On receiving the order or sealed copy, the examiner is to –

(a) appoint a date, time and place for the examination not less than 7 days, or any other time specified in the order, before the time of the appointment; and

(b) give notice of the place and time to the party obtaining the order.

(4) On receiving notice of the appointment, the party obtaining the order, within 24 hours or any shorter time specified in the order, is to give notice of the appointment to all parties to the proceeding.

478. Time and place of examination

(1) Subject to the terms of any order, an examiner, in determining the time and place of an examination, is to have regard to the convenience of any person to be examined and the circumstances of the case.

(2) An examiner is to proceed with the examination at the place and time appointed and, subject to any adjournment the examiner thinks necessary or just, continue the examination from day to day.

479. Method of examination

(1) An examination is to take place in the presence of the parties, their counsel, practitioners or agents.

(2) Any witness is to be subject to cross-examination and re-examination.

480. Oaths

Any officer of the Court, judge of an inferior court of civil jurisdiction, commissioner or other person directed to take the examination of any person may administer any necessary oaths to the person.

481. Attendance of witnesses

(1) Any party in any proceeding, by subpoena to give evidence or subpoena to produce documents, may require the attendance of any witness before the examiner in the same manner as the witness would be required to attend and be examined at a trial.

(2) A person who makes an affidavit intended to be used in the proceeding is bound on being served with such a subpoena to attend before the examiner for cross-examination.

482. Examination of additional witnesses

(1) An examiner may take the examination of any person in addition to those named or provided for in the order with the consent in writing of the parties.

(2) The examiner is to annex the consent to the original depositions.

483. Objection by witness to questions

(1) If a witness objects to any question put to the witness before an examiner, the examiner is to note the question and the objection of the witness and send them to the registry for filing.

(2) The Court or a judge is to decide the validity of the objection.

(3) An examiner does not have power to decide on the materiality or relevance of any question.

(4) If the examiner is a judge who is, or is to be, the trial judge in the proceeding, the order under rule 476 may –

(a) provide that this rule does not apply to the examination; and

(b) make other provision for the determination of any objection to a question put or as to the admissibility or relevance of any question.

484. Recording and signature of depositions

(1) A deposition before an examiner is to be taken down in writing by or in the presence of the examiner so as to represent as nearly as possible the statement of the witness.

(2) When completed, the statement is to be read over to the witness and signed by the witness in the presence of any party attending.

(3) If the witness refuses to sign the deposition, the examiner is to sign it.

(4) The examiner may –

(a) put down any particular question or answer at length, if there appears to be a special reason for doing so; and

(b) put any question to the witness as to –

(i) the meaning of any answer; or

(ii) any matter arising in the course of the examination.

485. Depositions to be transmitted to registry

(1) At the conclusion of the examination of any witness before an examiner, the examiner is to send the original deposition, with the examiner's signature, to the registry for filing.

(2) An examiner is not required to send any deposition to the registry until all fees and expenses due to the examiner in respect of that deposition are paid.

(3) A party may obtain a copy of the whole, or any part, of the deposition on payment of the prescribed fee.

486. Endorsement of depositions

On the completion of an examination, the examiner is to endorse and sign a note on the original depositions certifying –

(a) the number of hours or days spent exclusively on the examination; and

(b) the times at which the examination began and ended; and

(c) any fees received in respect of the examination.

487. Inability of examiner to take examination

If an examiner is unable or declines to take an examination, the Court ora judge is to appoint another examiner.

488. Examiner's fees and expenses

(1) On the application of an examiner, the Court or a judge may order the party who obtained an order under rule 476 to pay to the examiner any fees and expenses payable in respect of the examination.

(2) An order under subrule (1) is to be without prejudice to any question on the taxation of costs as to the party by whom the costs of the examination are to be borne.

(3) An examiner, other than an officer of the Court or a judge of an inferior court of civil

jurisdiction, is entitled to be paid by the party who obtained an order under rule 476 –

(a) any fees at any times specified in the order appointing the examiner or by a subsequent order; and

(b) all reasonable expenses, including any charges for the room, other than the examiner's office or chambers, in which the examination is conducted.

489. Deposits

(1) If required by the examiner, the party who obtained an order under rule 476 for the appointment of an examiner is to deposit with the examiner a reasonable sum in respect of the fees and expenses for the day before the examiner proceeds with the examination or any adjournment of it.

(2) Any balance of a deposit remaining after the discharge of the relevant fees and expenses is to be repaid by the examiner.

490. Special report by examiner

(1) An examiner may make a special report to the Court in relation to an examination and the conduct or absence of any witness or other person involved in the examination.

(2) The Court or a judge may direct any proceedings to be taken and make any order on the special report as may be just.

491. Refusal of person to attend or to be sworn

(1) If a person summoned by subpoena to attend for examination before an examiner fails or refuses to attend, refuses to be sworn or refuses to answer any lawful question, a certificate of the failure or refusal, signed by the examiner, is to be filed in the registry.

(2) On the filing of a certificate, the Court or a judge, on the application of the party requiring the person to attend, may make an order directing the person to attend, to be sworn or to answer any question.

(3) An application under subrule (2) may be made *ex parte* or on notice.

492. Costs incurred by refusal or objection

In any case under rule 483 or 491, the Court or a judge may order the witness to pay any costs incurred by the objection, failure or refusal.

493. Action to perpetuate testimony

(1) Any person who, under the circumstances the person alleges exist, would become entitled on the happening of any future event to any honour, title, office or an estate or interest in any property, the right or claim to which cannot be brought to trial by that person before the happening of that event, may commence an action to perpetuate any testimony which may be material for establishing the right or claim.

(2) The Crown may be a defendant in an action to perpetuate testimony in relation to any matter in which the Crown may have any estate or interest.

(3) In any proceeding in which a deposition taken in any action in which the Crown was made a defendant may be offered in evidence, the deposition is admissible regardless of any objection on the ground that the Crown was not a party to the action in which depositions were taken.

(4) A witness is not to be examined to perpetuate testimony unless an action has been commenced for that purpose.

(5) An action to perpetuate the testimony of witnesses is not to be set down for trial but the evidence to be taken in the action may be taken by the Court or a judge or an examiner, as the Court or a judge may order.

Division 3 – Subpoenas

494. Interpretation

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

addressee means the person who is the subject of the order expressed in a subpoena;

issuing party means the party at whose request a subpoena is issued;

subpoena means an order in writing requiring the addressee –

(a) to attend to give evidence; or

(b) to produce the subpoena, or a copy of it, and a document or thing; or

(c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a "subpoena to attend to give evidence".

(3) To the extent that a subpoena requires the addressee to produce the subpoena, or a copy of it, and a document or thing, it is called a "subpoena to produce".

495. Issuing of subpoena

(1) The Court or a judge may, in any proceedings, by subpoena order the addressee –

(a) to attend to give evidence as directed by the subpoena; or

(b) to produce the subpoena, or a copy of it, and any document or thing as directed by the subpoena; or

(c) to do both of those things.

(2) An officer must not issue a subpoena –

(a) if the Court or a judge has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena –

(i) not be issued; or

(ii) not be issued without the leave of the Court or a judge and that leave has not been given; or

(b) requiring the production of a document or thing in the custody of the Court or another court.

(3) If the subpoena is in order for filing, the officer receiving it is to file it, insert the date of filing it and seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in any registry in accordance with subrule (3).

(5) If the Registrar considers that a request for the issue of a subpoena may be an abuse of process or be frivolous or vexatious, the Registrar may refer the request to a judge for directions.

(6) The judge to whom the request for directions is referred may, having regard to such matters as the judge thinks fit –

(a) direct that the subpoena may be issued; or

(b) direct that the subpoena is not to be issued.

496. Form of subpoena

(1) A subpoena must be in accordance with the prescribed form.

(2) A subpoena must not be addressed to more than one person.

(3) Unless the Court or a judge otherwise orders, a subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must –

(a) identify the document or thing to be produced; and

(b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court or a judge.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court or a judge.

(8) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

496A. Alteration of date for attendance or production

(1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.

(2) Where notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena.

497. Setting aside or other relief

(1) The Court or a judge may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in respect of it.

(2) An application under subrule (1) must be made on notice to the issuing party.

(3) The Court or a judge may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

498. Service

(1) A subpoena must be served personally on the addressee.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

499. Compliance with subpoena

(1) Despite rule 498(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, prior to the time for compliance with the subpoena, actual knowledge of the subpoena and of its requirements.

(2) The addressee must comply with a subpoena to produce –

(a) by attending at the date, time and place specified for production or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time and producing the subpoena, or a copy of it, and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court or a judge; or

(b) by delivering or sending the subpoena, or a copy of it, and the document or thing to the Registrar at the address specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later

date or time from the issuing party, before that later date.

(3) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena, or a copy of it, and of the document or thing in any of the ways permitted by subrule (2) does not discharge the addressee from the obligation to attend to give evidence.

(4) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.

(5) The copy of a document may be –

(a) a photocopy; or

(b) in PDF format on a CD-Rom.

500. Production otherwise than upon attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 499(2)(b).

(2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

500A. Removal, return, inspection, copying and disposal of documents and things

The Court or a judge may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

500B. Inspection of, and dealing with, documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 499(2)(b).

(2) On the request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, no person may inspect a document or thing produced unless the Court or

a judge has granted leave and the inspection is in accordance with that leave.

(4) Unless the Court or a judge otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.

(5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.

(6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Registrar –

(a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the Court or a judge for hearing and determination.

(8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.

(9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the practitioner for a party.

(10) A practitioner who signs an application under subrule (9) and removes a document or thing from the Registry undertakes to the Court by force of this rule that –

(a) the document or thing will be kept in the personal custody of the practitioner or a barrister briefed by the practitioner in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.

(11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

500C. Disposal of documents and things produced

(1) The Registrar may, in the Registrar's discretion, return to the addressee any document or thing produced in response to a subpoena.

(2) The Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) The addressee must complete the declaration within the subpoena, or copy of the subpoena, that accompanies the documents produced to the court under the subpoena.

(4) The Registrar may, on the expiry of 4 months after the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena that were not declared by the addressee to be original documents or things, and are no longer required in connection with the proceeding, including on any appeal.

500D. Costs and expenses of compliance

(1) The Court or a judge may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court or a judge must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to –

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee.

500E. Failure to comply with subpoena – contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 498(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, prior to the time for compliance with the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court, under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

500F. Documents and things in the custody of a court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing –

(a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or

(b) as the Court or a judge directs.

(3) If the document or thing is in the custody of another court, the Registrar must, unless the Court or a judge has otherwise ordered –

(a) request the other court to send the document or thing to the Registrar; and

(b) after receiving it, produce the document or thing –

(i) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or

(ii) as the Court or a judge directs.

Division 4 – Affidavits

501. Form of affidavit

An affidavit is to comply with the following requirements:

(a) it is to bear the title of the proceeding in which it is sworn;

(b) it is to be drawn up in the first person;

(c) it is to state the deponent's address and occupation or, if none, a description of the deponent;

(d) it is to be divided into consecutively numbered paragraphs each of which is to be confined to a distinct part of the subject;

(e) any sum of money or number is to be in figures only;

(f) the jurat must state that it was sworn by the deponent on the day on which and the place at which it was sworn;

(g) each separate sheet is to be signed by the person before whom the affidavit is taken;

(h) each annexure or exhibit is to be identified by a certificate annexed to it or endorsed on it bearing the short title of the proceeding and signed by the person before whom it is sworn;

(i) any account, extract from a register, particulars of a creditor's debt or other document referred to is not to be annexed to the affidavit, or referred to in the affidavit as annexed, but is to be referred to as an exhibit.

502. Affidavits generally

(1) The hearsay rule does not apply to evidence in an affidavit used in an interlocutory application if the party who adduces the evidence also adduces evidence of its source.

(2) Despite subrule (1), unless a judge otherwise directs, the hearsay rule applies to evidence in an affidavit used on an interlocutory application for an order –

(a) to extend or waive a time limit on the start of proceedings that is imposed by statute; or

(b) to extend or waive a time limit on the continuation of proceedings that is imposed by statute; or

(c) to set aside a judgment; or

(d) to dismiss proceedings for want of prosecution; or

(e) to finally dispose of the rights of the parties to the proceedings.

(3 - 6) . . . . . .

503. Affidavits by illiterate or blind persons

(1) If a deponent appears to the person before whom an affidavit is taken to be illiterate or blind, that person is to certify in the jurat –

(a) that the affidavit was read in the presence of that person to the deponent; and

(b) that the deponent seemed to understand it fully; and

(c) that the deponent made his or her signature or mark in the presence of that person.

(2) An affidavit of a person who is illiterate or blind is not to be used in evidence in the absence of a certificate in accordance with subrule (1) unless the Court or a judge is otherwise satisfied of the matters referred to in that subrule.

504. Affidavits made by 2 or more deponents

(1) A jurat to an affidavit made by 2 or more deponents is to contain the full names of the persons making the affidavit.

(2) If the affidavit is sworn by all the deponents at the same time before the same person, it is sufficient to state that it was sworn by "both of the above-named deponents" or "all of the above-named deponents".

505. Alterations in affidavits

An affidavit which has, either in the body or the jurat, any addition, alteration or erasure is not to be used without leave of the Court or a judge, unless –

(a) in the case of an addition or alteration, it is authenticated by the initials of the person taking the affidavit; or

(b) in the case of an erasure, the words or figures appearing at the time of taking the affidavit to be written on the erasures are rewritten and signed or initialled in the margin by the person taking the affidavit.

506. Use of defective affidavits

The Court or a judge may receive an affidavit notwithstanding any defect in it or any irregularity in its form.

507. Affidavits to be filed

An affidavit is to be filed in the registry in which the relevant proceeding is pending or is to be instituted.

508. Scandalous material

(1) The Court or a judge may –

(a) order that any scandalous material in an affidavit be struck out; or

(b) order that any affidavit containing scandalous material be removed from the file.

(2) In an order made under subrule (1), the Court or a judge may order that the costs of the application be paid as between practitioner and client.

509. Affidavit in support of application for dealing with security in Court

An affidavit in support of an application for dealing with a security in Court, which is chargeable with a duty payable under any law of the Commonwealth or of a State or Territory, or any dividend of that security, is to contain a statement showing whether or not that duty has been paid.

510. Service of affidavits

(1) An affidavit, other than an answering affidavit or affidavit in reply, is not to be used on the hearing of an application unless it has been filed and a copy has been served on each party concerned at least 48 hours before the time appointed for the hearing of the application.

(2) Subrule (1) does not apply –

(a) to an application for an order to show cause; or

(b) to an application which is made *ex parte*; or

(c) if the application is so urgent that subrule (1) ought not be enforced.

(3) An answering affidavit or an affidavit in reply is not to be used on the hearing of an application unless it has been filed and a copy has been served on each party concerned as soon as practicable.

(4) If subrule (1) or (3) is not complied with, the Court or a judge may –

(a) permit the affidavit to be used, notwithstanding the non-compliance, on any terms as may be proper; or

(b) adjourn the application on any terms as may be proper and allow the affidavit to be read on the adjourned hearing.

511. Affidavits sworn within Australia

(1) An affidavit sworn and taken in the State is to be sworn before any one of the following:

(a) a judge;

(b) the Associate Judge;

(c) the Principal Registrar;

(d) the Deputy Registrar;

(e) the Assistant Deputy Registrar;

(f) a district registrar;

(g) a commissioner to administer oaths;

(h) an officer empowered by statute or under these rules to administer oaths;

(i) a magistrate;

(j) a justice;

(k) a practitioner.

(2) An affidavit sworn and taken in any place out of the State but within Australia may be sworn before any person having authority to administer an oath in that place and the Court or a judge is to take judicial notice of the signature of that person appended to the affidavit.

(3) The signature of a person authorised to take affidavits when appearing in any jurat or attestation to an affidavit sworn or taken in Australia is evidence that the affidavit was duly sworn and taken before that person and on the day and in the place attested to.

512. Affidavits sworn outside Australia

(1) An affidavit sworn and taken in any place out of Australia may be sworn –

(a) before a person exercising the functions of any of the following offices:

(i) an Australian consular officer;

(ii) an envoy or a Secretary of embassy or legation;

(iii) an acting consul or proconsul of any part of the Sovereign's dominions; or

(b) before any person having authority to administer an oath in that place.

(2) In this rule,

Australian consular officer means a person appointed to hold or act in any of the following offices of the Commonwealth in a country or place outside Australia:

(a) Ambassador;

(b) High Commissioner;

(c) Minister;

(d) Head of Mission;

(e) Commissioner;

(f) Charge d'affaires;

(g) Counsellor or Secretary at a diplomatic post;

(h) Consul-General;

(i) Consul;

(j) Vice-Consul;

(k) Trade Commissioner;

(l) Consular Agent.

(3) If a person purports to have the authority referred to in subrule (1)(b), the Court or a judge is to take judicial notice of the seal or signature of the person appended to any affidavit.

(4) For the purpose of subrule (1)(a)(iii), judicial notice may be taken as to which places are or are not under the dominion of the Sovereign.

(5) If a person purports to have the authority referred to in subrule (1)(b) by the law of a foreign country and not under the dominion of the Sovereign, the authority may be verified by any of the persons mentioned in subrule (1)(a) or by the certificate of a court of the country.

(6) If an authority purports to be verified under subrule (5), the relevant affidavit is admissible for all purposes without further proof of –

(a) the seal or signature; or

(b) the office or other character of the relevant person.

513. Affidavit sworn before practitioner or agent

An affidavit is not sufficient if it is sworn before –

(a) a practitioner or legal practitioner of any description in the place at which the affidavit was sworn acting for the party on whose behalf the affidavit is to be used; or

(b) the agent of such a practitioner; or

(c) a member of the law practice of such a practitioner or agent; or

(d) a practitioner or clerk employed by such a practitioner, agent or law practice; or

(e) a party.

Division 5 – Expert opinion evidence

514. Interpretation of Division 5 of Part 19

In this Division –

expert means a person who has specialised knowledge based on his or her training, study or experience;

expert opinion includes evidence of comparable sales by a valuer;

Expert Witness Code of Conduct means the Expert Witness Code of Conduct published by Practice Direction.

514A. Application of Division 5 of Part 19

This Division applies to the evidence of an expert, whether oral, by affidavit or by the tendering of a report in any proceeding.

515. Expert evidence

(1) The evidence of an expert relating to any fact in issue involving expert opinion is not receivable in evidence at a trial unless –

(a) the provisions of this Division have been complied with; or

(b) the Court or a judge, at or before the trial, otherwise orders or directs.

(2) An order or direction under subrule (1), including an order made on appeal, may be revoked by a subsequent order or direction of the Court or a judge made or given at or before the trial.

516. Service of statement of expert evidence

(1) A party that intends to present the evidence of an expert at a trial is to serve on each other party –

(a) a report containing the evidence; and

(b) a statement signed by the expert containing an acknowledgement by the expert that he or she –

(i) has read and understood the Expert Witness Code of Conduct; and

(ii) has complied with, and will continue to comply with, the Expert Witness Code of Conduct; and

(iii) will comply with any order made under subrule (4).

(2) The report and signed statement are to be served, jointly –

(a) on or before the date fixed by order of a judge, being a date before the trial; or

(b) if no such date is so fixed, within a reasonable time before the commencement of the trial.

(3) Where –

(a) a party to a proceeding receives a report from an expert witness containing a change of opinion on a material matter (***revised report***); and

(b) the revised report relates to a report and signed statement that the party has served under subrule (2) in the same proceeding –

the party (or the party's legal representative) is to serve the revised report on each other party to the proceeding as soon as practicable.

(4) If 2 or more parties to a proceeding intend to call experts to give opinion evidence about a similar question, the Court or a judge may, either on or without application, make one or more of the following orders:

(a) that all factual evidence relevant to the opinion of any expert be adduced before the expert is called to give evidence;

(b) that on the completion of the factual evidence pursuant to any order made under paragraph (a), each expert provide a supplementary report –

(i) stating whether the expert adheres to his or her previously

expressed opinion or holds a different opinion; and

(ii) further stating, if applicable, the different opinion and the factual evidence on which it is based;

(c) that each expert give an opinion about the opinion of any other expert;

(d) any other order convenient to the manner in which the opinion evidence is received.

517. Statement of other party evidence

A party may put in evidence against another party a statement served on him or her by that other party in accordance with rule 516.

PART 20 – MEDIATION

518. Referral for mediation or neutral evaluation not to operate as a stay

Unless otherwise ordered, an order under section 5(1) of the *Alternative Dispute Resolution Act 2001* referring a matter to mediation or neutral evaluation does not operate as a stay of proceedings.

519. Conduct of mediation

(1) The function of a mediator is to assist the parties –

(a) to reach a mutually agreed resolution of their differences; or

(b) if that is not possible, to resolve as many differences as possible.

(2) Subject to subrule (3), a mediation is to be conducted in any manner the mediator determines.

(3) The judges may approve guidelines for the conduct of mediation and, unless otherwise ordered or the parties agree, mediation is to be conducted in accordance with those guidelines.

(4) Unless otherwise ordered or agreed by the parties, each party is to attend the mediation with authority to settle.

520. . . . . .

521. Report of plaintiff

Immediately after the conclusion of a mediation which has not resulted in a mutually agreed resolution of all differences between the parties, the plaintiff or applicant is to notify the Court in writing –

(a) stating that the mediation has taken place as directed; and

(b) setting out any issues left to be determined by the Court or a judge.

522. . . . . .

523. Costs of mediation or neutral evaluation

A judge may order that a party recover costs of and incidental to mediation or neutral evaluation if those costs have been unnecessarily incurred by the conduct of another party.

PART 21 – INTERLOCUTORY APPLICATIONS

524. Interlocutory applications generally

Subject to rule 415 and any other special provision made by these rules, any application to the Court in a pending proceeding is to be made –

(a) by interlocutory application; and

(b) to a judge in chambers.

525. Making of interlocutory applications

(1) An interlocutory application is to be –

(a) in accordance with the prescribed form; and

(b) entitled in the proceeding in which it is made; and

(c) lodged at the registry with as many copies as the applicant requires.

(2) If the application is in order for filing, the person receiving it is to file it, seal the copies and return them to the person lodging the application.

526. Hearing date and time for applications

(1) The person filing an interlocutory application is to endorse on the application the place, date and time for its hearing.

(2) The place, date and time for hearing may be amended in the same manner as provided in rule 124.

(3) The hearing may take place by telephone, video link or other means.

527. Former practice as to motions and summonses

If any enactment, rule or practice requires that –

(a) a motion be preceded by a notice of motion, an application to the Court is to be used instead; or

(b) an application to a judge be preceded by a summons, an application to a judge in chambers is to be used instead.

528. Applications for consent orders

(1) An application for a consent order is to be –

(a) made by memorandum to the registrar; and

(b) signed by the parties or their practitioners; and

(c) supported by affidavit, if required.

(2) A judge in chambers may make an order on a memorandum without the attendance of the parties.

(3) A party is not to be allowed any costs and a practitioner may not recover from his or her

client any costs in relation to the attendance before the judge, unless the judge for special reasons makes an order to the contrary, if –

(a) parties attend before the Court or a judge for the making of a consent order; and

(b) the application might have been made under subrule (1); and

(c) a judge has not directed that the parties attend; and

(d) the judge is not asked to make any order in the proceedings other than by consent.

529. Period for service of applications

(1) An interlocutory application is to be served 2 clear days before the hearing date endorsed on it, unless the Court or a judge otherwise orders.

(2) An application for time only may be served on the day before the hearing date endorsed on it.

(3) An application for time operates as a stay of proceedings from 9 a.m. on the hearing date endorsed on it.

530. *Ex parte* applications

(1) Except as otherwise provided by these rules, an application is not to be made *ex parte*.

(2) If a delay in the conduct of proceedings is likely to cause irreparable or serious harm or detriment,

the Court or a judge may make an order *ex parte* on any terms as to costs or otherwise and subject to any undertaking as the Court or judge thinks just.

(3) The Court or a judge may set aside or vary an order under subrule (2).

531. Failure to serve

On the hearing of an interlocutory application, the Court or a judge may dismiss or adjourn the application if of the opinion that a person who has not been given notice ought to have been given notice.

532. Trial of issues

The Court or a judge may –

(a) order that any question of fact arising on an interlocutory application be tried in any manner in which any question or issue of fact in an action may be tried; and

(b) give any appropriate consequential direction.

533. Service of interlocutory application before expiration of period

A plaintiff or applicant may serve an interlocutory application on any defendant or respondent –

(a) at the same time as the service of the originating process; or

(b) at any time after service of the originating process and before the period limited for appearance by the defendant or respondent expires.

534. Notice of intention to adduce oral evidence

If it is intended to adduce oral evidence on the hearing of an interlocutory application, notice of that intention is to be served with the application.

535. Papers for use of judge

Unless otherwise directed by the registrar, at least 2 clear days before the hearing of an interlocutory application, the party filing it is to deliver to the registrar one set of papers –

(a) certified by the party or his or her practitioner as correct and complete; and

(b) containing a copy of the application and each other document to which it is intended to refer at the hearing.

536. Further consideration

If any matter that is the subject of an interlocutory application is not disposed of on the original date fixed for the hearing, the parties are to attend on notice without further

application at any time as is appointed by the registrar for the further consideration of the matter.

537. Failure of a party to attend

(1) If a party to an interlocutory application fails to attend its hearing, the judge may proceed in the absence of that party upon proof of service.

(2) If a judge proceeds under subrule (1), a party in whose absence an order was made may have the application reconsidered on satisfying the judge that the absence was not the result of the wilful delay or neglect of that party.

538. Duties of associate

(1) In respect of an interlocutory application dealt with by a judge, the associate is to record –

(a) the times at which the application started and finished on each day; and

(b) the names of counsel and practitioner for each party; and

(c) any order of the judge; and

(d) any certificate granted by the judge.

(2) A record under subrule (1) is to be made in a book to be kept for that purpose and in a record of proceedings to be kept in the file relating to the proceedings, or by some other means.

PART 22 – TRIALS

Division 1 – Setting down for trial

539. Interpretation of Division 1 of Part 22

In this Division –

action includes any action or proceeding that is –

(a) commenced in a court held under the *Magistrates Court (Civil Division) Act 1992*; and

(b) removed into the Court;

certificate of readiness means a certificate under rule 544;

compulsory conference means a compulsory conference of the parties under rule 541 or 542;

pre-trial conference includes a conference under this Division held before a judge by any of the following:

(a) the parties to an action before the trial of the action;

(b) the parties to an originating application to the Court specified in rule 89;

(c) the parties to an originating application to a judge in chambers specified in rule 90;

(d) the parties to a proceeding in respect of which a judge has ordered that a pre-trial conference be held;

pre-trial order means an order under rule 551.

540. Application of Division 1 of Part 22

This Division does not apply to a proceeding to which rules 414 and 416 apply.

541. Compulsory conference in actions

(1) Before filing a certificate of readiness, the parties to an action must confer together to –

(a) reach agreement on as many matters as possible; and

(b) discuss the possibility of settlement of the action; and

(c) discuss the date and length of trial; and

(d) facilitate the preparation of the certificate of readiness; and

(e) consider the following matters:

(i) whether the pleadings adequately raise all the necessary issues;

(ii) whether any further particulars are needed;

(iii) what documentary evidence will be required for the trial;

(iv) the content of any agreed documents to be placed before the trial judge without formal proof;

(v) whether to request any expert witnesses retained by the parties to confer prior to trial.

(2) The conference may be by telephone, video link or other means.

542. Compulsory conference in other proceedings

(1) If an inter parte originating proceeding that is an application to the Court or an application to a judge in chambers has reached the stage at which the parties are able to certify properly that they are ready to proceed to a hearing, the parties must confer together to –

(a) reach agreement on as many matters as possible; and

(b) discuss the possibility of settlement of the proceedings; and

(c) discuss the date and length of trial; and

(d) make any admissions of fact; and

(e) agree to admit documents into evidence without formal proof; and

(f) facilitate the presentation of the evidence and argument at the hearing; and

(g) facilitate the preparation of a joint letter of readiness.

(2) The conference may be by telephone, video link or other means.

543. Convening compulsory conference

The following provisions apply to the convening of a conference under rule 541 or 542:

(a) a party who is ready to go to trial may give each other party a notice specifying the date, time and place for the holding of a compulsory conference –

(i) if the proceeding is an action, on the expiration of 21 days after the date on which the pleadings are closed; or

(ii) in any other case, once the party is ready to proceed to a hearing;

(b) each other party is to attend the compulsory conference in accordance with the notice.

544. Certificate of readiness

(1) The parties to an action are to file a certificate of readiness if the action has reached the stage at which the parties are able to certify to the Court –

(a) that the pleadings are closed and complete; and

(b) that no further particulars or amendments are required by either party, other than any amendment made by consent and incorporated in the pleadings accompanying the certificate of readiness; and

(c) that third party proceedings are not to be taken or that the pleadings in third party proceedings are complete; and

(d) that the provisions of Part 13 as to discovery have been complied with by the parties; and

(e) that any interrogatories required by either party have been delivered and answered; and

(f) that the parties have held a compulsory conference in accordance with rule 541; and

(g) that the parties can be ready for trial after the expiration of a period specified in the certificate.

(2) A certificate of readiness is to –

(a) be in accordance with the prescribed form; and

(b) be accompanied by a copy of the whole of the pleadings in the action.

(3) Any amendment to a pleading is to be incorporated in the copies of the pleadings required to accompany the certificate of readiness.

545. Joint letter of readiness

After a conference referred to in rule 542 has been held, the parties may file a joint letter of readiness –

(a) certifying that the proceeding is ready for hearing; and

(b) setting out the results of the conference.

546. Failure to sign certificate or joint letter of readiness

(1) If the parties do not sign a certificate of readiness or a joint letter of readiness within 21 days after the compulsory conference, a plaintiff or applicant who is ready to go to trial –

(a) may give notice by letter to each other party requiring him or her to sign a certificate of readiness or joint letter of readiness; and

(b) if any other party fails to sign within 7 days, may make an application under rule 552.

(2) If the parties do not sign a certificate of readiness or joint letter of readiness and, at the expiration of 14 days after becoming entitled to do so, the plaintiff or applicant does not proceed in accordance with subrule (1), any other party may proceed under that subrule as if that party were the plaintiff or applicant.

547. Notice of pre-trial conference

(1) After a certificate of readiness or a joint letter of readiness has been filed, the registrar is to give notice of a pre-trial conference to the parties.

(2) A notice of pre-trial conference –

(a) is to be given at least 7 days before the day fixed for the conference; and

(b) is to specify the date, time and place of the conference; and

(c) may state generally the matters that the judge requires to be dealt with at the conference.

(3) If the registrar considers that, after a certificate or joint letter of readiness has been filed, a pre-trial conference may be unnecessary, the registrar is to refer the certificate or letter, together with the file to which it relates, to a judge.

(4) On receiving the certificate or letter and file, a judge may order that –

(a) a pre-trial conference is not to be held; and

(b) that the action or proceeding be listed for trial.

(5) The registrar is not to give a notice of pre-trial conference if an order is made under subrule (4).

(6) A judge, without an application, may at any time direct that no pre-trial conference be held and that the action or proceeding be listed for trial.

(7) A judge may –

(a) direct that a pre-trial conference be held by telephone, video link or other means; and

(b) give directions as to the manner in which the conference is to be held.

548. Listing of proceeding for trial

(1) If a judge orders that a proceeding be listed for trial, the registrar is to list that proceeding for trial at a convenient date and time.

(2) Before listing a proceeding for trial, the registrar may summon the parties to discuss a convenient date and time for the trial.

(3) On the listing of a proceeding for trial, the registrar is to give the parties a notice of the date, time and place of trial.

549. Pre-trial conferences

At a pre-trial conference before a judge, consideration is to be given to the following matters:

(a) simplifying the issues in the action or other proceeding;

(b) the necessity or desirability of amending the pleadings;

(c) obtaining further admissions of fact and of documents to avoid unnecessary proof;

(d) the availability of witnesses;

(e) limiting the number of expert witnesses;

(f) if the action is in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage and an application for a stay has not been made, whether the power to stay the action under section 7A(2) of the *Married Women's Property Act 1935* ought to be exercised;

(g) any other matter the judge considers appropriate for the disposing of the action or other proceeding.

550. Powers of judge at pre-trial conference

(1) A judge may make any order which is appropriate, whether or not any party seeks the order.

(2) Without limiting the generality of the powers conferred by subrule (1), a judge at a pre-trial conference –

(a) may deal with every application made by the parties under the certificate of readiness and, if the justice of the case so requires, any other application not referred to in the certificate; and

(b) may fix the period for compliance with any order made at the conference; and

(c) may fix the period for the delivery of any statement of expert evidence and for the production of any plan, photograph or device in which any sound, data or visual image is embodied; and

(d) may make any order as to modes of proof including proof of business records referred to in section 69 of the *Evidence Act 2001*; and

(e) may order that evidence of any specified fact be given at the trial –

(i) by statement on oath of information and belief; or

(ii) by production of any document or entry in a book; or

(iii) by a copy of any document or entry in a book; or

(iv) if the fact is or was a matter of common knowledge, either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact; or

(v) in any other manner the Court or judge directs; and

(f) may order –

(i) that any issue of fact be tried before any other; or

(ii) that a point of law be set down for hearing before trial; and

(g) is to endeavour to ensure that the parties make all admissions and agreements that ought reasonably be made; and

(h) is to record any admission or agreement so made and any refusal to make an admission or agreement; and

(i) may direct the parties to prepare any issue and settle it if the parties differ; and

(j) without directing the parties to prepare any issue, may settle the issue to be tried

by way of substitution for, or addition to, any issue appearing in the pleadings; and

(k) may exercise all the powers of a judge on a directions hearing under rule 415 or 425.

(3) Subject to subrule (7), a party and the practitioner or counsel for a party are to give any information and produce any document at a pre-trial conference that the judge reasonably requires to conduct the conference properly.

(4) If it appears proper so to do in the circumstances, at a pre-trial conference a judge may authorise information to be given or a document to be produced by a party under subrule (3) without that information or document being disclosed to another party.

(5) In the absence of an authorisation under subrule (4), any information given or document produced is to be given or produced to –

(a) every party present or represented at the conference; and

(b) the judge.

(6) Subject to subrule (7), if a party or the practitioner or counsel for a party fails to give any information or produce a document when required by a judge, the judge may cause the facts to be recorded in the pre-trial order.

(7) Any information or document that is privileged from disclosure is not required to be given or

produced by a party or his or her practitioner or counsel otherwise than with the consent of that party.

551. Pre-trial orders

(1) At the conclusion of a pre-trial conference, the judge may make a pre-trial order.

(2) A pre-trial order is to –

(a) direct that the proceeding be set down for trial; and

(b) recite –

(i) the action taken at the pre-trial conference to which it relates; and

(ii) any amendment allowed to the pleadings; and

(iii) any admission or agreement made or refused by the parties; and

(c) control the subsequent course of the action or other proceeding unless the trial judge otherwise orders; and

(d) be taken out and filed by the registrar and delivered to each of the parties, if so ordered by a judge.

552. Applications for directions in certain cases

(1) A party to a proceeding may apply to a judge for directions if –

(a) the party has a genuine doubt or difficulty as to the application of the provisions of this Division or compliance with those provisions; or

(b) there has been undue delay by another party in relation to any step in the proceeding; or

(c) another party has failed to comply with a provision of this Division; or

(d) for some other sufficient reason it appears expedient so to do.

(2) An application is to be made by letter to the registrar and to the other parties stating the particulars and grounds of the application.

(3) The registrar is to fix a date and time for the determination by a judge of the application under subrule (1) and is to notify the parties accordingly.

(4) On an application, the judge may –

(a) make any order in the circumstances as may be just; and

(b) fix a timetable in relation to delivery of pleadings, discovery and any other matter relating to the action or other proceeding; and

(c) in the case of third party proceedings –

(i) dispense with formal pleadings and settle the issues to be tried between the defendant and third party; and

(ii) order that the third party comply with any of the provisions of this Division as are appropriate; and

(d) dispense with the filing of the certificate of readiness or joint letter of readiness, hold a pre-trial conference and give any direction as may be just and expedient to bring the action or other proceeding to trial.

(5) A timetable fixed under subrule (4)(b) replaces any times otherwise fixed by these rules.

(6) If a judge makes an order under subrule (4) dispensing with the filing of a certificate of readiness or joint letter of readiness, the action or other proceeding is to be listed for trial on the filing by a party of a request to list it for trial and 2 copies of the pleadings.

553. Division not limited

The powers conferred on a judge by this Division are not limited by any other provision of these rules.

Division 2 – Place and mode of trial

554. Place of trial

Subject to rule 555, a trial in an action and in any other proceeding in which there is to be a trial of any question or issue of fact is to be held at the seat of the registry in which the matter is proceeding if sittings of the Court at which the trial would be held are appointed to be held at that place.

555. Order for place of trial

(1) The Court or a judge at any time may order that the place of trial be at a place other than at the seat of the registry in which the matter is proceeding.

(2) In deciding the place of trial, the Court or judge is to have regard to –

(a) the convenience of the parties and witnesses; and

(b) the wishes of the parties; and

(c) the expense to the parties; and

(d) the date on which the trial could take place; and

(e) the relative facilities for trial at any place at which the trial could take place; and

(f) if a view may be desirable, the locality of the place or object to be viewed; and

(g) all other circumstances of the case.

556. Mode of trial

Subject to the Act, the *Commercial Arbitration Act 2011* and rule 557, any action or other proceeding in which there is to be a trial of any question or issue of fact is to be tried by a judge without a jury, unless the Court or a judge orders that it be tried by a judge with a jury.

557. Trial with a jury

Subject to rule 558, a party is entitled to have tried by a judge with a jury any action, question or issue which, before the commencement of the Act, could have been instituted in the Court as an action at law.

558. Issue requiring prolonged examination

Notwithstanding rule 557, on the application of any party, the Court or a judge may direct that any action or any question or issue in the action be tried without a jury if the action, question or issue requires prolonged examination of any document or account or any scientific or local investigation which it is not convenient for a jury to do.

559. Questions of fact or law tried differently

(1) In any proceeding and at any time, the Court or a judge may order that –

(a) different questions, whether of fact or law, be tried at different places or by different modes of trial; or

(b) any question be tried before any other.

(2) On an application for an order under subrule (1), the Court or judge is to have regard to –

(a) the advantage of hearing evidence without undue delay; and

(b) the costs which may be incurred; and

(c) any other relevant matter.

(3) If any issue which has been ordered to be tried or any question or issue of fact which has been ordered to be determined in any manner has been determined, the Court or a judge may give any judgment as is appropriate on the application of –

(a) the plaintiff or applicant; or

(b) if the plaintiff or applicant fails to do so within 10 days, any other party.

(4) If only some of the questions or issues ordered to be determined or tried have been determined or tried and the result renders the determination or trial of the other questions or issues unnecessary or renders it desirable that their determination or

trial be postponed, the Court or a judge may give any judgment as may be appropriate, without waiting for that trial or determination.

560. Trial with assessors

(1) The Court or a judge may at any time order that a proceeding or issue be tried by a judge with an assessor.

(2) On making an order, the Court or judge may make further orders as to –

(a) the manner in which the trial is to take place; and

(b) the terms upon which the trial is to take place; and

(c) the manner in which an assessor is to be chosen and sworn; and

(d) the remuneration payable to the assessor or the manner in which the remuneration is to be calculated.

561. Trial by other adjudicator

(1) At any time the Court or a judge may order a question or issue of fact arising in a proceeding to be tried with or without an assessor by –

(a) the Associate Judge; or

(b) an officer of the Court; or

(c) a judge of an inferior court of civil jurisdiction; or

(d) a referee.

(2) . . . . . .

(3) If a reference is made to an officer of the Court to ascertain the amount for which final judgment is to be entered, the certificate of the officer as to the amount is to be filed in the registry in which judgment is entered at the time it is entered.

562. Trial of proceeding on affidavit

A proceeding tried on affidavit is to be tried by a judge sitting without a jury.

563. Setting aside judgment

(1) The Court or a judge may set aside a verdict, judgment or order if a party did not appear when the proceeding was called on for trial on application by that party.

(2) A verdict, judgment or order may be set aside on any appropriate terms.

(3) An application for an order must be made within 6 days after the proceeding is called on for trial.

Division 3 – Special case

564. Application of Division 3 of Part 22

This Division applies –

(a) to a special case stated in a proceeding; or

(b) in any proceeding incidental to such a proceeding.

565. Special case by agreement

(1) The parties may agree by stating the questions of law arising in a proceeding in the form of a special case for the opinion of the Court.

(2) A special case is to –

(a) be divided into consecutively numbered paragraphs; and

(b) state concisely the facts and documents necessary to enable the Court to decide questions raised.

(3) A special case is to be –

(a) signed by the parties or their practitioners; and

(b) filed by the plaintiff.

(4) A party may file a request that a special case be entered for argument.

(5) A party filing a request to enter a special case for argument is to file –

(a) a copy of the special case for the use of the judge; and

(b) 2 copies of the whole of the originating process and of the pleadings or issues –

(i) showing the questions for determination; and

(ii) certified by the practitioner for the party as correct and complete.

(6) On filing a request that a special case be entered for argument, the registrar is to refer the request to a judge who may –

(a) direct that the special case be entered for argument; or

(b) require the parties to attend before him or her or another judge.

(7) If the parties attend before a judge under a direction, the judge may –

(a) give all necessary and appropriate directions concerning the special case; and

(b) without affecting the generality of paragraph (a), may order that the special case be amended; and

(c) may order that it be entered for argument or that it not be entered for argument.

(8) On the argument of a special case –

(a) the Court and the parties may refer to the whole contents of the documents contained in the special case; and

(b) from the facts or documents contained in the special case, the Court may draw any inference, whether of fact or law, which might have been drawn had the facts or documents been proved at a trial.

566. Special case by order before trial

(1) In any proceeding, the Court or a judge, on application, may direct that a question of law be raised for the opinion of the Court.

(2) The question may be raised either by special case or otherwise if it may be convenient to decide the question –

(a) before any evidence is given or any question or issue of fact is tried; or

(b) before any reference is made to a referee or arbitrator.

(3) Any further proceeding that the decision of a question under subrule (1) renders unnecessary may be stayed.

567. Person under disability

The Court is not to decide a question raised by a special case in a proceeding to which a person under disability is a party unless the Court is satisfied that –

(a) the statements in the special case are true so far as they affect the interests of the person under disability; and

(b) it is appropriate to decide the question.

568. Agreement of damages and costs

(1) The parties to a special case may agree in writing that, on the judgment of the Court being given on a question of law raised by the special case, a sum of money is to be paid by one of the parties to the other of them, either with or without costs of the proceeding or leaving costs in the discretion of the Court.

(2) The sum of money may be –

(a) fixed by the parties; or

(b) ascertained by the Court in any manner the Court directs.

(3) The judgment of the Court may be entered for the sum agreed or ascertained, with or without costs.

Division 4 – Trial

569. Order of evidence and addresses

(1) The Court or a judge may give directions as to the order of evidence and addresses and generally as to the conduct of the trial of any action, proceeding or issue.

(2) Subject to any direction given under subrule (1) –

(a) if the burden of proof on any question lies on the plaintiff or applicant, that party is to begin; and

(b) if the burden of proof on any question lies on the defendant or respondent, that party is to begin.

(3) Subject to any direction given under subrule (1) –

(a) if the only parties are one plaintiff or applicant and one defendant or respondent, and there is no counterclaim, the order of evidence and addresses is to be as provided by subrules (4), (5) and (6); and

(b) in any other case, the order of evidence and addresses is to be as provided by subrules (4), (5) and (6) with any necessary modifications.

(4) The party beginning may make an address opening the case and may then adduce evidence.

(5) If, in the course of the case of the party who begins, no document or thing tendered by the opposite party is admitted in evidence, and at the conclusion of that case –

(a) the opposite party adduces evidence –

(i) the opposite party may first make an opening address; and

(ii) the opposite party, after adducing evidence, may make a closing address; and

(iii) after that closing address, the party who began may make a closing address; or

(b) the opposite party does not adduce evidence –

(i) the party who began may make a closing address; and

(ii) after that closing address, the opposite party may make a closing address.

(6) If, in the course of the case of the party who begins, any document or thing tendered by the opposite party is admitted in evidence, and at the conclusion of that case –

(a) the opposite party adduces evidence –

(i) the opposite party may first make an opening address; and

(ii) the opposite party, after adducing evidence, may make a closing address; and

(iii) after that closing address, the party who began may make a closing address; or

(b) the opposite party does not adduce evidence –

(i) the opposite party may make a closing address; and

(ii) after that closing address, the party who began may make a closing address.

570. Absence of party at trial

(1) If, when the trial of a proceeding is called on –

(a) the plaintiff or applicant appears and a defendant or respondent does not appear, the plaintiff or applicant –

(i) may prove the claim against that defendant or respondent; and

(ii) is entitled to judgment dismissing any counterclaim or cross-application brought by that defendant or respondent; or

(b) a plaintiff or applicant does not appear, a defendant or respondent who does appear –

(i) is entitled to judgment dismissing the proceeding insofar as it is brought by that plaintiff or applicant; and

(ii) may prove any counterclaim or cross-application brought against that plaintiff or applicant; or

(c) no party appears, the proceeding may be struck out and wholly discontinued and no party is entitled to costs.

(2) On the application of a party who did not appear at trial made within 14 days after trial, the Court or a judge may set aside or vary any judgment, order or verdict obtained under subrule (1).

571. Adjournment of trial

The Court or a judge may adjourn a trial for any period and to any place and on any terms as may be appropriate.

572. Adjournment from chambers

A proceeding before a judge in chambers may be adjourned into Court and a proceeding in the Court which might have been made in chambers may be adjourned into chambers.

573. Entry of judgment after trial

(1) At or after the trial, the judge may –

(a) direct that any appropriate judgment be entered; or

(b) adjourn the case for further consideration; or

(c) give leave to any party to apply for judgment.

(2) On an application for judgment, the judge –

(a) may draw any inference of fact not inconsistent with the finding of the jury; or

(b) if all the materials necessary for finally determining a question in dispute or for awarding any relief sought are before the Court, may give judgment accordingly; or

(c) if all the materials referred to in paragraph (b) are not before the Court, may direct –

(i) the application to stand over for further consideration; and

(ii) any issue or question to be tried or determined and any account or inquiry to be taken and made as may be appropriate.

Division 5 – References out of Court

574. Reference of questions

(1) Subject to any right to trial by jury, the Court or a judge, by order, may refer any question in any proceeding to a special referee for inquiry or report.

(2) If an order referring a question is made, the Court or judge –

(a) is to state the question referred; and

(b) is to direct that the special referee make a report in writing to the Court on the question stating, with reasons, the determination or opinion; and

(c) may direct that the special referee give any further information in the report as may be appropriate; and

(d) may give any direction as to the conduct of the reference.

575. Report on reference

(1) The report of a special referee may –

(a) submit any question arising on the reference for the decision of the Court; or

(b) contain a statement of facts found by the special referee from which the Court may draw any inferences as it thinks fit.

(2) On receiving the special referee's report, the Court –

(a) is to give a copy of it to the parties; and

(b) may by order –

(i) require the special referee to provide a further report explaining any matter mentioned or not mentioned in the report; or

(ii) remit the whole or any part of the question originally referred for

further consideration by the special referee or by any other special referee; or

(iii) vary the report.

(3) The report of a special referee on a reference under subrule (1) may be adopted wholly or in part by the Court and, if adopted, may be enforced as a judgment or an order to the same effect.

(4) If the further consideration of the report or further report of a special referee has been adjourned, a party may –

(a) by letter apply to the Court or a judge to adopt the report; or

(b) by interlocutory application apply to vary the report or remit the matter or some part of it for rehearing or further consideration by the special referee or by any other special referee.

576. Status of special referee

If a reference is made under rule 574 to a special referee, the special referee is taken to be an officer of the Court.

577. Duties of special referee

Subject to any order of the Court, a special referee is to conduct the reference in the same

manner, and as nearly as possible, as a trial is conducted in the Court.

578. Remuneration of special referee

The Court or a judge is to determine the remuneration payable to a special referee.

579. Powers of special referee

(1) Subject to any order of the Court or a judge, a special referee has the following powers in relation to a reference:

(a) to hold the inquiry at, or adjourn it to, any place which may be most convenient;

(b) to take evidence and enforce the attendance of witnesses;

(c) to inspect or view;

(d) to make orders with respect to discovery and inspection of documents;

(e) to exercise the same authority in the conduct of the reference as a judge has when sitting in chambers.

(2) This rule does not authorise a special referee –

(a) to commit any person to prison; or

(b) to enforce any order by attachment or otherwise.

580. Submission of question to Court

(1) A special referee may submit any question arising in an inquiry for the decision of the Court.

(2) A submission is to be made before the end of the inquiry or by the special referee's report.

(3) The Court or a judge may direct any order to be made on a submission.

581. Costs

Subject to any order, if the whole of a proceeding is referred to a special referee, the referee may exercise the same discretion as to costs as the Court or a judge may exercise.

582. Application to other persons

The provisions of rules 579, 580 and 581 apply to a proceeding or question or issue of fact referred to –

(a) an officer of the Court; or

(b) a judge of an inferior court of civil jurisdiction; or

(c) an arbitrator.

Division 6 – Assessment of damages or value

583. Assessments of damages or value

The Court or a judge is to assess damages under any judgment or order for damages.

584. Division 1 and Division 4 to apply

(1) On entry of judgment for damages or value to be assessed, Division 1 of this Part applies to the action as if the entry of judgment were the close of pleadings.

(2) Division 4 of this Part applies, with any necessary modifications, to an assessment made under this Division.

585. Procedure if judgment by default

(1) A defendant against whom judgment is entered for damages or value to be assessed may take part in the assessment of those damages or that value.

(2) On entry of judgment, the registrar is to cause to be served on the defendant a notice of assessment of damages.

(3) A notice of assessment may be served by delivering it personally to the defendant or by sending it by post –

(a) if the defendant has not filed a notice of appearance, to the address at which the defendant was served with the writ; or

(b) if the defendant has filed a notice of appearance, to the address given as the address for service in the notice of appearance.

(4) Without the leave of the Court or a judge, an assessment under this rule is not to be listed for hearing until after the expiration of 10 days after the date of the service of the notice of assessment of damages.

(5) A party, at any time before an assessment under this rule is listed for hearing, may apply for directions by notice to a judge in chambers.

(6) On the hearing of an application under subrule (5), a judge may require the parties to comply with Parts 13 and 14 to the extent that the judge considers appropriate.

(7) After an assessment under this rule is listed for hearing, the Court or judge hearing the assessment, on the application of any party, may require the parties to comply with Parts 13 and 14 to the extent that the Court or judge considers appropriate.

(8) Unless the Court or judge otherwise orders, evidence by affidavit may be used at the hearing of an assessment.

586. Calculation of damages

(1) If it appears to the Court or a judge, either on the trial of an action or other proceeding or where judgment has been entered for damages or value to be assessed, that the amount of damages or value sought to be recovered is substantially a matter of calculation, the Court or judge may direct that the amount for which final judgment is entered be ascertained by an officer of the Court.

(2) If a direction is given under subrule (1) –

(a) the attendance of any witness and the production of any document before the officer may be compelled by subpoena; and

(b) the officer may adjourn the inquiry from time to time and from place to place; and

(c) the officer is to –

(i) certify to the registrar the amount of damages or value found; and

(ii) deliver a copy of the certificate to the person entitled to the damages or value.

(3) On receiving the certificate, the registrar is to enter final judgment for the amount shown in the certificate.

587. Damages in respect of continuing cause of action

Any damages to be assessed in respect of a continuing cause of action are to be assessed up to the time of the assessment.

PART 23 – RECORDING OF PROCEEDINGS

588. Recordings of proceedings in court

Subject to any direction of the Court or a judge, all proceedings in Court or before a judge in any proceeding are to be recorded by mechanical, electronic or other means.

589. Transcripts of proceedings

(1) On application, the registrar is to provide a party with a copy of a transcript of the appropriate proceedings as soon as reasonably practicable –

(a) if that party has appealed; or

(b) if that party satisfies the registrar that the party reasonably requires a transcript for the purpose of determining whether to appeal or not.

(2) Subject to any direction of the Court or a judge, the registrar may direct that a copy of the transcript of the whole or any part of any proceedings recorded be provided to –

(a) each party to the proceedings; or

(b) any other person who appears to the registrar to have sufficient interest in the subject matter of the proceeding.

590. Charge for transcripts

(1) A party or person to whom a transcript is provided is to pay the prescribed fee for the transcript.

(2) The registrar may require a person to lodge a deposit before a transcript is made.

(3) Any deposit received is to be deducted from the amount payable under subrule (1).

(4) A party who is an assisted person within the meaning of the *Legal Aid Commission Act 1990* and who is unsuccessful in a proceeding is not required to pay for a transcript.

591. Retention of tapes or apparatus

The registrar is to retain any tape or other apparatus on which any proceedings or part of proceedings are recorded –

(a) for a period of one year after the making of the recording; or

(b) for any longer period the Court or a judge directs.

592. Costs of transcripts

Unless the Court or a judge otherwise orders, the costs borne by a successful party for a transcript, whether for the purposes of an appeal or otherwise, are part of the costs in the proceeding.

PART 24 – ISSUES, ACCOUNTS AND INQUIRIES

593. Preparation of issues

(1) In any proceeding, if the issues of fact in dispute are not sufficiently defined, the Court or a judge may order that the parties prepare issues.

(2) On an application for an order, the parties and their practitioners –

(a) may be orally examined; and

(b) are to produce any document which may be necessary for the issues to be settled.

(3) If the parties differ as to the issues ordered to be prepared, the issues are to be settled by, or as directed by, the Court or a judge.

594. Inquiry or account

(1) At any stage of a proceeding, the Court or a judge may direct any inquiries or accounts to be made or taken.

(2) On the making of an order for the taking of an account, an order for payment of any amount found to be due on taking the account may also be made.

(3) An order for the taking of any account is not to be made –

(a) against a defendant who has not filed a notice of appearance unless that defendant is in default of appearance; or

(b) if it appears that there is some preliminary question to be tried.

(4) A direction for the taking of an account or the making of an inquiry is to be numbered so that, as far as possible, each account and inquiry is distinguishable.

(5) Unless the Court or a judge otherwise directs, a judgment or order for a general account of the personal estate of a deceased person is to contain a direction for an inquiry as to what parts, if any, of the estate are outstanding or undisposed of.

595. Directions for account

If the Court or a judge makes an order for the taking of an account, by the same or a later order the Court or judge –

(a) may give directions with regard to the manner of taking or verifying the account; and

(b) may direct that, in taking the account, the relevant books of account be taken as *prima facie* evidence of the truth of the matters in them.

596. Application to proceed with accounts and inquiries

(1) Unless a direction has been given on the making of an order for, or the taking out of a judgment requiring, the taking of an account or the making of an inquiry, a party may apply to proceed with the account or inquiry.

(2) On the hearing of an application, the Court or a judge, if all necessary parties have been served with notice of the judgment or order, may give directions –

(a) as to the manner in which the account is to be prosecuted; and

(b) as to the evidence to be adduced in support; and

(c) as to where any voucher is to be produced; and

(d) that only items that are contested or surcharged may be brought before the judge; and

(e) as to the parties who are to attend; and

(f) as to the time within which each proceeding is to be taken; and

(g) as to when the parties are to attend further.

(3) Any direction may be varied or added to.

597. Form of account

(1) The items on each account are to be numbered consecutively.

(2) Unless directed to the contrary, an account is to be verified by the affidavit of the accounting party.

(3) An alteration in an account –

(a) is not to be made by erasure; and

(b) is to be marked with the initials of the person before whom the affidavit is sworn.

(4) The account and the affidavit are to be filed.

598. Surcharge

If a party seeks to charge an accounting party beyond that which the accounting party by the account admits to having received, that party is to give notice to the accounting party with particulars of the charge.

599. Just allowances

In taking an account, any just allowance is to be made without a direction for that purpose.

600. Delay

If there is any undue delay in the prosecution of an account or inquiry, the Court or a judge –

(a) may require a party to explain the delay; or

(b) may make any order with a view to expediting the proceedings; or

(c) may stay the proceedings; or

(d) may make any other order which the circumstances of the case require.

PART 25 – MORTGAGES, ESTATES, TRUSTS AND SALE OF LAND

Division 1 – Summary proceedings by mortgagee for delivery of possession

600A. Interpretation of Division 1

In this Division –

mortgage includes an encumbrance or lease;

mortgagee includes an encumbrancee or landlord;

mortgagor includes an encumbrancer or lessee.

601. Application for delivery of possession

(1) An application by a mortgagee under section 146(1) of the *Land Titles Act 1980* for delivery of possession by a mortgagor is to –

(a) include a schedule setting out so much of the following information as is known and applicable:

(i) the address of the relevant land;

(ii) the title reference of that land;

(iii) the date of, parties to, and registered number of, the mortgage;

(iv) the amount claimed to be due under the mortgage and particulars of how that amount is calculated;

(v) the daily amount of interest accruing under the mortgage;

(vi) the costs of the application as set out in Part 5 of Schedule 1; and

(b) be supported by an affidavit.

(2) The affidavit is to –

(a) show the circumstances under which the right to possession arises; and

(b) give particulars, to the best of the mortgagee's knowledge, of every person in possession of the mortgaged property; and

(c) if the mortgage or charge creates a tenancy other than a tenancy at will between the mortgagee and mortgagor, show –

(i) how and when the tenancy was determined; and

(ii) in the case of a determination by service of notice, when the notice was served; and

(d) have as an exhibit a copy of the mortgage or charge.

(3) . . . . . .

602. Payment before hearing

(1) If, before the hearing of an application for possession by a mortgagee, the mortgagor pays to the mortgagee the money secured by the mortgage and due and payable, the application is to be dismissed except as to costs.

(2) On proof of the matters set out in subrule (3), the Court or a judge may order that possession of the property the subject of the application be given to the mortgagee on a date not less than 4 weeks after the hearing of the application as the Court or judge directs if –

(a) subrule (1) does not apply; and

(b) the mortgagor does not show good cause why the property should not be recovered by the mortgagee.

(3) The matters to be proved are –

(a) service of the application, if the mortgagor does not appear; and

(b) default in the payment of the money due and payable under the mortgage before the application was filed; and

(c) that the money, or part of it, is still due and payable under the mortgage.

(4) The Court or a judge may issue a writ authorising and directing the Sheriff to give

possession of the property to the mortgagee unless, before the date referred to in subrule (2), the mortgagor pays to the mortgagee –

(a) the money due and payable under the mortgage; and

(b) the costs of the proceedings.

Division 2 – Administration of estates and execution of trusts

603. Interpretation of Division 2 of Part 25

In this Division –

administration proceeding means a proceeding for –

(a) the administration of an estate; or

(b) the execution of a trust under the direction of the Court;

estate means the estate of a deceased person.

604. Relief without general administration

(1) An application may be made for any relief which may be granted in an administration proceeding.

(2) A claim is not required to be made for the administration or execution under the direction of the Court of the estate or trust in respect of which relief is sought.

(3) An application may be made for –

(a) the determination of any question which may be determined in an administration proceeding, including any question –

(i) arising in the administration of an estate or in the execution of a trust; or

(ii) as to the composition of any class of persons having a claim against an estate or a beneficial interest in an estate or in property subject to a trust; or

(iii) as to any right or interest of a person claiming to be a creditor of an estate or to be entitled under the will or on the intestacy of a deceased person or to be beneficially entitled under a trust; or

(b) an order directing an executor, administrator or trustee to –

(i) furnish and verify accounts; or

(ii) pay funds of the estate or trust into Court; or

(iii) do, or abstain from doing, any act; or

(c) an order –

(i) approving any sale, purchase, compromise or other transaction

by an executor, administrator or trustee; or

(ii) directing any act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

605. Parties

(1) In an administration proceeding or on an application under rule 604 –

(a) all the executors of the will of the deceased or administrators of the estate or trustees of the trust are to be parties; and

(b) if the application is made by executors, administrators or trustees, any of them who does not consent to being joined as an applicant is to be made a respondent; and

(c) any person having a beneficial interest in, or claim against, the estate or having a beneficial interest under the trust need not be a party but the applicant may make any such person a respondent; and

(d) if, in the taking of an account of debts or liabilities under a judgment or order in

the proceedings, a person not a party makes a claim –

(i) a party, other than the executors, administrators or trustees, is not entitled to attend before the Court or a judge in relation to that claim except by leave; and

(ii) the Court or a judge may direct or allow any party to attend on the taking of the account either in addition to, or in substitution for, the executors, administrators or trustees; and

(e) if the application is for the prevention of waste or otherwise for the protection of property, a person may apply on his or her own behalf and on behalf of all other persons having the same interest.

(2) The persons to be made respondents to an application in an administration proceeding or an application under rule 604 are the persons whose rights or interests are sought to be affected or may be affected by the application.

(3) The Court or a judge may direct that a person other than a person mentioned in subrule (2) be served with the application.

606. Court or judge not bound to order administration

The Court or a judge is not required to give judgment or make an order for the

administration of an estate or the execution of a trust if the questions between the parties can be properly determined without giving such a judgment or making such an order.

607. Order for accounts

On an application for administration or the execution of a trust by a creditor or beneficiary under a will, intestacy or trust, if no accounts or insufficient accounts have been provided, the Court or a judge –

(a) may order that –

(i) the application stand over for a certain time; and

(ii) that the executor, administrator or trustee in the meantime provide the applicant with a proper statement of the accounts; or

(b) if necessary to prevent proceedings by other creditors or by persons beneficially interested, may grant or make the usual judgment or order for administration on the condition that proceedings are not to be taken under the judgment or order without leave of the Court or a judge.

608. Interference with discretion of trustee

The making of an application under this Division does not affect any power or discretion vested in any executor, administrator or trustee, except in

so far as is necessarily involved in the particular relief sought.

609. Determination of question of fact

In an administration proceeding or on an application under rule 604, the Court or a judge is not bound to –

(a) determine any question or matter, the determination of which requires a decision on any disputed question of fact; or

(b) make an order under the application in respect of any other question or matter which should be determined in an action.

610. Judge may require separate representation

If, on any application under this Division, the same practitioner is employed for 2 or more parties, a judge may –

(a) require that any of those parties be represented by a separate practitioner; and

(b) adjourn the proceeding until the party is so represented.

611. Notice of judgment or order

(1) In an administration proceeding or on an application under rule 604, the Court or a judge

may order that any person who is not a party be given notice of –

(a) the application; or

(b) any judgment or order made on the application.

(2) Notice of a judgment or order is to be served on a person under disability in the same manner as a writ in an action.

(3) An affidavit of service on a person ordered to be given notice under subrule (1) is to be filed in the registry.

(4) On the application of a person served, the Court or judge may discharge, vary or add to the judgment or order.

(5) Before making an application under subrule (4), a person served is to appear in the registry in the same manner, and subject to the same provisions, as a respondent who appears.

(6) An application under subrule (4) is to be made within one month after service.

Division 3 – Sale of land by order of Court

612. Interpretation of Division 3 of Part 25

In this Division,

land includes any interest in or right over land.

613. Order for sale of land

(1) If it is necessary or expedient for the purpose of any proceeding relating to land, the Court or a judge, at any stage of the proceeding, may order that –

(a) the whole or any part of the land be sold; and

(b) any party in possession of the land, or in receipt of the rents and profits, deliver possession to some specified person.

(2) Unless otherwise ordered, an order under subrule (1) is to require –

(a) that the land be sold –

(i) for the best available price; and

(ii) for a sum not less than a reserve previously set by a judge; and

(b) that all parties join in the sale and conveyance or transfer.

614. Manner of sale

If an order that land be sold is made under rule 613 –

(a) the Court or judge may appoint a party or other person to conduct the sale; and

(b) unless otherwise ordered, if the land is comprised in an estate or is trust

property, the executor, administrator or trustee is to conduct the sale; and

(c) the Court or judge may permit the person conducting the sale to sell the land in any specified manner; and

(d) the Court or judge may direct any party to join in the sale and conveyance or transfer or in any other manner relating to the sale; and

(e) the Court or judge may give any direction for the purpose of the sale, including a direction –

(i) fixing the manner of sale, whether by contract conditional on the approval of the Court or judge, private treaty, public auction or tender or otherwise; or

(ii) fixing a reserve or minimum price; or

(iii) requiring payment of the purchase money into Court or to a trustee or other person; or

(iv) settling the particulars and conditions of sale; or

(v) obtaining evidence of value; or

(vi) fixing the remuneration payable to any auctioneer, estate agent or other person.

615. Affidavit of value

Any affidavit for the purpose of enabling a reserve or minimum price to be fixed is to state the value of the property by reference to an exhibit containing the value so that the value is not disclosed by the affidavit when filed.

616. Certificate of result of sale

(1) The result of any sale under the direction of the Court or a judge is to be certified to the Court –

(a) if the sale is by public auction, by the auctioneer who conducted the sale; or

(b) in any other case, by the person conducting the sale or the practitioner for that person.

(2) The Court or a judge may require that the certificate be verified by affidavit.

(3) Unless the Court or a judge otherwise orders, the certificate and any affidavit are to be filed within 21 days after the sale.

617. Sale out of Court

(1) The Court or a judge may authorise a sale of land to be carried out by proceedings out of Court.

(2) Any money produced by a sale out of Court are to be –

(a) paid into Court or to trustees; or

(b) otherwise dealt with –

as the Court or judge orders.

(3) The Court or a judge is not to make an order under subrule (1) unless each person interested in the land to be sold is before the Court or is bound by the order.

(4) An order under subrule (1) is to be prefaced by –

(a) a declaration that the Court or a judge is satisfied of the matters referred to in subrule (3); and

(b) a statement of the evidence on which the declaration is made.

618. Mortgage, exchange or partition

This Division applies, with any necessary modifications, to the mortgage, exchange or partition of land under an order of the Court or a judge.

Division 4 – Conveyancing counsel

619. Appointment of conveyancing counsel

(1) The judges may appoint any practitioners to be conveyancing counsel.

(2) The Court or a judge may –

(a) act on the opinion of conveyancing counsel; and

(b) distribute business amongst conveyancing counsel as the judges consider appropriate.

620. Reference by Court to conveyancing counsel

The Court or a judge may refer to, and may obtain the advice and assistance of, conveyancing counsel with respect to any matter relating to the following:

(a) the investigation of title;

(b) the provisions to be contained in conditions of sale;

(c) the settlement of a draft of a conveyance, transfer, mortgage, settlement or other instrument;

(d) any other matter the Court or judge considers appropriate.

621. Objection to opinion of conveyancing counsel

(1) A party may object to an opinion given by conveyancing counsel.

(2) If a party objects to an opinion, the point in dispute is to be determined by the Court or a judge.

622. Procedure on reference

(1) If a matter is referred to conveyancing counsel, the registrar is to –

(a) endorse a copy of the order by which the reference was made with a note specifying the name of the conveyancing counsel; and

(b) provide the copy to the party prosecuting the order.

(2) A copy of the endorsed order is sufficient authority for the conveyancing counsel to proceed with the matter referred.

(3) If any conveyancing counsel to whom the business is offered declines the reference, the business is to be offered to the other conveyancing counsel successively, according to seniority, until one of them accepts.

(4) Notwithstanding subrule (3), the Court or a judge may refer a matter to a particular conveyancing counsel.

PART 26 – RELIEF SIMILAR TO CERTIORARI, MANDAMUS AND PROHIBITION AND WRITS OF HABEAS CORPUS

Division 1 – Relief similar to certiorari, mandamus and prohibition

623. Applications

(1) An application for relief similar to *certiorari*, *mandamus* or prohibition may be made to the Court or a judge.

(2) An application in the first instance is to be made *ex parte* for a general order to show cause why the relief sought by the applicant or further or other relief should not be granted upon grounds to be stated in the general order.

(3) Notwithstanding subrule (2), the Court or judge is to make an order absolute in the first instance if –

(a) the application is made by the Attorney-General ex officio, whether on behalf of the Sovereign or a subject, and the application seeks relief similar to *certiorari*; or

(b) it appears necessary for the advancement of justice to do so and the application seeks relief similar to *certiorari*, *mandamus* or prohibition.

(4) On an application, the Court or judge may –

(a) exercise the jurisdiction conferred by section 11(12) of the Act to grant relief similar to *mandamus* or an injunction by interlocutory order; and

(b) order a stay in respect of any proceedings to which the application relates.

(5) An application is to –

(a) set out –

(i) the name, address and description of the applicant; and

(ii) the relief sought and the grounds on which it is sought; and

(iii) the judicial or other authority or other person to whom the order is proposed to be directed or against whom other relief is sought; and

(iv) particulars of any person who may be affected by the relief sought and the grounds upon which that person may be affected; and

(b) be accompanied by an affidavit verifying the facts relied on.

(6) An application for a general order to show cause made under this rule is not to be granted except on the application of a person interested in the relief sought.

624. General orders to show cause

(1) If, on an application under rule 623 the Court or a judge makes a general order to show cause, that order is to specify –

(a) the date, time and place at which the order is returnable; and

(b) whether the order is returnable before a Full Court or a judge in Court or in chambers; and

(c) the judicial or other authority or other person to whom the order is directed or against whom other relief is sought; and

(d) the relief sought and the grounds on which it is sought; and

(e) any person, other than a person referred to in paragraph (c), who, in the opinion of the Court or judge, is required to be served because that person may be affected by the relief sought.

(2) A general order to show cause and any subsequent proceedings are to be titled with the name of the applicant against the authority or the person specified under subrule (1)(c).

625. Service of general orders

(1) A general order to show cause and any affidavit upon which the prosecutor intends to rely are to be served on each authority and person specified

under rule rule 624(1)(c) or (e) not later than 14 days before the day on which the order is returnable.

(2) If a general order to show cause is to be served on a magistrate or justices in petty sessions, it is sufficient that it be served on the relevant clerk of petty sessions.

(3) If a general order to show cause is to be served on a statutory tribunal or board, it is sufficient that it be served on the chairperson, presiding member or clerk of the tribunal or board.

(4) If the prosecutor is unable to serve a general order, the Court or a judge may –

(a) extend the period for the return of the general order; or

(b) on any terms the Court or judge thinks fit dispense with service of the order and any affidavit in support on any person required to be served.

626. Notices

(1) An authority or person on whom a general order has been served is not to be heard on the return of the order unless the authority or person has filed and served on the prosecutor a notice of intention to appear.

(2) A notice of intention to appear is to be in accordance with the prescribed form.

(3) An authority or person upon whom a general order to show cause has been served may file and serve on the prosecutor a notice of submission.

(4) A notice of submission is to be in accordance with the prescribed form.

(5) A notice filed under subrule (1) or (3) is to specify an address for service of documents for the person on whose behalf it is filed.

(6) The filing of a notice under subrule (1) or (3) is proof of service on the authority or person who has filed that notice.

(7) The filing of a notice under subrule (3) operates as a submission by the authority or person filing that notice to any order the Court or a judge makes on the return of the general order, including an order as to costs, without hearing the authority or person.

(8) Before finally determining a general order, the Court or judge may relieve an authority or person of the consequences of failing to file a notice of intention to appear, or of filing a notice of submission, on any terms the Court or judge thinks fit.

627. Forms of relief

(1) On the return of a general order, the Court or a judge may exercise any jurisdiction or power and may grant any form of relief as, on the

material adduced and the grounds stated in the general order or permitted to be relied upon by an order made under rule 629(6), might have been exercised and granted –

(a) on an application for any one or more of the forms of relief referred to in rule 623(1); or

(b) in an action for a declaratory judgment or an order or injunction.

(2) On the return of a general order, or if the Court or judge is required to make an order absolute under rule 623(3), the Court or judge may order that –

(a) the relevant judgment, order, conviction or other determination be quashed; or

(b) the relevant authority or person perform some lawful duty; or

(c) the relevant judicial or other authority or person be restrained from acting in excess of jurisdiction in any particular.

628. Return before Full Court

If a judge makes a general order to show cause returnable before the Full Court, the registrar, unless a judge otherwise directs, at least 7 days before the day appointed for the return of the order to show cause, is to –

(a) deliver to the associate to the judge presiding in the Full Court 3 copies of each document required by the Full Court for the purpose of hearing and determining the order to show cause; and

(b) deliver to each of the parties a copy of each of those documents.

629. Hearing on return of general orders

(1) This rule applies to a hearing on the return of the general order.

(2) The prosecutor may use any affidavit filed by the prosecutor and served in accordance with rule 625(1), whether or not the affidavit was used on the making of the application under rule 623.

(3) Any person heard, other than the prosecutor, may use any affidavit filed by that person and served –

(a) on the prosecutor; and

(b) on any person who has filed a notice under rule 626(1) at least 4 clear days before the return of the general order.

(4) Notwithstanding the provisions of subrules (2) and (3), the Court or a judge may permit any other affidavit to be used on any terms as the Court or judge thinks fit.

(5) A person at the hearing is not to rely on any ground other than a ground set out in the general order under rule 624(1)(d) or allowed under subrule (6).

(6) The Court or judge by order may allow the prosecutor to rely on a ground different from, or additional to, any ground stated in the general order on any terms as the Court or judge thinks fit.

(7) A person seeking to be heard in opposition and who has not been served with the general order may be heard if that person –

(a) files a notice of intention to appear; and

(b) appears to the Court or judge to be a proper person to be heard.

(8) A notice of intention to appear is to be in accordance with the prescribed form.

(9) The Court or judge may dispose of the costs of the proceedings and of any order made either by final judgment or by separate order.

630. Orders under rule 627(2)(a), (b) or (c)

(1) The provisions of these rules relating to the service of writs apply to orders under rule 627(2)(a), (b) or (c).

(2) Unless otherwise ordered, an order under rule 627(2)(a), (b) or (c) is sufficiently served on –

(a) a magistrate or justice in petty sessions if directed to the relevant clerk of petty sessions; or

(b) a statutory tribunal or board if directed to the chairperson, presiding member or clerk of the tribunal or board.

Division 2 – Relief similar to certiorari

631. Restrictions on grant of relief similar to *certiorari*

An order under rule 627(2)(a) is not to be made –

(a) unless, on the return of the general order, a copy of the order, warrant, commitment, conviction, inquisition or record, verified by affidavit, is filed or the absence of the copy is accounted for to the satisfaction of the Court or a judge; and

(b) if it concerns a judgment, order, conviction, inquisition or other determination of a magistrate or justice in petty sessions from which an appeal or motion to review lies to the Court or a judge, before –

(i) any appeal or motion to review has been determined; or

(ii) the period for appealing or filing a notice to review has expired

without an appeal or motion to review having been instituted.

632. Quashing on return of order

The Court or a judge may make it a part of an order absolute for relief similar to *certiorari* that the judgment, order, conviction, inquisition or other determination be quashed on return without further order.

Division 3 – Relief similar to mandamus

633. Order to command act

(1) Subject to subrule (2), an order for relief similar to *mandamus* is to command the person to whom it is addressed to do the act.

(2) An order for relief similar to *mandamus* may command the person to whom it is addressed to do the act required or show why that person has not done it.

634. When order is returnable

(1) An order for relief similar to *mandamus* is returnable immediately or within a period the Court or a judge allows, either with or without terms.

(2) In the absence of any order of the Court or a judge as to when the order for relief is returnable, it is returnable within the same period

after service as is allowed for appearance to a writ.

635. Return of order

(1) A person compellable by law to make a return to a first order for relief similar to *mandamus* is to make a return to the first order.

(2) Within the period allowed by the order or, if no period is fixed, within the period specified in rule 634, a person to whom the order is directed is to file the order in the registry, together with a return signed by the person, certifying –

(a) that the act commanded by the order has been done; or

(b) if the order was not peremptory in the first instance, the reason why it has not been done.

(3) A copy of the return is to be served by the respondent on the prosecutor on the same day as it is filed.

636. Judgment to obtain peremptory order

(1) The provisions of this rule apply to the return to a first order for relief similar to *mandamus* which was not peremptory in the first instance.

(2) If a point of law is raised in answer to a return or any other pleading for relief similar to *mandamus* and there is no issue of fact to be

decided, the Court or a judge, on the argument of the point of law, is to give judgment for the successful party without any application for judgment being required.

(3) The applicant may plead to the return within the same period and in the same manner as if the return were a statement of claim delivered in an action.

(4) A pleading to the return and any subsequent proceedings, including pleadings, trial, judgment and execution, are to proceed and may be had and taken as in an action.

(5) A prosecutor who obtains judgment under this rule is immediately entitled to a peremptory order for relief similar to *mandamus* to enforce the command contained in the original order.

637. Substitution of persons

If, on an application for an order for relief similar to *mandamus*, it appears that some other person claims that the person to whom it is proposed to direct the order should do some act inconsistent with the act which the prosecutor claims to have done, the Court or a judge, on the application of the person to whom it is proposed to direct the order, may –

(a) order that the other person be substituted for the applicant in all subsequent proceedings up to the issue of a

peremptory order for relief similar to *mandamus*; or

(b) make any other order as may be just.

638. Quashing of return

(1) The Court or a judge may order any return to an order for relief similar to *mandamus* to be quashed on the ground that it is frivolous, impertinent or vexatious.

(2) If a return to a first order for relief similar to *mandamus* which was not peremptory is quashed, the Court or a judge may order a second order for relief similar to *mandamus*.

(3) If –

(a) an order for relief similar to *mandamus* which was peremptory is quashed; or

(b) a second order for relief similar to *mandamus* is quashed –

then the Court or a judge may –

(c) issue a writ of attachment; or

(d) commit the respondent for contempt.

639. Claim for relief similar to *mandamus* in action

(1) The plaintiff in an action who claims relief similar to *mandamus* to command the defendant to perform any act in which the plaintiff is

personally interested is to endorse that claim on the writ.

(2) The Court or a judge, by any judgment given for the plaintiff, may command the defendant, either immediately or on the expiration of any period, and on any terms as may be just, to perform the act in question.

(3) The Court or a judge may extend the period for the performance of the act.

(4) In an action, relief similar to *mandamus* is to be by judgment or order.

(5) . . . . . .

Division 4 – Relief similar to procedendo and quo warranto

640. Relief similar to *procedendo*

If, after the issue of an order for relief similar to prohibition, it appears to the Court or a judge that relief ought to be given against the judgment or order on any ground on which relief might be given against a judgment in an action, the Court or judge may make an order for relief similar to *procedendo* commanding the judicial tribunal to which the order was made –

(a) to proceed to hear or determine the matter; or

(b) to proceed as if the order for relief similar to prohibition had not been made.

641. Application for leave to exhibit information

(1) An application for leave to exhibit an information in the nature of quo warranto may be made to the Court or a judge.

(2) In this Division,

relator means the person applying for leave to exhibit an information.

(3) An application is to be –

(a) made *ex parte*; and

(b) accompanied by a draft information.

(4) Rule 623(4) and (5) applies to an application under subrule (1) as if rule 623(5)(a)(iii) read "the person against whom the order is proposed to be directed".

(5) The Court or judge is to make an order absolute or dismiss the application in the first instance.

(6) An order absolute is to specify the form of the information which may be exhibited by the relator.

(7) Before or after an order has been made absolute, the Court or a judge may allow a new relator to be substituted for the original relator on any terms the Court or judge thinks fit.

642. Facts set out in information

An information is to set out the facts relied on by the relator as invalidating the title of the respondent to the corporate character, office or franchise in question in the same manner as in a statement of claim.

643. Information to state names

(1) An information is to be in the name of the Attorney-General and, if it is exhibited at the instance of any person as relator, is to state that fact and the name of the relator.

(2) A copy of the information is to be served on the respondent.

644. Pleadings and subsequent proceedings

(1) The respondent is to plead to an information within the same time and in the same manner as if the information were a statement of claim in an action.

(2) The same proceedings are to be taken in all respects, including pleadings, trial, judgment and execution, as if the proceeding by information were an action in which the Attorney-General or relator was the plaintiff and the respondent was the defendant.

645. Disclaimers

(1) The respondent may disclaim any corporate character, office or franchise in question.

(2) A disclaimer is to be –

(a) signed by the respondent; and

(b) attested by a person before whom affidavits may be sworn; and

(c) filed in the registry; and

(d) served on the relator within the time allowed for delivering a defence.

(3) If a respondent disclaims, the Attorney-General or relator, unless the Court or a judge otherwise orders, is entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

646. Consolidation

Subject to rule 647, if any proceedings by information in the nature of quo warranto or for relief of a similar nature are pending against several persons for usurpation of the same or similar offices and on the same grounds of objection, the Court or a judge may direct the proceedings to be consolidated and for that purpose may make any order as may be just.

647. Consolidation or stay on application of respondent

An order for consolidation or stay of proceedings against a respondent is not to be made on the application of a respondent unless that respondent undertakes to enter a disclaimer in the event of judgment being given for the relator in the proceeding which is not stayed.

Division 5 – Habeas corpus

648. Application for writ or order

(1) An application for any writ of habeas corpus or for an order for the production of any person in confinement for the purpose of examination or trial may be made *ex parte*.

(2) An application may be made to the Court or to a judge at any time.

(3) If an application is refused by a judge, another application may be made to any other judge.

(4) On the hearing of an application, the Court or a judge may make an order absolute in the first instance or may make an order to show cause why a writ of habeas corpus should not issue.

(5) The order and any subsequent proceeding is to be entitled "The Queen against" the person to whom the writ or order is directed, except in the case of an order for the production of a person as witness, which is to be titled in the proceeding.

649. Requirement for verified copy of order

An order for the issue of a writ of habeas corpus concerning any order, warrant, commitment, conviction, inquisition or record is not to be made unless –

(a) a copy of the order, warrant, commitment, conviction, inquisition or record, verified by affidavit, has been filed; or

(b) its absence is accounted for to the satisfaction of the Court or judge.

650. Service

(1) The provisions of these rules relating to the filing and service of a writ apply to a writ of habeas corpus and an order for production.

(2) Service of a writ of habeas corpus or an order for production directed to a person charged by law with the custody of persons in lawful custody or confinement on a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained is sufficient service.

(3) A notice is to be served with the writ.

(4) The notice is –

(a) to be directed to the person to whom the writ is addressed; and

(b) is to state any act to be done by that person in obedience to the writ and any consequences of making default.

651. Return to writs

(1) The person to whom a writ of habeas corpus is directed, at the time and place specified in the writ, is to make a return to the writ.

(2) A return is to –

(a) be endorsed on or attached to the writ; and

(b) set out all the causes of the detention of the person named in the writ.

(3) The return is to be filed in the registry.

(4) The return may be amended or another substituted for it by leave of the Court or a judge.

652. Discharge without writ

(1) On the return of an order to show cause, the Court or a judge may order the discharge or other disposition of the person in question without the issue of a writ of habeas corpus.

(2) An order under subrule (1) has the same effect as if it had been made on the return of a writ.

653. Attachment for contempt

If a writ of habeas corpus or an order for the production of any person is disobeyed by the person to whom it is directed –

(a) the Court may order a writ of attachment to issue or commit the person for contempt; or

(b) a judge may order the issue of a warrant for the apprehension of the person to be brought before the Court or a judge; or

(c) the Court or a judge may admit to bail a person apprehended under the warrant or commit the person to prison pending disposition.

654. Proceedings on return of writ

(1) On the return of a writ of habeas corpus –

(a) the return is to be read; and

(b) an application is to be made for –

(i) the disposition of the person named in the writ; or

(ii) amending or quashing the return.

(2) If application is made for the discharge of the person in custody, that person is to be heard first, followed by the person denying the right to

discharge and then the first-named person in reply.

PART 27 – APPEALS

Division 1 – Appeals from judge to Full Court

655. Interpretation of Division 1 of Part 27

In this Division –

final judgment includes any judgment, by which the rights of the parties are finally concluded with respect to any matter in question in a proceeding, other than a decision on a matter of procedure;

judge's notes means any notes taken by a judge of –

(a) the evidence given in a proceeding tried before the judge; or

(b) any ruling with respect to the admission or rejection of evidence at that trial; or

(c) an application made at that trial; or

(d) the contentions of the parties as to a point of law and the judge's decision on that point;

judgment includes any decision, order or other determination;

notice of appeal means a notice of appeal under rule 660;

Registry means the Principal Registry;

trial includes the hearing of any proceeding.

656. Application of Division 1 of Part 27

(1) This Division applies to any case in which an appeal lies from a judge to a Full Court.

(2) Except for so much of rule 657(1) as provides that an appeal is to be by way of rehearing, this Division applies to an application to the Full Court for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury as it applies to an appeal to that court.

657. Appeal to be by way of rehearing

(1) An appeal from a judge, whether sitting in Court as a court or in chambers, to a Full Court is to be –

(a) by way of rehearing; and

(b) brought by notice of appeal in a summary way.

(2) A notice of appeal and any subsequent proceeding on an appeal from a judge under this Division is to be entitled –

(a) "In the Supreme Court of Tasmania, On appeal to the Full Court"; and

(b) as between the appellant and the respondent.

(3) An appellant may appeal against the whole or any part of a judgment by a notice of appeal.

(4) The notice of appeal is to state –

(a) the part of the judgment that is being appealed; and

(b) specifically and concisely the grounds of appeal; and

(c) what judgment is sought.

(5) Notice of appeal is to be given for an ordinary sitting of the Full Court to be held on a date to be fixed by the Principal Registrar.

658. Appeal from judge in chambers

An appeal from a judgment of a judge sitting in chambers, including the refusal of an *ex parte* application, may be instituted or made and is to be heard even though –

(a) the judge was not requested to adjourn the proceeding into Court; or

(b) the judge has not certified that no further argument was required.

659. Time for institution of appeal

If an appeal is from a final judgment, it is to be instituted within 21 days, or if it is not from final judgment, within 10 days, after the date on which the judgment was pronounced or, in the

case of the refusal of an application, from the date of the refusal.

660. Institution of appeal

An appeal is to be instituted by –

(a) filing the original notice of appeal in the Principal Registry; and

(b) serving a copy of the notice of appeal on each party directly affected by it.

661. Service of notice of appeal

(1) Service of notice of appeal may be effected personally or at the address for service of the person to be served given for the purpose of the proceeding to which the appeal relates.

(2) The Court or a judge may make an order for substituted service of a notice of appeal.

662. Appeal in proceedings in district registry

(1) If an appeal is brought from a judgment or order made in a proceeding in a district registry, a copy of the notice of appeal is to be filed in the district registry.

(2) A failure to comply with subrule (1) does not affect the validity of the appeal.

663. Transmission of documents from district registry

If a proceeding in respect of which an appeal is brought is proceeding in a district registry, the district registrar is to transmit the relevant file and any exhibits to the Principal Registrar.

664. Notice of cross-appeal

(1) A respondent seeking to appeal from the whole or a part of the judgment from which the appellant has appealed, within 14 days after the service of the notice of appeal is to –

(a) deliver a copy of the notice of cross-appeal to the appellant and any other party directly affected by it; and

(b) file the original notice of cross-appeal in the Principal Registry.

(2) A notice of cross-appeal is to –

(a) state from what part of the decision the respondent cross-appeals; and

(b) state specifically and concisely the grounds of the cross-appeal and the judgment or order or the variation of judgment sought.

(3) A respondent proposing to contend that some matter of fact or law has been erroneously decided but not seeking a discharge or variation of the judgment or order actually given or made need not give notice of cross-appeal.

(4) An omission to give a notice of cross-appeal under subrule (1) does not diminish the powers of the Full Court when hearing an appeal but may be a ground for an adjournment of the appeal or for a special order as to costs.

665. List of documents to be included in appeal book

(1) This rule applies to an appeal other than an appeal by way of renewing before a Full Court an *ex parte* application which has been refused by a judge.

(2) Within 7 days after the expiration of the time prescribed by rule 659, an appellant is to deliver to the Principal Registrar a list of the documents proposed to be included in the appeal book.

(3) The list of documents is to consist of any of the following as are required for the appeal:

(a) the notice of appeal;

(b) the formal judgment appealed from;

(c) the reasons for judgment, if given in writing;

(d) any pleading;

(e) any affidavit;

(f) any notice of cross-appeal;

(g) the transcript of the proceedings or, if there is no transcript, the judge's notes taken at the trial.

(4) If an appellant does not comply with subrule (2), the Court or a judge, on the application of a respondent, may order that the appeal be dismissed for want of prosecution.

666. Settlement of appeal book

(1) On the leaving of a list of documents with the Principal Registrar, the Principal Registrar is to give the appellant an appointment for the settlement of the list.

(2) The appellant is to serve a copy of the list of documents with 2 days' notice of the appointment on each respondent.

(3) The Principal Registrar may permit a party to attend the settlement of a list of documents by telephone.

(4) The Principal Registrar –

(a) is to settle the list of documents to be inserted in the appeal book; and

(b) in so doing may strike out from or add to the list of documents any document or other material; and

(c) may specify in the list of documents any part of a document or other material that is to be inserted in or omitted from the appeal book.

(5) The Principal Registrar is to direct that the appeal book contain any document or material that the Principal Registrar, officer or judge from

whom the appeal is brought thinks necessary for the hearing and determination of the appeal.

(6) The Principal Registrar is to exclude from a list of documents the whole or part of any document or material not required for the purpose of hearing and determining that appeal.

(7) If a respondent does not attend an appointment under subrule (1), the Principal Registrar, on proof of service, may settle the list of documents in the absence of the respondent.

(8) The Principal Registrar may adjourn any appointment for settling the list of documents and the parties are bound to attend the adjourned appointment without further notice.

(9) The Principal Registrar may require any party to produce any documents relating to the appeal as may be required for the settlement of the list of documents.

(10) In settling the list of documents, the Principal Registrar is to have regard to any cross-appeal.

(11) For the purpose of settling the list of documents, the Principal Registrar may consult any judge.

(12) If a judge is consulted, the judge may direct the Principal Registrar to give notice to the parties to attend before the judge for the purpose of settling the list of documents.

(13) The parties are not entitled to be heard before the judge unless required under subrule (12).

(14) The Principal Registrar is to –

(a) sign the list as settled, whether by himself or herself or a judge; and

(b) retain the list; and

(c) deliver a copy to any party to the appeal who applies for it.

667. Cases in which evidence is lengthy

(1) In any case in which the evidence or material used at the trial is of great length or may not conveniently be reproduced, the Court or a judge may direct that it –

(a) be omitted from the appeal book; and

(b) be produced in the Full Court.

(2) The Court or a judge may give any other direction as to the materials to be used on the hearing of any appeal.

668. Appeal books

(1) An appeal book is to be printed or produced by a process that gives uniform facsimile pages of clear and legible type.

(2) A copy of the transcript of the proceedings to which an appeal relates that is prepared by photocopying may be contained in the appeal book.

(3) A volume of an appeal book –

(a) is not to be more than 40 millimetres thick; and

(b) if it contains a copy of a transcript prepared by photocopying, is to have every tenth line on each page numbered in the margin; and

(c) is to be fastened or bound in a manner approved by the Principal Registrar.

(4) The title pages of an appeal book are to give –

(a) the full and correct title of the appeal; and

(b) the names of the practitioners for each party and the name of the practitioner who has carriage of the appeal for the appellant and for the respondent; and

(c) each party's address for service.

(5) After the title page of an appeal book there is to be an index containing the following:

(a) a complete list of the documents as settled and witnesses, referring to the appropriate page of the appeal book;

(b) the date of each document and the exhibit mark of any exhibit;

(c) any exhibits arranged in the order in which they have been lettered or numbered.

(6) Each document in an appeal book is to –

(a) be on folio A4 paper of good and durable quality capable of receiving writing in ink; and

(b) have a margin of 6 millimetres on the left-hand side of each page; and

(c) be numbered on each page; and

(d) bear the number allotted to it in the index on each page.

(7) The documents are to be arranged in an appeal book in the following order:

(a) process and pleadings;

(b) evidence, either oral or by affidavit;

(c) exhibits;

(d) reasons for judgment;

(e) formal judgment appealed from;

(f) notice of appeal and any notice of cross-appeal;

(g) the certificate referred to in subrule (9).

(8) The appellant is to cause a copy of an appeal book to be examined with the original documents in the proceeding.

(9) The examined copy of an appeal book is to bear a certificate by the appellant or the practitioners for the appellant that the book has been examined and is correct.

(10) An appeal book is to be prepared and produced in a manner satisfactory to the Principal Registrar.

(11) The costs of an appeal book are costs in the appeal unless the Full Court otherwise orders.

669. Filing of appeal book

(1) Within 42 days after the settlement of the list of documents, the appellant is to –

(a) file in the Principal Registry an examined copy of the appeal book together with 3 copies for the use of the judges of the Full Court; and

(b) deliver a copy of the appeal book to each respondent.

(2) If an appellant does not comply with subrule (1), the Court or a judge, on the application of a respondent, may order that the appeal be dismissed for want of prosecution.

670. Setting down of appeal

(1) If an appellant complies with rule 669(1)(a), whether within the time limit or not –

(a) unless the Court or a judge otherwise directs, the Principal Registrar is to enter the appeal in the list of appeals for hearing at the next ordinary sittings of the Full Court to be held not less than 14

days after the date on which the copies of the appeal book were filed; and

(b) not less than 10 days before the first day of the sittings referred to in paragraph (a), the Principal Registrar is to forward the list to the Chief Justice, who is to fix the date, time and place for the hearing of the appeal; and

(c) the Principal Registrar is to notify the parties to the appeal of the date, time and place for the hearing of the appeal fixed by the Chief Justice.

(2) At least one day before the day listed for the hearing of the appeal, the Principal Registrar is to cause the file of papers relating to the appeal to be sent to the associate who is to attend the sitting of the Full Court.

671. Security for costs

Security for the costs of an appeal is not required unless the Court or a judge otherwise orders.

672. Powers of the Full Court

(1) The Full Court may order that a notice of appeal or notice of cross-appeal be served on –

(a) a party to the proceeding in which the appeal has been brought; or

(b) a person not a party to the proceeding.

(2) If a person is served under subrule (1)(b), the Full Court may give any judgment and make any order that might have been given or made if the person had originally been a party to the proceeding in which the appeal is brought.

(3) A notice of appeal or notice of cross-appeal may be amended at any time as the Full Court thinks fit.

(4) To ascertain the oral evidence or the terms of any ruling or direction or the summing-up or judgment given at the trial, the Full Court may refer to the judge's notes or counsel's notes, or any other materials the Full Court thinks proper, whether in the appeal book or not.

(5) The Full Court may postpone or adjourn the hearing of any appeal to any time and on any terms as it thinks fit.

(6) The Full Court may make any order as to the whole or any part of the costs of an appeal as appears to the Full Court to be just, but, unless some other order is made, the costs of an appeal follow the event.

(6A) On or after delivering judgment in an appeal which they have heard, one or more judges of the Full Court, despite the absence of any other judge who also heard that appeal, may determine –

(a) an uncontested application for costs in relation to that appeal; and

(b) an application for an indemnity certificate under the *Appeal Costs Fund Act 1968* in relation to that appeal.

(6B) In relation to an appeal, a judge may do either or both of the following:

(a) make a consent order on any matter other than an order agreeing to allow or uphold the appeal;

(b) grant an indemnity certificate under the *Appeal Costs Fund Act 1968*.

(7) On an appeal against the refusal of an *ex parte* application, the Full Court may make any order which the judge who refused the application could have made.

(8) An interlocutory order from which there has not been an appeal does not prevent the Full Court giving any judgment on the hearing of the appeal as may be just.

(9) The Full Court may order a new trial on any question without interfering with the finding or decision on any other question.

(10) If the Full Court orders a new trial, it may, by that order, give all necessary directions for the further proceedings in the case.

(11) If the Full Court does not give sufficient directions under subrule (10), a judge may give any necessary directions.

673. Non-appearance of party

(1) If an appellant does not appear on the hearing of an appeal, the appeal may be dismissed.

(2) If an appeal is dismissed under subrule (1), the Full Court may order that the appeal be reinstated and the order dismissing it vacated on any terms as to costs and otherwise as in the circumstances may be just.

(3) If a party who has been served with a notice of appeal does not appear on the hearing of the appeal, on proof of service, any order is to be made on the appeal as in the circumstances may be just.

674. Return of file to Principal Registrar

(1) If an appeal is heard and determined, the associate is to return the file of papers relating to the appeal, together with a minute of the result of the hearing, to the Principal Registrar.

(2) If the file was sent from a district registry, the Principal Registrar is to return the file to that registry.

675. Appellant may have appeal dismissed

(1) An appellant who does not prosecute an appeal is not taken to have abandoned the appeal until that appellant has filed with the Principal Registrar and served on the respondent a notice of discontinuance.

(2) A notice of discontinuance is to be in accordance with the prescribed form.

(3) On the filing and service of a notice under subrule (1), the appeal is taken to be dismissed with costs.

676. Appeal not to stay proceedings

(1) An appeal does not operate as a stay of proceedings unless the Court or a judge so orders.

(2) An order staying proceedings may be made –

(a) as to the whole or any part of the proceedings in the proceeding; and

(b) on any terms the Court or judge granting the stay thinks fit.

677. Interest if execution delayed by appeal

In any case in which execution has been delayed by reason of a stay of proceedings on an appeal, interest for the time that execution has been delayed is to be allowed, unless the Court or a judge otherwise orders.

678. Notice to parties under section 15(8) of Act

(1) Any notice to be given under section 15(8) of the Act is to be given to the parties at least 4 days before the date appointed for the hearing of the appeal.

(2) The Principal Registrar is the prescribed officer for the purpose of section 15(8) of the Act.

679. Application for leave to appeal

(1) An application for leave to appeal is to be made by a notice of appeal containing a statement that leave to appeal is sought.

(2) The provisions of rules 659 to 677, inclusive, apply to an application for leave to appeal as if any reference to an appeal was a reference to an application for leave to appeal.

680. Appeal from refusal of *ex parte* application

(1) If an *ex parte* application is refused by a judge, whether sitting in Court or in chambers, the application may be renewed by way of appeal to the Full Court without any notice of appeal being served or filed.

(2) The renewal of an *ex parte* application is to be made by letter to the Principal Registrar within 10 days after the refusal of the application.

(3) A person making an application for renewal is to file in the Principal Registry 3 sets of the papers provided for the use of the judge who refused the application.

(4) If a person making an application for renewal complies with subrule (3), the provisions of rule 670 apply.

Division 1A – Appeal from Associate Judge

680A. Appeal from Associate Judge

(1) In this rule –

final judgment includes any judgment other than a decision on a matter of procedure –

(a) that disposes of an application to extend or waive a time limit on the start of proceedings that is imposed by statute; or

(b) that disposes of an application to extend or waive a time limit on the continuation of proceedings that is imposed by statute; or

(c) that disposes of an application to set aside a judgment; or

(d) that disposes of an application to dismiss proceedings for want of a prosecution; or

(e) by which the rights of the parties are finally concluded in respect of any matter in question in a proceeding;

interlocutory judgment is any judgment other than a final judgment;

judgment includes any decision, order or other determination.

(2) A person affected by a judgment of the Associate Judge may appeal against the whole or any part of the judgment by a notice of appeal to –

(a) the Full Court, if the judgment was a final judgment; or

(b) a judge sitting in chambers, if the judgment was an interlocutory judgment and was given in chambers; or

(c) a judge sitting in court, if the judgment was an interlocutory judgment and was given in court.

(3) An appeal is to be instituted –

(a) in the case of an appeal from a final judgment, within 21 days after the judgment was pronounced; or

(b) in the case of an appeal from a judgment that is not a final judgment, within 10 days after the judgment was pronounced; or

(c) in the case of the refusal of an application, within 10 days after the refusal.

(3A) Rules 656, 657, 658 and rules 660 to 678 apply to an appeal from a final judgment and subrules (4) to (15) only apply to an appeal from an interlocutory judgment.

(4) An appeal is to be instituted by –

(a) filing an original notice of appeal; and

(b) serving a copy of the notice of appeal on each party directly affected by it.

(5) If an appeal is brought from a judgment given in a proceeding in a District Registry, the notice of appeal is to be filed in the District Registry.

(6) A respondent seeking to appeal from the whole or a part of the judgment from which the appellant has appealed is to, within 14 days after the service of the notice of appeal –

(a) file an original notice of cross-appeal; and

(b) deliver a copy of the notice of cross-appeal to the appellant and any other party directly affected by it.

(7) Within 42 days after the expiration of the time limited for the institution of an appeal, an appellant is to –

(a) file an appeal book together with one copy; and

(b) deliver a copy of the appeal book to each respondent.

(8) A judge may refer an appeal, or any point or question arising in an appeal, for determination by the Full Court, and upon such a referral the appellant is to file 2 additional copies of the appeal book.

(9) Unless otherwise ordered, an appeal book is to contain copies of the following:

(a) the notice of appeal;

(b) the formal judgment appealed from;

(c) the reasons for judgment, if given in writing;

(d) any pleading;

(e) any affidavit;

(f) any notice of cross-appeal;

(g) the transcript of the proceedings or, if there is no recording, the Associate Judge's notes taken at the hearing.

(10) If an appellant does not file and deliver the appeal book within the time limited the appeal may be dismissed for want of prosecution.

(11) If an appellant does not appear on the hearing of an appeal, the appeal may be dismissed.

(12) If an appeal is dismissed under subrule (11), the court or a judge may order that the appeal be reinstated and the order dismissing it be vacated on any terms as to costs and otherwise as in the circumstances may be just.

(13) If a party who has been served with a notice of appeal does not appear on the hearing of the appeal, the court or judge, on proof of service, may make any order on the appeal as in the circumstances may be just.

(14) An appellant who does not prosecute an appeal is not taken to have abandoned the appeal until that appellant has filed and served a notice of discontinuance.

(15) On the filing and service of a notice under subrule (14), the appeal is taken to be dismissed with costs.

(16) Rules 657(4), 661, 664(2) and (3), 668(1) to (10), 671, 676 and 677 apply to an appeal from a judgment of the Associate Judge.

Division 2 – Appeals from and cases stated by inferior courts

681. Interpretation of Division 2 of Part 27

In this Division –

Court includes the Full Court hearing an appeal from an inferior court under an order of a judge referring the appeal or any point or question arising in it for determination by a Full Court;

judge, in relation to an inferior court, includes any judicial officer of the inferior court by whom the judgment the subject of the appeal was made or given;

judge's notes means –

(a) any notes taken under rule 688; or

(b) if the proceedings are recorded, a transcript of the recording;

judgment includes any decision, order, determination or finding from which an appeal may be brought and which is subject to this Division;

notice of appeal means a notice of appeal under rule 685;

pleading includes –

(a) any document stating or raising the claim, demand or application of any person to or for any relief or judgment; and

(b) any document stating or raising any defence, answer, objection or opposition made by any other person to the claim, demand or application; and

(c) any subsequent pleadings;

trial includes the hearing of any cause, matter or proceeding.

682. Application of Division 2 of Part 27

(1) Subject to any provision of any Act conferring the right of appeal, this Division applies to any appeal or case stated from or by an inferior court which is subject to the provisions of the Act.

(2) This Division does not apply to any appeal or case stated to the Court or a judge under the *Justices Act 1959*.

(3) This Division does not apply to an appeal from a judge of an inferior court of civil jurisdiction in a case in which any proceeding or a question or issue of fact has been referred to such a judge or any damages have been assessed or awarded by such a judge under an order of the Court or a judge.

(4) The provisions of rules 672, 673, 675, 676 and 677 apply to an appeal from an inferior court to the Court as if any reference to the Full Court were a reference to the Court.

683. Hearing of appeal

(1) An appeal is to be heard by a judge sitting in Court, unless –

(a) the Act conferring the right of appeal otherwise provides; or

(b) the appeal is from a court sitting in private.

(2) An appeal from a court sitting in private –

(a) is to be heard by a judge in chambers; and

(b) unless the Act conferring the right of appeal requires that the appeal be heard by a judge sitting in chambers, may be adjourned by the judge into Court.

(3) The Court or a judge may refer an appeal or any point or question arising in the appeal for determination by the Full Court.

(4) If an appeal, point or question is referred to the Full Court, the Full Court or the judge may make any order and give any direction as may be necessary or convenient.

684. Period for institution of appeal

An appeal is to be instituted within 14 days –

(a) after the date on which the judgment was given or made; or

(b) in the case of the refusal of an application, after the date of the refusal.

685. Notice of appeal

(1) A notice of appeal and any subsequent proceeding on an appeal to which this Division applies are to be titled "In the Supreme Court of Tasmania, On appeal from [naming the court from which the appeal is brought]" followed by "Hobart Registry [or the name of the district registry if filed in one]" and as between the appellant and the respondent.

(2) An appellant, by notice of appeal, is to –

(a) state whether the whole or part only of the judgment is appealed against; and

(b) in the latter case, specify the part.

(3) The notice of appeal is to state –

(a) the grounds of appeal; and

(b) what judgment or order is sought.

686. Institution of appeal

An appeal is to be instituted by –

(a) filing the original notice of appeal and one copy in a registry; and

(b) filing one copy of the notice of appeal with –

(i) the registrar or clerk of the inferior court from which the appeal is brought; or

(ii) if there is no such officer, the judge of the inferior court who gave or made the judgment the subject of the appeal; and

(c) serving one copy of the notice of appeal on each party directly affected by the appeal.

687. Service of notice of appeal

(1) Service of a notice of appeal may be effected personally or on the practitioner representing the party in or before the inferior court, even if the retainer or authority of the practitioner has been withdrawn or has determined.

(2) The Court or a judge may make an order for substituted service of a notice of appeal.

688. Judge of inferior courts to record proceedings

A judge of an inferior court from which an appeal lies to the Court is to –

(a) take or cause to be taken a note of the proceedings; or

(b) cause the proceedings to be recorded.

689. Obtaining documents from inferior court

(1) On the filing in the Court of a notice of appeal from an inferior court, the registrar is to apply to that inferior court for the following documents or copies of them:

(a) any pleadings;

(b) if the proceedings, or any part of the proceedings –

(i) were transcribed, the transcript of the proceedings; or

(ii) were recorded, the recording of the proceedings; or

(iii) were not transcribed or were not recorded, the judge's notes;

(c) any affidavit or other documentary evidence filed in the inferior court.

(2) On an application under subrule (1), a judge of the inferior court is to deliver or cause to be delivered to the registrar the relevant documents.

(3) If a judge of an inferior court fails to comply with subrule (2) within 14 days, a judge, on the report of the registrar or on the application of a party to the appeal, may make an order requiring the judge or officer of the inferior court to comply with that subrule.

690. Setting down appeal

(1) On obtaining any documents from the inferior court, the registrar is to –

(a) enter the appeal for hearing on the first convenient day; and

(b) give at least 10 days' notice to the appellant of the time and place appointed for the hearing.

(2) If not all of the documents requested under rule 689(1) are delivered to the registrar within 14 days after the request, the registrar is to proceed in accordance with subrule (1).

(3) On receiving notice of the hearing, the appellant is to give at least 7 days' notice of the time and place appointed for the hearing to all other parties served with the notice of appeal.

(4) Subject to any order of the Court or a judge, an appeal from an inferior court may be entered by the registrar for hearing at any place.

(5) On an application made at any time by a party to an appeal or a person served with a copy of the notice of appeal, a judge may order –

(a) that the appeal be entered for hearing at any place; or

(b) if the appeal has been entered for hearing, that the place of the hearing be changed.

691. Setting aside notice of appeal

The Court or a judge may set aside a notice of appeal if –

(a) the appeal is incompetent; or

(b) a provision of rule 685 or 686 has not been complied with.

692. Reference to Full Court

(1) A judge may –

(a) refer an appeal, or any point or question arising in an appeal, for determination by the Full Court; and

(b) make any order and give any direction in that behalf as may be necessary or convenient.

(2) An appeal or a point or question referred under subrule (1) is to be determined by the Full Court.

(3) Unless a judge otherwise directs, the registrar, at least 7 days before the day appointed for the hearing before the Full Court of an appeal or a point or question, is to –

(a) deliver to the associate attending the sitting of the Full Court 3 copies of each document required by the Full Court for the purpose of hearing and determining the appeal, point or question; and

(b) deliver to each party one copy of each of those documents.

693. Powers of Court on hearing appeal

(1) The Court or a judge hearing an appeal has all the powers conferred on the Full Court by rule 672.

(2) If any document required to be delivered under rule 689 has not been delivered, the Court or a judge may –

(a) require a party to supply a copy of any affidavit or other documentary evidence filed in the inferior court; or

(b) order a witness examined at the trial in the inferior court to be produced and examined on the hearing of the appeal.

(3) The Court or judge has the power to draw any inference of fact that might have been drawn by the inferior court.

(4) Any new trial ordered by the Court or judge may be ordered to be heard before a judge of the Court or in the inferior court.

(5) The Court or judge may exercise the powers under this rule even if –

(a) notice of appeal or cross-appeal has not been given –

(i) in respect of any part of the decision of the inferior court; or

(ii) by any party to the proceeding in the inferior court; or

(b) any ground is not specified in the notice of appeal or cross-appeal for –

(i) allowing the appeal; or

(ii) affirming the decision of the inferior court; or

(iii) varying the decision of the inferior court.

(6) An appeal is not to succeed merely on the ground of misdirection or the improper reception or rejection of evidence unless some substantial wrong or miscarriage has been occasioned by the misdirection, reception or rejection.

(7) The Court or judge may make any order with respect to an appeal from an inferior court which may be just for the purpose of ensuring the determination of the merits of the real question in controversy between the parties.

(8) Subject to section 47(1) of the Act, the Court or judge, on hearing an appeal from an inferior court, may –

(a) give or make any judgment the Court or judge considers should have been given or made by the inferior court; and

(b) set aside, reverse, alter or vary any judgment given or made by the inferior court; and

(c) make any other order the Court or judge considers appropriate.

694. Return of documents to inferior court

After the determination of the appeal, the registrar is to return any document delivered under rule 689 to the proper officer of the inferior court to which it belongs.

Division 3 – Stated case

695. Application of Division 3 of Part 27

This Division applies if an Act makes provision for a question to be reserved in the form of a special case or case stated by an inferior court for the opinion of, or determination by, the Court or a judge.

696. Preparation of case

(1) A court intending to reserve a question in the form of a special case or case stated may direct a party to –

(a) prepare a draft of the case; and

(b) deliver the draft to each other party.

(2) The draft is to –

(a) state the question for the opinion or determination of the Court or a judge and any facts necessary to enable the Court or judge to give proper consideration to that question; and

(b) list all the documents referred to in the case; and

(c) be divided into paragraphs numbered consecutively.

(3) The draft is to be delivered within –

(a) any period the court giving the direction orders; or

(b) if the court does not order a period, 21 days after the direction that the order be prepared.

(4) After giving the parties a sufficient opportunity to be heard –

(a) the court is to settle the draft and return it to the party who prepared it; and

(b) that party is to lodge a sufficient number of copies of the draft with the court.

(5) On the lodgment of the copies, the court is to sign one copy and certify a sufficient number of further copies.

(6) The copy signed by the court is to be the case.

697. Transmission of case

On signing a case, the court, by its proper officer, is to –

(a) retain one certified copy as the record of the court; and

(b) deliver the case and one certified copy to the registrar; and

(c) deliver one certified copy to each party.

698. Listing of case

On receiving a case, the registrar is to arrange for it to be listed for hearing.

699. Hearing of case

On the hearing of a case, the Court or a judge or a party may refer to the whole of the contents of a document referred to in the case.

700. Reference to Full Court

On the hearing of any case, or point or question arising from any case, reserved by the Court or a judge for the opinion of, or determination by, the Full Court, the Principal Registrar is to direct any party proposing to refer to a document or part of a document to provide sufficient copies

of the document or part for the Full Court and each of the other parties.

Division 4 – Appeal from and case stated by statutory tribunals other than courts

701. Interpretation of Division 4 of Part 27

In this Division –

Court includes the Full Court hearing an appeal, point or question referred to it;

determination means any decision, ruling, order, direction or other determination of a tribunal;

tribunal means any statutory tribunal or statutory office, other than a court, established or constituted by or under any Act.

702. Application of Division 4 of Part 27

This Division applies to any appeal or case stated from a tribunal which is subject to the provisions of the Act.

703. Hearing of appeals

(1) Unless the Act conferring a right of appeal otherwise provides or the appeal is from a tribunal sitting in public, an appeal is to be heard by a judge in chambers.

(2) Unless the Act conferring a right of appeal requires that it be heard by a judge sitting in chambers, a judge hearing an appeal from a tribunal sitting in private may adjourn the appeal into Court.

(3) An appeal from a tribunal sitting in public is to be heard by a judge sitting in Court.

(4) The Court or a judge may refer an appeal, or any point or question arising in an appeal, for determination by the Full Court.

(5) If an appeal, point or question is or has been referred under subrule (4), the Court or the judge may make any order and give any direction as may be necessary or convenient.

704. Certain rules to apply

Rules 689 to 694, inclusive, apply to any appeal the subject of this Division as if –

(a) the tribunal which made the determination were an inferior court; and

(b) the proceedings in which the determination was made were a trial; and

(c) the determination were a judgment.

705. Notice of appeal

(1) An appeal is to be instituted by notice of appeal in a summary way.

(2) The notice of appeal, and any subsequent proceeding, is to be titled "In the Supreme Court of Tasmania" followed by "Hobart Registry [or the name of the district registry if filed in one]", in the matter of the Act under which the determination was made, and in the matter of the proceeding in which the determination was made.

(3) The appellant, by the notice of appeal, is to state whether the whole or a part only of the determination is complained of and, in the latter case, is to specify the part.

(4) The notice of appeal is to state the grounds of the appeal and the order or determination sought.

706. Period for institution of appeal

An appeal is to be instituted within 21 days after the date of the determination.

707. Institution of appeal

An appeal is to be instituted –

(a) by filing the original notice of appeal and one copy in a registry; and

(b) by serving a copy of the notice of appeal on the registrar, chairperson, secretary or other similar officer of the tribunal which made the determination; and

(c) unless a judge otherwise orders, if a person other than the appellant appeared

before or was heard by the tribunal in the proceedings in which the determination was made, by serving a copy of the notice of appeal on that person.

708. Setting down appeal

(1) On the filing of a notice of appeal, the registrar is to –

(a) enter the appeal for hearing on the first convenient day; and

(b) give at least 10 days' notice to the appellant of the time and place appointed for the hearing.

(2) On being given notice of a hearing, the appellant is to give at least 7 days' notice of the time and place appointed for the hearing to each person served with the notice of appeal.

(3) Subject to any order of the Court or a judge, the registrar may enter an appeal for hearing at any place.

(4) On an application made at any time by a party to an appeal or a person served with a copy of the notice of appeal, a judge may order that –

(a) an appeal be entered for hearing at any place; or

(b) if the appeal has been entered for hearing, that the place of the hearing be changed.

(5) The registrar is to deliver one copy of the notice of appeal to the judge who is to hear the appeal.

708A. Applicant may have appeal dismissed

(1) An appellant who does not prosecute an appeal is not taken to have abandoned the appeal until that appellant has filed with the Principal Registrar and served on the respondent a notice of discontinuance.

(2) A notice of discontinuance is to be in accordance with the prescribed form.

(3) On the filing and service of a notice under subrule (1), the appeal is taken to be dismissed with costs.

709. Powers of Court or judge

(1) The Court or a judge has all the powers conferred on the Court by rule 693 as if –

(a) the tribunal which made the determination were an inferior court; and

(b) the proceedings in which the determination was made were a trial; and

(c) the determination were a judgment.

(2) Any evidence given before a tribunal may be brought before the Court or judge by affidavit or, if so directed by the Court or judge, by oral evidence.

(3) The Court or judge may ascertain the evidence given, and the proceedings had, before the tribunal from any material, including counsel's notes, and that material may be used to determine the appeal.

710. Rules as to stated case

The provisions of rules 695 to 700, inclusive, apply if by any Act provision is made for a question to be reserved in the form of a special case or case stated by a tribunal for the opinion of, or determination by, the Court or a judge as if the tribunal which reserved or stated the case were an inferior court.

711. Hearing of case

If a case is reserved or stated by a tribunal, rule 703 applies as if it were an appeal from a tribunal.

Division 5 – Appeal from referee

712. Interpretation of Division 5 of Part 27

In this Division,

determination means any finding, decision, assessment, order or direction, and any judgment entered or signed by leave, order or direction, of a referee, officer or a judge of an inferior court of civil jurisdiction in any proceeding where the subject matter of the determination was

referred by an order of the Court or a judge.

713. Appeals from referees

(1) A person may appeal to a judge in chambers from a determination.

(2) An application to the Court or a judge for a new trial or to set aside a determination is deemed to be an appeal against that determination.

714. Procedure on appeals

Subject to rule 715, the following provisions apply to an appeal from the determination:

(a) the appeal is to be brought within 21 days after the determination is made;

(b) the appeal is to be brought by application to a judge to set aside or vary the determination;

(c) the application may ask that some other determination be made or that the matter be referred back to the referee, officer or judge of the inferior court for reconsideration;

(d) the application is to be served within the period prescribed by paragraph (a) and not less than 14 days before the date appointed for its hearing;

(e) the application is to state whether the whole or only part of the determination is appealed from, and in the latter case is to specify which part;

(f) the application is to state specifically and concisely the grounds of the appeal;

(g) the appeal does not operate as a stay of proceedings unless a judge or the referee, officer or judge of the inferior court otherwise orders;

(h) on the hearing of the appeal, the judge may –

(i) set aside or vary the determination or any part of it; or

(ii) direct any other determination to be made; or

(iii) require an explanation or reasons from the referee, officer or judge of the inferior court; or

(iv) remit the matter or any part of it, or any question or issue in it, to the same or any other referee, officer or judge of an inferior court for retrial or further consideration, with or without any special direction.

715. Appeal from order on interlocutory applications

(1) If an appeal is against a determination made on the hearing of an interlocutory application, the notice of appeal is to be filed and served within 7 days after the making or giving of the determination.

(2) There are to be at least 2 clear days between the service of the notice of appeal and the day fixed for the hearing of the appeal.

PART 28 – REGISTRATION OF JUDGMENTS

716. Interpretation of Part 28

(1) In this Division, "Commonwealth Act" means the *Foreign Judgments Act 1991* of the Commonwealth.

(2) Any expression in this Part has the same meaning as in the Commonwealth Act.

717. Application for registration

(1) An application under section 6 of the Commonwealth Act for the registration of a judgment to which Part 2 of that Act applies is to be made by *ex parte* application to the Court or a judge.

(2) The judge to whom an application is made may direct that it be served.

718. Affidavit in support of application

(1) An application under rule 717 is to be supported by an affidavit.

(2) An affidavit is to state the following to the best of the information of the deponent –

(a) that the judgment creditor is entitled to enforce the judgment;

(b) that the judgment is final and conclusive between the parties for the purposes of section 5(4) of the Commonwealth Act;

(c) that the Court is the appropriate court under section 6(1) of the Commonwealth Act;

(d) that at the date of the application the judgment has not been wholly satisfied;

(e) the amount in respect of which the judgment remains unsatisfied;

(f) that at the date of the application the judgment is enforceable by execution in the country of the original court;

(g) the amount of any interest which, under the law of the country of the original court, is due under the judgment up to the time of the application;

(h) if the sum payable under the judgment is expressed in a currency other than Australian currency and the judgment creditor does not wish the judgment to be registered in that other currency, the amount which that sum represents in Australian currency calculated at the rate of exchange prevailing on the day of the application;

(i) if the judgment is in respect of different matters and only some of the provisions of the judgment, if contained in separate judgments, are registrable, the provision in respect of which it is sought to register the judgment;

(j) the full name and occupation and the usual or last known place of residence or business of the judgment creditor and judgment debtor;

(k) details of the sources of the deponent's information.

(3) The affidavit is to exhibit –

(a) a copy of the judgment of the original court sealed and certified by the proper officer of that court; and

(b) if the judgment is not in English, a translation of the judgment certified by a notary public or authenticated by affidavit.

(4) The affidavit is to be accompanied by any other evidence in respect of the matters referred to in subrule (2)(f) and (g) as may be required having regard to the provisions of any regulations made under the Commonwealth Act extending the Commonwealth Act to the country of the original court.

719. Security of costs

The Court or a judge may order that a person applying for registration of a judgment give security for costs.

720. Order for registration

(1) An order for the registration of a judgment –

(a) is to state the period after service of notice of registration of the judgment on the judgment debtor within which an application to set aside the registration may be made; and

(b) is to state that the judgment will not be enforced until after the expiration of that period or any extension of that period under subrule (2); and

(c) need not be served on the judgment debtor.

(2) The period referred to in subrule (1)(a) may be extended by the Court or a judge on the application of a party made before or after the expiration of the period or any extended period.

721. Notice of registration

(1) After registration of a judgment, the judgment creditor is to serve notice of the registration on the judgment debtor.

(2) Service of the notice is to be personal or in any other manner the Court or a judge orders.

(3) The notice is to contain the following:

(a) full particulars of the judgment registered and of the order for registration;

(b) the name and address of the judgment creditor or of the practitioner or agent of the judgment creditor on whom and at

which any application filed by the judgment debtor may be served;

(c) a statement that the judgment debtor may apply on the grounds set out in the Commonwealth Act to have the registration set aside;

(d) a statement of the period from the date of service of the notice within which an application to set aside the registration may be made;

(e) a statement that the judgment debtor may apply to have that period extended.

722. Application to set aside registration

(1) Any application to set aside the registration of a judgment is to be made in the proceeding in which the judgment was registered.

(2) The application is to –

(a) set out the grounds of the application; and

(b) be supported by an affidavit verifying those grounds.

(3) The application and the affidavit in support are to be served on the person who obtained registration of the judgment.

723. Enforcement of registered judgment

A judgment registered under the Commonwealth Act may not be enforced until –

(a) the period prescribed under rule 720(1)(a), or any extended period, has expired; and

(b) any application to set aside the registration of the judgment has been determined; and

(c) the period limited for appealing against an order refusing an application to set aside the registration of the judgment has expired and any appeal instituted within that period has been determined; and

(d) an affidavit of the service of the notice of registration and a copy of the notice of registration have been filed; and

(e) any order of the Court or a judge in relation to the judgment has been filed.

724. Application for certificate

(1) An application for a certificate under section 15 of the Commonwealth Act may be made by letter to the Principal Registrar without notice to any other person.

(2) An application is to be accompanied by a draft of the certificate referred to in subrule (1).

(3) Before granting an application, the Principal Registrar may require the applicant to establish, by affidavit or otherwise, that the application should be granted.

725. Issue of certificate

If the Principal Registrar grants an application for a certificate under section 15 of the Commonwealth Act, the copy of the judgment is to be –

(a) sealed with the seal of the Court; and

(b) certified by the Principal Registrar that –

(i) the copy is a true copy; and

(ii) the copy is issued in accordance with section 15 of the Commonwealth Act; and

(c) accompanied by a certificate by the Principal Registrar stating –

(i) that the proceeding is at an end except for the enforcement of the judgment; and

(ii) the claim or claims in respect of which the judgment was given; and

(iii) the grounds upon which the judgment was based; and

(iv) the rate at which the judgment carries interest; and

(v) any other matter the Principal Registrar considers necessary or desirable.

PART 29 – CONTENTIOUS PROBATE ACTIONS

726. Application of Part 29

(1) This Part applies to probate actions and the application of the other provisions of these rules to those actions is subject to this Part.

(2) In these rules,

probate action means an action, other than an action which is non-contentious or common form probate business, for –

(a) the grant of probate of the will, or letters of administration of the estate, of a deceased person; or

(b) the revocation of such a grant; or

(c) a decree pronouncing for or against the validity of an alleged will.

727. Requirements in connection with writ

(1) A writ commencing a probate action –

(a) may be issued out of any registry; and

(b) is to be endorsed with a statement of the nature of the plaintiff's and defendant's interests in the estate of the deceased to which the action relates.

(2) A writ commencing an action for the revocation of a grant of probate or letters of administration of the estate is not to be filed unless –

(a) a citation under rule 730(1)(b) has been issued; or

(b) the probate has been, or letters of administration have been, lodged in a registry.

728. Entry of appearance

A notice of appearance in a probate action is to be filed in a registry.

729. Intervener in probate action

(1) On the application of a person not a party to a probate action, the Court or a judge may grant leave to that person to intervene in a probate action.

(2) An application is to be supported by an affidavit showing the interest of the person applying in the estate of the deceased.

(3) If leave is granted under subrule (1), the Court or judge may give any direction as to –

(a) the service of pleadings; or

(b) the filing of an affidavit of testamentary scripts; or

(c) any other matter as may be appropriate.

(4) A person granted leave to intervene in a probate action is to file a notice of appearance in the action before being entitled to be heard.

730. Citations

(1) A citation may issue –

(a) on the application of any party who has pleaded in a probate action requiring a person not a party to the action who has an adverse interest to the applicant to appear and advising that person that judgment may be given without further notice to him or her; or

(b) in an action for the revocation of the grant of probate or letters of administration, on the application of the plaintiff against the person who obtained the grant of probate or letters of administration, requiring that person to bring into and leave at the Registry the probate or letters of administration.

(2) A citation is to be –

(a) in accordance with the prescribed form; and

(b) issued out of the Principal Registry by being sealed by the Principal Registrar.

(3) A citation is not to issue unless there is filed an affidavit verifying the statements of fact to be made in the citation sworn by –

(a) the applicant; or

(b) if the Principal Registrar in special circumstances so allows, by the applicant's practitioner.

(4) A citation is to be served personally on the person cited unless the Court or a judge orders substituted service.

(5) Service of a citation may be effected out of the jurisdiction without the leave of the Court or a judge.

(6) If a person against whom a citation under subrule (1)(a) has been issued fails to appear in the action, the party on whose application the citation was issued is not entitled to be heard at the trial of the action without the leave of the Court or a judge unless that party has filed an affidavit proving due service of the citation.

731. Affidavit of testamentary scripts

(1) The plaintiff and any person who files a notice of appearance in a probate action is to swear an affidavit –

(a) describing any testamentary script of the deceased person of which the deponent has any knowledge; and

(b) exhibiting any such script if it is in the possession, or under the control, of the deponent; and

(c) giving the name and address of any person other than the deponent who has possession or control of any such script; and

(d) if the deponent does not know the name or address of any person who has possession or control of any such script, stating that fact; and

(e) if the deponent knows of no such script, stating that fact.

(2) An affidavit is to be filed –

(a) within 14 days after the filing of a notice of appearance by a defendant; or

(b) if no defendant enters an appearance, before an application for judgment is made.

(3) Except with the leave of the Court or a judge, a party to a probate action may not inspect an affidavit filed by any other party to the action, or any testamentary script annexed to the affidavit, until that party has filed an affidavit under subrule (1).

(4) In this rule,

testamentary script means –

(a) a will or draft will; or

(b) written instructions for a will made by or at the request or

under the instructions of the testator; or

(c) any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

732. Default of a party

(1) Judgment in default of appearance may not be entered in a probate action.

(2) If one or more but not all of several defendants to a probate action fail to file a notice of appearance, at any time after the expiration of the period limited for appearance and on proof of service the plaintiff may proceed with the action as if all the defendants had entered an appearance.

(3) If each defendant to a probate action and each person cited under rule 730(1)(a) fails to file a notice of appearance, the plaintiff may apply to the Court or a judge for judgment.

(4) If a party to a probate action fails to observe a provision of these rules requiring service of a pleading on any other party, that other party may apply to the Court or a judge for leave to set down the action for trial.

733. Statement of claim

In a probate action, the plaintiff is to file a statement of claim and deliver it to a defendant –

(a) if that defendant has filed a notice of appearance, within 28 days after the filing and service of that notice of appearance or within 8 days after that defendant filing an affidavit of testamentary scripts, whichever is the later; or

(b) in any other case, within 28 days after the expiration of the period limited for appearing.

734. Counterclaim

A defendant to a probate action who claims any relief or remedy in respect of a matter relating to the grant of probate or letters of administration is to add to the defence a counterclaim in respect of that matter.

735. Pleadings

(1) A plaintiff who disputes the interest of the defendant is to state that in the statement of claim.

(2) If the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest is to show in the appropriate pleading that if the allegations made in the pleading are proved that party would be entitled to an interest in the estate.

(3) A party pleading that the deceased did not know and approve of the contents of a will, unless otherwise ordered by the Court or a judge, is to deliver particulars stating briefly the substance of the case which that party intends to set up.

(4) The following provisions apply to a defence which is pleaded to a probate action and to every statement of claim for revocation of probate:

(a) the substance of the case on which it is intended to rely is to be stated;

(b) if it is pleaded that the testator was not of sound mind, memory and understanding, particulars of every specific instance of delusion are to be delivered before the case is set down for trial;

(c) if it is pleaded that undue influence was exercised over the testator, particulars of the character of the undue influence and of every act alleged in exercise of it together with the date of every such act, but not the names of persons present, are to be delivered before the case is set down for trial;

(d) except by leave of the Court or a judge, evidence is not to be given at the trial –

(i) of any instance of delusion other than one particulars of which have been delivered under paragraph (b); or

(ii) of undue influence other than undue influence the character of which is referred to in particulars delivered under paragraph (c); or

(iii) of any act alleged in exercise of undue influence other than one particulars of which have been delivered under paragraph (c).

736. Discontinuance

(1) Rule 377 does not apply to a probate action.

(2) At any stage of a probate action, on the application of the plaintiff or of any party to the action who has appeared, the Court or a judge may order that –

(a) the action be discontinued on any terms as the Court or judge thinks just; and

(b) a grant of probate or letters of administration be made to the person entitled.

737. Application to judge in chambers

Subject to clauses 3 and 4 of Schedule III to the *Administration and Probate Act 1935* and except where these rules otherwise provide, an application in a probate action may be made to a judge in chambers.

738. Notice in probate action

(1) A party opposing a will in a probate action may give notice to the party setting up the will that the opposing party –

(a) merely requires the will to be proved in a solemn form of law; and

(b) intends only to cross-examine the witnesses produced in support of the will.

(2) Notice under subrule (1) is to be filed and given with the defence.

(3) A party opposing a will who has given notice –

(a) may cross-examine the witnesses produced in support of the will but may not adduce evidence in opposition to the will; and

(b) is not liable to pay the costs of the other side, unless the Court is of opinion that there was no reasonable ground for opposing the will.

739. Costs in probate action

In a probate action, the Court or a judge may order –

(a) that costs be paid out of the estate; or

(b) that costs be paid out of a particular part or parts of the estate.

740. Election of guardian by minor

(1) Subject to subrule (2), a minor may elect a guardian to carry on, defend or intervene in a suit in the same manner and subject to the same rules as in respect of non-contentious business in the Court.

(2) If an infant under the age of 7 years has no testamentary or statutory guardian for the purposes of subrule (1), a judge on an application is to assign a guardian.

(3) An application is to be supported by an affidavit showing that the proposed guardian –

(a) is next of kin of the infant or that the next of kin has renounced the right to the guardianship and consents to the assignment of the proposed guardian; and

(b) is ready to undertake the guardianship.

741. Compromise of action

Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court or a judge may order the trial of the action on affidavit evidence.

742. Interlocutory application

Except where these rules otherwise provide, an application to the Court or a judge in a probate action may be made by interlocutory application.

PART 30 – PROCEEDINGS AT THE SUIT OF THE CROWN

743. Interpretation of Part 30

In this Part –

claimant means a person who has filed a claim form under rule 746;

property means the property the subject of an action to which this Part applies;

proprietor means a person having a proprietary interest in any property.

744. Actions at suit of Attorney-General

(1) An action for the forfeiture to the Crown of any property, or the condemnation of any property seized or taken possession of by the Crown as forfeited or as being liable to forfeiture or condemnation, is to be brought by the Attorney-General.

(2) Subrule (1) does not apply to an action –

(a) in the admiralty jurisdiction of the Court; or

(b) for forfeiture to the Crown –

(i) under or by virtue of the provisions of a contract; or

(ii) by reason of a breach or non-observance of the provisions of a contract.

(3) An action to which subrule (1) applies is to be commenced by filing in a registry a writ endorsed with a statement of claim in accordance with the prescribed form.

745. Notice to be published

(1) Within 14 days after the filing of the writ, the Attorney-General is to cause a notice in accordance with the prescribed form to be published –

(a) once in the *Gazette*; and

(b) twice in a daily newspaper published at Hobart and a daily newspaper published at Launceston, in each case the 2 publications to be at least 10 days apart.

(2) Within 30 days after the filing of a writ, the Attorney-General is to cause to be filed an affidavit, proving compliance with subrule (1) and exhibiting copies of the relevant pages of the *Gazette* and of the newspapers in which the notice was published.

(3) If subrule (1) or (2) is not complied with, the Court or a judge may make an order as to –

(a) how and when notice is to be published or when the affidavit is to be filed; and

(b) the time within which a claim under rule 746 may be filed and after which the action may proceed notwithstanding the non-compliance.

746. Claims

(1) A person is to file a claim form in the registry if the person intends to –

(a) claim any property; or

(b) contest the forfeiture of any property; or

(c) contest the liability of any property to forfeiture or condemnation.

(2) A claim form –

(a) is to be filed within 30 days after the date of filing of the writ or within such other time as may be allowed by an order made under rule 745(3); and

(b) is to be in accordance with the prescribed form.

(3) The Court or a judge may –

(a) grant leave to a person to claim property any time before the property has been disposed of under the judgment of the Court; and

(b) vacate any judgment already entered.

(4) A claim is to state –

(a) the full name, occupation and place of residence or business of the claimant; or

(b) in the case of a corporation, its name and the place of its registered office or principal place of business.

(5) A proprietor who is not the owner of property is to state in the claim the nature of his or her proprietary interest and how it arises.

(6) If the property is claimed by two or more co-proprietors, any one of them may make the claim on behalf of all co-proprietors.

747. Affidavit in support of claim

(1) A claim is not to be filed unless there is filed with it an affidavit stating –

(a) that the property claimed was, at the date of its seizure or taking, the property of the claimant; or

(b) that the claimant had a proprietary interest in the property at that date and the nature of the interest and how it arose.

(2) An affidavit may be made by –

(a) the proprietor making the claim; or

(b) the practitioner for the proprietor making the claim; or

(c) if the proprietor making the claim is a corporation, a director or other responsible officer of the corporation.

(3) If an affidavit is made other than by the proprietor making the claim, the deponent is to state –

(a) that he or she has authority to make the claim; and

(b) that, to the best of the deponent's knowledge and belief, at the time of the seizure or taking of the property –

(i) it was the property of the claimant; or

(ii) the claimant then had a proprietary interest in the property, setting out the nature of the interest and how it arose.

748. Order for sale or delivery before judgment

(1) If the Crown seizes or takes possession of property that is an animal or of a perishable nature, the Court or a judge at any time after the seizure or taking but before judgment –

(a) on the application of the Attorney-General, may order that the property be sold and the proceeds of sale paid into Court pending the determination of the action; or

(b) on the application of a claimant, may order that the property be delivered to the claimant on paying into Court the appraised value of the property or giving security to the satisfaction of the registrar at the registry in which the action is pending for the payment into Court of that value if the property should be declared forfeited or be condemned.

(2) If a claimant to whom any property is ordered to be delivered refuses or neglects to pay, or give security for, the appraised value of the property, the Court or a judge, on the application of the Attorney-General, may order that the property seized or taken be sold and the proceeds of sale paid into Court pending the determination of the action.

749. Appraisal

(1) An appraisal required to be made for the purposes of this Part may be made by any person appointed by the Court or a judge.

(2) A person who makes an appraisal is to state the result in writing and sign and deliver it to the registry in which the action is pending within any time the Court or a judge directs.

750. Directions as to sale

The Court or a judge may make any order with respect to a sale as the Court or judge considers necessary or convenient.

751. Application of proceeds of sale

(1) If any property is sold under an order made under rule 748 and judgment is given for the Attorney-General, the proceeds of sale are to be paid and applied according to law in the same manner as the property seized or taken, or the proceeds of sale, would have been applied if no sale had been ordered.

(2) If any property is sold under rule 748 and a writ is not filed within the time prescribed by law, or a writ is filed but judgment is given for the claimant, the claimant, at his or her election, is entitled to judgment –

(a) for the amount of the appraised value of the property; or

(b) for the proceeds of sale; and

(c) in either case, for any further sum by way of compensation for the loss sustained by reason of the seizure or taking as the Court or judge thinks just.

752. Claimant to pay amount of appraised value

(1) If any property seized or taken has been ordered to be delivered to the claimant, a judgment given for the Attorney-General is to direct the amount to be paid into Court under any security given under rule 748(1)(b) and applied according to law.

(2) The Court or a judge, either by the judgment or by a separate order, is to limit a period within which the claimant is to pay into Court the appraised value of the property.

(3) In default of payment into Court within the period limited, the security may be enforced according to law.

(4) A judgment is to direct that any money paid into Court under rule 748(1)(b) be paid and applied according to law if –

(a) the judgment is given for the Attorney-General; and

(b) the property seized or taken has been ordered to be delivered to the claimant.

753. Judgment if claim not filed

(1) If a claim is not filed within the period prescribed by rule 746(2), a judgment that the property remain forfeited or be forfeited or condemned may be entered by the Attorney-General.

(2) On the entry of judgment, the property may be disposed of according to law without any further process.

(3) A judgment is to be in accordance with the prescribed form.

754. Claim filed as part of property only

If a claim is filed within the period prescribed as to part only of the property, the same proceedings may be taken with respect to any unclaimed part as if a claim had not been filed.

755. Delivery of pleadings

(1) If a claim is filed within the period prescribed, the Attorney-General, within 10 days after that period, is to deliver a copy of the writ and statement of claim to each claimant.

(2) Within 10 days after receiving the writ and statement of claim, a claimant is to –

(a) file a defence; and

(b) deliver a copy of the defence to the Attorney-General.

(3) Several claimants in an action who are co-proprietors are to defend and be represented in the action by the same practitioner, unless the Court or a judge otherwise orders.

(4) On the filing of a defence, the same proceedings are to be had and taken, and the action is to proceed and be tried, as if it were an action between subject and subject.

756. Judgment in default

(1) If a claimant fails to file and deliver a defence as required by rule 755(2), on proof of delivery of

the writ and statement of claim and of that failure, judgment may be entered for the Attorney-General.

(2) A judgment is to be in accordance with the prescribed form.

757. Form of judgment after trial

In a case in which a claim has been filed and the action is tried –

(a) judgment for the Attorney-General is to be in accordance with the prescribed form; and

(b) judgment for the claimant is to be in accordance with the prescribed form.

758. Action at instance of relator

(1) A writ for the commencement of an action in the name of the Attorney-General at the instance of a relator is not to be issued unless the authority of the Attorney-General has been obtained and is evidenced as provided for by this Part.

(2) Any authority of the Attorney-General to use the name of the Attorney-General for the purpose of any proposed action is taken to be given on the condition that this Part be complied with.

759. Application for authority

(1) The practitioner of any person, public authority or public officer desiring to commence an action as relator in the name of the Attorney-General is to leave with the Attorney-General –

(a) a copy of the writ and the proposed statement of claim; and

(b) a certificate of counsel annexed to the writ and statement of claim stating that they are proper for the allowance of the Attorney-General; and

(c) a second copy of the writ and the statement of claim; and

(d) a certificate of the relator's practitioner stating that the relator is –

(i) a proper person to be a relator; and

(ii) competent to answer the costs of the proposed action.

(2) The Attorney-General is to retain the documents referred to in subrule (1)(a), (b) and (d).

(3) If the Attorney-General allows the action, the copies referred to in subrule (1)(c) are to be signed by the Attorney-General and returned to the relator's practitioner.

760. Original writ

The writ signed by the Attorney-General is to be issued as the original writ.

761. Statement of claim to be retained

The relator's practitioner is to retain the statement of claim signed by the Attorney-General.

762. Copy of Attorney-General's signature required

Any copy of the writ and statement of claim served or delivered is to bear a copy of the Attorney-General's signature.

763. Amendment of statement of claim

(1) If an amendment to a statement of claim is required after it has been signed by the Attorney-General, the proposed amended statement of claim and a copy, both identifying the amendment, are to be left with the Attorney-General.

(2) The copy is to include a counsel's certificate certifying that the proposed amendment is proper for the allowance of the Attorney-General.

(3) If the Attorney-General approves the amendment, the Attorney-General is to sign the amended statement of claim and return it to the relator's practitioner.

(4) The Attorney-General is to retain the signed copy.

764. Attorney-General may control action

The Attorney-General, at all times –

(a) may exercise full control over the conduct of any action commenced in the name of the Attorney-General at the instance of a relator; and

(b) may have, as of right, any such action dismissed notwithstanding any opposition of the relator.

765. Consent of Attorney-General to stay

An action instituted in the name of the Attorney-General at the instance of a relator is not to be stayed, discontinued or referred to arbitration under section 37A of the *Supreme Court Civil Procedure Act 1932* without the consent of the Attorney-General.

766. Appointment of new relator

(1) A new relator is not to be appointed in the place of the relator named in the proceedings without the consent of the Attorney-General.

(2) For the purpose of obtaining the Attorney-General's consent, the practitioner of the proposed new relator is to leave with the Attorney-General the original statement of claim

and a certificate of the practitioner stating that the relator is –

(a) a proper person to be a relator; and

(b) competent to answer the costs of the proposed action.

(3) If the Attorney-General approves of the action proceeding with the proposed new relator, the Attorney-General is to endorse that approval on the original statement of claim.

(4) Any copy of a statement of claim which is amended by the substitution of a new relator and is served or delivered is to bear a copy of the Attorney-General's approval of the substitution of the new relator.

PART 31 – ADMINISTRATION OF CHARITABLE TRUSTS

767. Application in relation to charitable trusts

In the case of a breach or alleged breach of a charitable trust or if an order or direction of the Court for the administration of a charitable trust is necessary or desirable, the Attorney-General or any person or corporation directly interested in the charitable trust or the administration of the trust may apply for any relief the case requires.

768. Requirements for application

An application under rule 767 is to be –

(a) accompanied by an affidavit of the applicant or, in the case of a corporation, its proper officer, verifying the facts on which the application is based; and

(b) endorsed with a certificate of the counsel or practitioner who prepared it to the effect that in his or her opinion the application is a proper application under rule 767; and

(c) unless it is made by the Attorney-General, endorsed with a certificate of the applicant's practitioner that, to the best of the practitioner's knowledge and belief, the applicant is competent to pay all costs which may be incurred.

769. Service of application

(1) The Attorney-General is to be served with the application unless –

(a) the application is made by the Attorney-General; or

(b) the case is one that the Act provides that the Attorney-General is not required to be made a party.

(2) Notwithstanding subrule (1), the Court or a judge may order that the application be served upon the Attorney-General.

(3) The application is to be served on any person whose rights or interests may be affected by any order made on the application.

770. Attendance of Attorney-General

(1) The Court or a judge may direct the Attorney-General to attend any proceedings taken under an order made on an application under rule 767.

(2) The Attorney-General may attend any proceedings taken under an order made on an application under rule 767.

(3) It is not necessary for the Attorney-General to attend on any proceeding unless directed to do so under subrule (1).

PART 32 – PROCEEDINGS UNDER PARTICULAR STATUTES

Division 1 – Proceedings in arbitration

Subdivision 1 – Domestic proceedings under Commercial Arbitration Act 2011

771. Interpretation

(1) In this Subdivision –

arbitration means an arbitration to which the Commercial Arbitration Act applies;

Commercial Arbitration Act means the *Commercial Arbitration Act 2011*.

(2) Unless the contrary intention appears, expressions used in this Subdivision have the same meaning as in the Commercial Arbitration Act.

772. Application for referral to arbitration

An application under section 8 of the Commercial Arbitration Act to refer the parties to arbitration must be accompanied by an affidavit –

(a) exhibiting a copy of the arbitration agreement; and

(b) stating the material facts on which the application for relief is based.

772A. Subpoenas

(1) An application under section 27A of the Commercial Arbitration Act for the issue of a subpoena must be accompanied by –

(a) a draft subpoena; and

(b) an affidavit stating –

(i) the names of the parties to the arbitration; and

(ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration; and

(iii) the place where the arbitration is being conducted; and

(iv) the nature of the arbitration; and

(v) the terms of the permission given by the arbitral tribunal for the application; and

(vi) the conduct money (if appropriate) to be paid to the addressee; and

(vii) the witness expenses payable to the addressee.

(2) The Court may –

(a) fix an amount that represents the reasonable loss and expenses the

addressee will incur in complying with the subpoena; and

(b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.

(3) An amount fixed under subrule (2) may be in addition to any conduct money or witness expenses referred to in subrule (1)(b).

(4) A person served with a subpoena under this section must comply with the subpoena in accordance with its terms.

(5) Division 3 of Part 19 applies so far as is practicable to a subpoena referred to in this Subdivision.

772B. Application relating to evidence for arbitration

An application for an order under section 27B of the Commercial Arbitration Act must be accompanied by an affidavit stating –

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the grounds under section 27B of the Commercial Arbitration Act relied on; and

(d) the terms of the permission given by the arbitral tribunal for the application as required under that section; and

(e) the material facts relied on.

772C. Application relating to disclosure of confidential information

An application under section 27H or 27I of the Commercial Arbitration Act for an order prohibiting or allowing the disclosure of confidential information must be accompanied by an affidavit stating –

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the material facts relied on; and

(d) if the application is made under section 27H of the Commercial Arbitration Act, the terms of the order of the arbitral tribunal under section 27G of that Act allowing disclosure of the information and the date the order was made; and

(e) if the application is made under section 27I of the Commercial Arbitration Act –

(i) the date the arbitral tribunal's mandate was terminated under section 32 of that Act; or

(ii) the date and the terms –

(A) of the request made to the arbitral tribunal for an order under section 27G of that Act for disclosure of the confidential information; and

(B) of the arbitral tribunal's refusal to make the order.

772D. Application for relief under miscellaneous provisions of Commercial Arbitration Act

An application for relief under section 11(3), 11(4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 of the Commercial Arbitration Act must be accompanied by an affidavit stating the material facts on which the application for relief is based.

772E. Application for determination of preliminary point of law

(1) An application under section 27J of the Commercial Arbitration Act for leave to apply for the determination of a question of law arising in the course of an arbitration and, if leave is granted, for the determination of the question of law must be accompanied by an affidavit –

(a) exhibiting –

(i) a copy of the arbitration agreement; and

(ii) evidence of the consent of the arbitrator, or the consent of all the

other parties, as required by section 27J(2) of the Commercial Arbitration Act; and

(b) identifying –

(i) the name and usual or last-known place of residence or business of any person whose interest might be affected by the proposed determination of the question of law or, if the person is a company, the last-known registered office of the company; and

(ii) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and

(iii) the facts on the basis of which the question of law is to be determined and the basis on which those facts are stated, including whether they are agreed, assumed, found by the arbitral tribunal or otherwise; and

(iv) the detailed grounds on which it is contended that leave should be granted.

(2) The application and supporting affidavit are to be served on any person whose interest might be

affected by the determination of the question of law.

(3) The Court may, if it thinks fit, hear and determine the question of law at the same time as the application for leave to apply for the determination of the question.

(4) If the Court first hears and grants the application for leave, it may make such orders as it thinks fit for the hearing and determination of the question of law.

772F. Application to set aside award

(1) An application under section 34 of the Commercial Arbitration Act to set aside an award must identify –

(a) if the applicant relies on section 34(2)(a) of the Commercial Arbitration Act, which subparagraph of section 34(2)(a) is relied upon; and

(b) if the applicant relies on section 34(2)(b) of the Commercial Arbitration Act, which subparagraph of section 34(2)(b) is relied upon; and

(c) brief grounds for seeking the order.

(2) The application must be accompanied by an affidavit –

(a) exhibiting –

(i) a copy of the arbitration agreement; and

(ii) a copy of the award including the reasons of the arbitral tribunal for the award; and

(b) identifying –

(i) the detailed grounds for seeking the order; and

(ii) the material facts relied on; and

(iii) the date on which the applicant received the award or, if a request was made to the arbitral tribunal under section 33 of the Commercial Arbitration Act to correct the award, the date on which that request was disposed of by the arbitral tribunal.

(3) The application and supporting affidavit are to be served on any person whose interest might be affected by the setting aside of the award.

(4) An application by a party to the arbitration under section 34(4) of the Commercial Arbitration Act is to be made by interlocutory application in the proceeding commenced under subrule (1).

772G. Appeal

(1) An application under section 34A of the Commercial Arbitration Act for leave to appeal

on a question of law arising out of an award must state –

(a) the question of law to be determined; and

(b) the grounds on which it is alleged that leave to appeal should be granted.

(2) The application must be accompanied by an affidavit –

(a) showing that, before the end of the appeal period referred to in section 34A(6) of the Commercial Arbitration Act, the parties agreed that an appeal may be made under section 34A of that Act; and

(b) exhibiting –

(i) a copy of the arbitration agreement; and

(ii) a copy of the award, including the reasons of the arbitral tribunal for the award.

(3) The application must be accompanied by a submission setting out –

(a) the name and usual or last-known place of residence or business of any person whose interest might be affected by the proposed appeal or, if the person is a company, the last-known registered office of the company; and

(b) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and

(c) when and how the arbitral tribunal was asked to determine the question of law and where in the award or the reasons, and in what way, the arbitral tribunal determined it; and

(d) the relevant facts found by the arbitral tribunal on the basis of which the question of law is to be determined by the Court; and

(e) the basis on which it is contended that the determination of the question of law will substantially affect the rights of one or more parties; and

(f) the basis on which it is contended that –

(i) the decision of the arbitral tribunal on the question of law is obviously wrong; or

(ii) the question of law is of general public importance and the decision of the arbitral tribunal is open to serious doubt; and

(g) the basis on which it is contended that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in the circumstances for the Court to determine the question; and

(h) a succinct statement of the argument in support of the application for leave and the appeal if leave is granted.

(4) The application and the supporting material are to be served on any person whose interest might be affected by the proposed appeal.

(5) Within 14 days after service on a party, or within such further period as the Court may allow, the party may file and serve any answering material, including a succinct statement of any argument in opposition to the application for leave and the appeal if leave is granted.

(6) If it appears to the Court that an oral hearing of the application for leave to appeal is required, the Court may, if it thinks fit, hear and determine the appeal on the question of law at the same time as it hears the application for leave to appeal.

(7) If the Court grants the application for leave before hearing the appeal, it may make such orders as it thinks fit for the hearing and determination of the appeal.

(8) When an application for leave to appeal is brought or leave to appeal is granted, the Court may suspend or discharge any enforcement order made in respect of the award that is the subject of the proposed appeal.

773. Application to enforce award

An application under section 35 of the Commercial Arbitration Act to enforce an award must be accompanied by –

(a) the documents referred to in section 35 of the Commercial Arbitration Act; and

(b) an affidavit stating –

(i) the extent to which the award has not been complied with, at the date the application is made; and

(ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

Subdivision 2 – International proceedings under International Arbitration Act 1974

774. Interpretation

(1) In this Subdivision –

arbitration means an arbitration to which the International Arbitration Act applies;

International Arbitration Act means the *International Arbitration Act 1974* of the Commonwealth;

Model Law means the UNCITRAL Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006, the English text of which is set out in Schedule 2 to the International Arbitration Act.

(2) Unless the contrary intention appears, expressions used in this Subdivision have the same meaning as in the International Arbitration Act.

774A. Documents not in English

A party to a proceeding to which this Subdivision applies who seeks to rely on a document that is not in the English language must provide a certified English translation of the document –

(a) to the Court; and

(b) to any other party to the proceedings.

774B. Application for stay and referral to arbitration – foreign arbitration agreements

An application under section 7 of the International Arbitration Act to stay the whole, or part, of a proceeding and to refer the parties to arbitration must be accompanied by –

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the application for relief is based.

774C. Application to enforce foreign award

An application under section 8(2) of the International Arbitration Act to enforce a foreign award must be accompanied by –

(a) the documents referred to in section 9 of the International Arbitration Act; and

(b) an affidavit stating –

(i) the extent to which the foreign award has not been complied with, at the date the application is made; and

(ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the foreign award or, if the person is a company, the last-known registered office of the company.

774D. Application for referral to arbitration – article 8 of Model Law

An application under article 8 of the Model Law to refer parties to arbitration must be accompanied by –

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the application for relief is based.

774E. Subpoenas

(1) An application for the issue of a subpoena under section 23(3) of the International Arbitration Act must be accompanied by –

(a) a draft subpoena; and

(b) an affidavit stating –

(i) the names of the parties to the arbitration; and

(ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration; and

(iii) the place where the arbitration is being conducted; and

(iv) the nature of the arbitration; and

(v) the terms of the permission given by the arbitral tribunal for the application; and

(vi) the conduct money (if appropriate) to be paid to the addressee; and

(vii) the witness expenses payable to the addressee.

(2) The Court may –

(a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and

(b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.

(3) An amount fixed under subrule (2) may be in addition to any conduct money or witness expenses referred to in subrule (1)(b).

(4) A person served with a subpoena under this section must comply with the subpoena in accordance with its terms.

(5) Division 3 of Part 19 applies so far as is practicable to a subpoena referred to in this Subdivision.

774F. Application relating to evidence for arbitration

An application for an order under section 23A(3) of the International Arbitration Act must be accompanied by an affidavit stating –

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the grounds relied on under section 23A(1) of the International Arbitration Act; and

(d) the terms of the permission given by the arbitral tribunal for the application if required under that section; and

(e) the material facts relied on.

774G. Application relating to disclosure of confidential information

An application under section 23F or 23G of the International Arbitration Act for an order prohibiting or allowing the disclosure of confidential information must be accompanied by an affidavit stating –

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the material facts relied on; and

(d) if the application is made under section 23F of the International Arbitration Act, the terms of the order of the arbitral tribunal under section 23E of that Act allowing disclosure of the information and the date the order was made; and

(e) if the application is made under section 23G of the International Arbitration Act either –

(i) the date the arbitral tribunal's mandate was terminated under article 32 of the Model Law; or

(ii) the date and the terms –

(A) of the request made to the arbitral tribunal for an order under section 23E of that Act for disclosure of the confidential information; and

(B) of the arbitral tribunal's refusal to make the order.

774H. Application for relief under miscellaneous provisions of Model Law

An application for relief under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 of the Model Law must be accompanied by an affidavit stating the material facts on which the application for relief is based.

774I. Application to set aside award – Model Law

(1) An application under article 34 of the Model Law to set aside an award must identify –

(a) if the applicant relies on article 34(2)(a) of the Model Law, which subparagraph of article 34(2)(a) is relied upon; and

(b) if the applicant relies on article 34(2)(b) of the Model Law, which subparagraph of article 34(2)(b) is relied upon; and

(c) brief grounds for seeking the order.

(2) The application must be accompanied by an affidavit –

(a) exhibiting –

(i) a copy of the arbitration agreement; and

(ii) a copy of the award including the reasons of the arbitral tribunal for the award; and

(b) identifying –

(i) the detailed grounds for seeking the order; and

(ii) the material facts relied on; and

(iii) the date on which the applicant received the award or, if a request was made to the arbitral tribunal under article 33 of the Model Law to correct the award, the date on which that request was disposed of by the arbitral tribunal.

(3) The application and the supporting affidavit are to be served on any person whose interest might be affected by the setting aside of the award.

(4) Any application by a party to the arbitration under article 34(4) of the Model Law is to be made by interlocutory application in the proceedings commenced under subrule (1).

774J. Enforcement of award under Model Law

An application under article 35 of the Model Law to enforce an award must be accompanied by an affidavit –

(a) exhibiting the documents referred to in article 35(2) of the Model Law; and

(b) stating –

(i) the extent to which the award has not been complied with, at the date the application is made; and

(ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

775. Enforcement of Investment Convention award

An application under section 35(2) of the International Arbitration Act for leave to enforce an award to which Part IV of that Act applies must be accompanied by an affidavit stating –

(a) the extent to which the award has not been complied with, at the date the application is made; and

(b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

Division 1AA – Proceedings under Crime (Confiscation of Profits) Act 1993

776. Applications

(1) A proceeding under Part 9 of the *Crime (Confiscation of Profits) Act 1993* is to be commenced by an originating application to a judge in chambers.

(2) All subsequent applications in respect of such a proceeding are to be made by interlocutory application.

(3) An application under Part 9 of the *Crime (Confiscation of Profits) Act 1993* is to –

(a) be headed "In the Matter of" followed by a reference to the statutory provision under which the application is brought and "In the Matter of" followed by the name of the person to whom the application relates; and

(b) specify the order sought; and

(c) specify the grounds upon which the order is sought; and

(d) list the name and address of each person known to the applicant who might be directly adversely affected by the making of the order sought; and

(e) be accompanied by an affidavit containing the evidence relied upon in support of the application.

776A. Directions as to service

The Court may give directions as to the service of an application under Part 9 of the *Crime (Confiscation of Profits) Act 1993*.

776B. Undertaking for damages for wealth-restraining order wrongly granted

Unless otherwise ordered, a wealth-restraining order, or an interim wealth-restraining order, under Part 9 of the *Crime (Confiscation of Profits) Act 1993* is to contain an undertaking by the State to pay any person directly adversely affected by the order any damages that –

(a) may be sustained by that person because of the order; and

(b) the Court, or a judge, thinks ought to be paid by the State.

776C. Searches

Despite rule 33, a person may not require the Registrar to search an index or register, and cannot inspect any document in proceedings under Part 9 of the *Crime (Confiscation of Profits) Act 1993*, except with the leave of the Court, or a judge, which may only be granted after notice of the request has been given to the Director of Public Prosecutions.

776D. . . . . .

777. Conduct of examinations

(1) In this rule –

examination officer means any officer of the Court holding authority as a taxing officer.

(2) Upon making an examination order under Part 9 of the *Crime (Confiscation of Profits) Act 1993*, the Court or a judge may direct that the examination under that order is to be conducted by an examination officer.

(3) At any time during an examination conducted in accordance with Part 9 of the *Crime (Confiscation of Profits) Act 1993* –

(a) if the examination is conducted by a judge, the judge may adjourn the examination to be continued before an examination officer; or

(b) if the examination is conducted by an examination officer, the examination officer may adjourn the examination to be continued before a judge.

Division 1A – Proceedings under the Judicial Review Act 2000

777A. Description of respondent

If an application under the *Judicial Review Act 2000* is directed to a judicial authority or public authority, the authority is to be described by his, her or its name or office.

777B. Contents of application

An application under the *Judicial Review Act 2000* is to set out the following:

(a) if the application relates to a decision, the date and terms of the decision and the reasons for it;

(b) if the application relates to conduct, particulars of all conduct, past, present and proposed, in respect of which the application is made;

(c) if it is alleged that the respondent had failed to make a decision, particulars of –

(i) the decision which the respondent is alleged to have had a duty to make; and

(ii) any law that fixes a period within which the respondent is required to have made the decision; and

(iii) the date on which that period is alleged to have expired;

(d) particulars of any allegation of fraud made under section 17(2)(g) of that Act;

(e) particulars of any person who may be affected by the relief sought and the grounds on which that person may be affected.

777C. Particulars

The Court or a judge may order an applicant to file and serve further and better particulars of any matter referred to in rule 777B.

777D. Documents to be filed

(1) If a respondent to an application under the *Judicial Review Act 2000* has provided –

(a) a written decision; or

(b) written reasons for a decision; or

(c) a statement in accordance with Part 5 of that Act; or

(d) a transcript of a decision given orally; or

(e) a transcript of reasons given orally for a decision –

the applicant is to file a copy of any such document, verified by affidavit, at the time of filing the application or as soon as practicable afterwards.

(2) If an application relates to a decision given orally and a transcript has not been provided, the applicant is to file an affidavit setting out as fully as possible the terms of the decision and of any reasons given orally for it, at the time of filing the application or as soon as practicable afterwards.

777E. Service

(1) An application is to be served on the respondent and on any other person the Court or a judge directs.

(2) In proceedings under the *Judicial Review Act 2000*, if a document is to be served –

(a) on a magistrate or justices in petty sessions, it is sufficient that it be served on the relevant clerk of petty sessions; or

(b) on a statutory tribunal or a board, it is sufficient that it be served on the chairperson, presiding member or clerk of the tribunal or board.

(3) If an applicant is unable to serve a document on a person, the Court or a judge may dispense with service of the document on that person on any terms the Court or judge thinks fit.

777F. Notice of intention to appear

(1) An authority or a person on whom an application under the *Judicial Review Act 2000* has been served is not to be heard on the hearing of the application unless the authority or person has filed and served on the applicant a notice of intention to appear.

(2) A notice of intention to appear is to be in the prescribed form.

(3) A notice of intention to appear is to specify an address for service of documents for the authority or person on whose behalf the notice is filed.

(4) The filing of a notice of intention to appear is proof of service of the application on the authority or person filing the notice.

(5) The Court or a judge may relieve an authority or a person of the consequences of failing to file a notice of intention to appear on any terms the Court or judge thinks fit.

777G. Notice of submission

(1) An authority or a person on whom an application under the *Judicial Review Act 2000* has been served may file and serve on the applicant a notice of submission.

(2) A notice of submission is to be in the prescribed form.

(3) A notice of submission is to specify an address for service of documents for the authority or person on whose behalf the notice is filed.

(4) The filing of a notice of submission is proof of service of the application on the authority or person filing the notice.

(5) The filing of a notice of submission is a submission by the authority or person filing it to any order the Court or a judge makes on the application, including an order as to costs, without hearing the authority or person.

(6) The Court or a judge may relieve an authority or a person of the consequences of filing a notice of submission, on any terms the Court or judge thinks fit.

Division 2 – Proceedings under the Jurisdiction of Courts (Cross-vesting) Act 1987

778. Interpretation of Division 2 of Part 32

(1) In this Division –

Cross-vesting Act means the *Jurisdiction of Courts (Cross-vesting) Act 1987*;

cross-vesting law means a law of the Commonwealth or a State or Territory relating to the cross-vesting of jurisdiction.

(2) An expression defined in section 3 of the Cross-vesting Act has the same meaning in this Division.

779. Attorney-General not party to proceeding

If the Attorney-General of the Commonwealth or of a State or Territory makes an application under the Cross-vesting Act for the transfer of a proceeding, the Attorney-General does not, by reason of the application, become a party to that proceeding.

780. Powers on removal of proceedings to Court

If an order is made under section 8(1) of the Cross-vesting Act for the removal of a proceeding from a court or tribunal to the Court, the Court may give any directions that could have been given by that court or tribunal in relation to that proceeding.

781. Jurisdiction under cross-vesting laws

(1) A party to a proceeding proposing to rely on a cross-vesting law is to identify the following in the originating process or the pleadings or by notice filed in the relevant court and served on the other parties:

(a) the provision relied on;

(b) the claim in relation to which reliance is placed on that provision;

(c) the grounds on which reliance is placed on that provision.

(2) The first party in a proceeding to invoke a cross-vesting law is to take out an application for

directions and serve the application on the other parties within 7 days after the service of the pleading invoking that law.

(3) If a proceeding in which a cross-vesting law is invoked is transferred to the Court from another court –

(a) the party who originated the proceeding, within 14 days after the date of the order transferring the proceeding, is to file and serve an application for directions and, in default –

(i) any other party may file and serve such an application; or

(ii) the Court, of its own motion, may call the parties before it; and

(b) on the hearing of the application for directions, the Court is to give any direction or make any decision as to the conduct of the proceeding that the Court thinks proper; and

(c) the Court, at the trial or hearing of the proceeding, may vary an order or a decision made on the application for directions.

(4) If a pleading raises a question involving a special federal matter, the pleading is to identify the special federal matter and state the grounds on which it is such a matter.

(5) If a pleading raises a special federal matter for determination, the party initiating the pleading is to apply for directions as to whether the proceeding to which it relates should be transferred to the Federal Court.

(6) A proceeding may be served beyond the territorial limits of the State with the leave of the Court if the proceeding includes a matter for determination of which jurisdiction under a cross-vesting law may be invoked.

(7) A proceeding may be transferred to another court under the Cross-vesting Act even though leave to serve the proceeding beyond the territorial limits of the State has been given.

782. Proceedings transferred under cross-vesting laws

(1) On the transfer of a proceeding by the Court under the Cross-vesting Act, the Principal Registrar is to send to the proper officer of the court to which the proceeding is transferred any document filed and order made in the proceeding.

(2) On the transfer of a proceeding to the Court under a cross-vesting law –

(a) the Principal Registrar is to enter and number the documents received in respect of the proceeding in the register of proceedings so that the proceeding is distinguished by the year of its filing and its number; and

(b) the plaintiff is to lodge, or, if the proceeding is *ex parte*, the Principal Registrar is to issue, an application for directions as soon as possible.

783. Conduct of proceedings

(1) If, under section 11(1)(b) of the Cross-vesting Act, the Court applies the law of another State or a Territory in determining a right of action arising under a written law of that State or Territory, the pleadings are to identify the right of action and the written law under which the proceeding arises.

(2) A party seeking to have rules of evidence and procedure, other than those of the Court, applied under section 11(1)(c) of the Cross-vesting Act in dealing with a matter for determination by the Court is to include in the pleadings a statement substantially identifying the rules of evidence and procedure.

(3) If a party claims that rules of evidence and procedure other than those of the Court should, under section 11(1)(c) of the Cross-vesting Act, be applied to the determination by the Court of a matter in a proceeding –

(a) the party is to seek directions on the matter before the proceeding is set down for trial; and

(b) the Court, at any time and of its own motion, may –

(i) give directions in relation to the matter; and

(ii) revoke or vary any direction.

Division 2AA – Proceedings under the Legal Profession Act 2007

783AA. Interpretation of Division 2AA of Part 32

In this Division –

acceptable deponent, in relation to an applicant, means a person who is not married to the applicant, in a significant relationship, within the meaning of the *Relationships Act 2003*, with the applicant or a close blood relative of the applicant and –

(a) is a commissioner for declarations pursuant to section 12 of the *Oaths Act 2001* and has known the applicant for a period of not less than 12 months; or

(b) has an occupation in an overseas jurisdiction, or is authorised to practise in a profession in an overseas jurisdiction, that is substantially equivalent to one that would qualify the person as a commissioner for declarations pursuant to section 12(2) of the *Oaths Act 2001* and has known

the applicant for a period of not less than 12 months; or

(c) is, or was, employed at a secondary or tertiary teaching institution and taught the applicant for not less than the equivalent of one year of tertiary studies, or one of the two final years of secondary studies; or

(d) is a person determined by the Court to be an acceptable deponent;

admission means admission to the legal profession under the admitting Act;

admitting Act means the *Legal Profession Act 2007*;

application for a declaration of suitability means an application made under section 27 of the admitting Act;

Board has the same meaning as in the admitting Act;

Board of Legal Education certificate means a certificate or document that –

(a) states the person specified in the certificate or document has the academic qualifications and practical legal training required for admission; and

(b) is issued or given under the *Legal Profession (Board of Legal Education) Rules 1994*;

local applicant means a person who –

(a) has not previously been admitted to the legal profession in any jurisdiction in Australia; and

(b) wishes to be admitted on the basis of academic qualifications and practical legal training obtained wholly or principally in Australia;

overseas practitioner means a person who –

(a) is admitted to the legal profession in a jurisdiction other than Australia; and

(b) at the time of the application for admission under the admitting Act, is entitled to practise as a legal practitioner in a place outside Australia;

qualified overseas applicant means a person who –

(a) has not previously been admitted to the legal profession in any jurisdiction; and

(b) wishes to be admitted on the basis of academic qualifications

and practical legal training obtained wholly or principally outside Australia;

relevant matter – see rule 783AB;

suitability matter has the same meaning as in the admitting Act.

783AB. Relevant matters

(1) A relevant matter is a matter, other than a suitability matter, which a reasonable applicant under this Division may consider would affect whether or not the Court believes the applicant is a fit and proper person for admission.

(2) Without limiting the generality of subrule (1), relevant matters may include the following matters:

(a) any outstanding charges for criminal offences against the applicant;

(b) if the applicant is, or has been, the subject of disciplinary action, however described, arising out of conduct in attaining academic qualifications or completing practical legal training;

(c) any prior unsuccessful application by the applicant for admission in any jurisdiction including Tasmania;

(d) if the applicant suffers from an illness or condition which would affect his or her ability to adequately or safely perform

the duties and responsibilities of a practitioner.

783AC. Notice of intention to apply for admission

(1) An applicant for admission must cause a notice of intention to apply for admission to be published –

(a) in a newspaper circulating generally in the district of the Court where the application is to be heard; and

(b) in one other relevant newspaper.

(2) A notice of intention to apply for admission is to be –

(a) in the prescribed form; and

(b) published not less than one month and not more than 3 months before the hearing of the application.

(3) For the purposes of subrule (1)(b), a relevant newspaper is –

(a) for an application to be heard in Hobart, a newspaper circulating generally in the northern region or the north-western region; or

(b) for an application to be heard in Launceston or Burnie, a newspaper circulating generally in the southern region.

783AD. Application for admission

(1) An application for admission must be commenced by an originating application to the Court.

(2) Not less than 14 days before the hearing of an application for admission, the applicant must file and serve the originating application and supporting documents on –

(a) the Board; and

(b) the Law Society.

783AE. Documents supporting application for admission

(1) If an applicant for admission is a local applicant, the following documents are required in support of the application:

(a) an affidavit by the applicant in the prescribed form –

(i) addressing each of the suitability matters; and

(ii) addressing any relevant matters; and

(iii) to which is annexed –

(A) the published notice, or a copy of the published notice, required by rule 783AC; and

(B) the Board of Legal Education certificate; and

(C) a report from the Commissioner of Police setting out the applicant's criminal record, if any, in this or any other Australian jurisdiction prepared not more than 6 months before the date of swearing of the affidavit;

(b) two affidavits as to character in the prescribed form, each made by an acceptable deponent;

(c) any other affidavits, reports, certificates or documents required by the Court.

(2) If an applicant for admission is a qualified overseas applicant, the following documents are required in support of the application:

(a) an affidavit by the applicant in the prescribed form –

(i) addressing each of the suitability matters; and

(ii) addressing any relevant matters; and

(iii) to which is annexed –

(A) the published notice, or a copy of the published

notice, required by rule 783AC; and

(B) the Board of Legal Education certificate; and

(C) unless the Court determines otherwise, a report from the police in the overseas jurisdiction where the applicant obtained the academic qualification and practical legal training on which he or she relies, setting out the applicant's criminal record, if any, prepared not more than 2 years before the date of swearing of the affidavit;

(b) two affidavits as to character in the prescribed form, each made by an acceptable deponent;

(c) any other affidavits, reports, certificates or documents required by the Court.

(3) If an applicant for admission is an overseas practitioner, the following documents are required in support of the application:

(a) an affidavit by the applicant in the prescribed form –

(i) addressing each of the suitability matters; and

(ii) addressing any relevant matters; and

(iii) to which is annexed –

(A) the published notice, or a copy of the published notice, required by rule 783AC; and

(B) the Board of Legal Education certificate; and

(C) unless the Court determines otherwise, a report from the police in the overseas jurisdiction where the applicant is a local legal practitioner, setting out the applicant's criminal record, if any, prepared not more than 2 years before the date of swearing of the affidavit;

(b) two affidavits as to character in the prescribed form, each made by an acceptable deponent who is an overseas practitioner and with whom the applicant has associated during his or her work in the legal profession;

(c) any other affidavits, reports, certificates or documents required by the Court.

(4) The Court may request that an applicant arrange that a certificate or document required under this

rule be provided to the Court by the authority or institution that provides or issues the certificate or document.

783AF. Application for declaration of suitability

(1) An application for a declaration of suitability must be commenced by originating application to the Court.

(2) Not less than 14 days before the hearing of an application for a declaration of suitability, the applicant must file and serve the originating application and supporting documents on –

(a) the Board; and

(b) the Law Society.

(3) The following documents are required to support the application under this rule:

(a) an affidavit by the applicant in the prescribed form addressing –

(i) each of the suitability matters; and

(ii) any relevant matters;

(b) two affidavits as to character in the prescribed form, each made by an acceptable deponent;

(c) any other affidavits, reports, certificates or documents required by the Court.

783AG. Effect of declaration of suitability on application for admission

(1) If the Court makes a declaration under section 27 of the admitting Act, the affidavit of the applicant required under rule 783AE must, in addition to the requirements of that rule –

(a) specify that a declaration has been made by the Court under section 27 of the admitting Act; and

(b) have annexed –

(i) a copy of the application for a declaration of suitability including the supporting documents; and

(ii) a copy of the declaration.

(2) If an affidavit as to character required under rule 783AE is prepared by the same person who made an affidavit under rule 783AF(3)(b), the affidavit made under rule 783AE is to specify –

(a) whether or not the deponent's opinion of the applicant has changed since the affidavit under rule 783AF(3)(b) was made; and

(b) give details of any such changes.

783AH. Affidavit of service of application under this Division

Not less than 7 days before the hearing of an application under this Division, the applicant must file an affidavit of service in the prescribed form to which is annexed –

(a) an acknowledgment of service of the application and the supporting documents signed by the Board; and

(b) an acknowledgment of service of the application and the supporting documents signed by the Law Society.

783AI. Inquiries

The Court may make such inquiries as it thinks fit into any application made under this Division including, but not limited to, whether the applicant is a fit and proper person for admission in Tasmania.

783AJ. Oath

A person who is found to have the qualifications and training required for admission, and to be a fit and proper person for admission, must take and subscribe the oath in the prescribed form.

783AK. Compliance with former rules

If an application for admission was validly filed with the Court before the commencement of this

Division, the application is to be considered and determined as if this Division had not yet commenced.

Division 2A – Proceedings under the Mutual Recognition (Tasmania) Act 1993 and the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth

783A. Interpretation of Division 2A of Part 32

In this Division –

Commonwealth Act means the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth;

interstate practitioner means a person who at the time of applying for admission under this Division –

(a) is an interstate legal practitioner within the meaning of the *Legal Profession Act 2007*; or

(b) is entitled to practise as a barrister, solicitor or barrister and solicitor of the High Court of New Zealand;

mutual recognition principle means –

(a) the mutual recognition principle enacted in Part 3 of the *Mutual Recognition Act 1992* of the Commonwealth and adopted in

Tasmania by the *Mutual Recognition (Tasmania) Act 1993*; or

(b) the principle enacted in Part 3 of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth and adopted in Tasmania by the *Trans-Tasman Mutual Recognition (Tasmania) Act 1998*;

State includes any other State, a Territory and New Zealand.

783B. Application of Division

This Division applies to the admission of an interstate practitioner to the legal profession in accordance with the mutual recognition principle.

783C. Application for admission

An application by an interstate practitioner for admission is to –

(a) be made by originating application in accordance with these Rules of Court; and

(b) be accompanied by a notice in the prescribed form.

783D. Hearing date

On the filing of an application under rule 783C, the Registrar is to –

(a) appoint a hearing date before the Court, a judge or the Associate Judge, which is to be within one month of the filing of the application; and

(b) cause a copy of the application with a hearing date inserted in it, and a copy of the notice, to be displayed on a public notice board at the Principal Registry; and

(c) forward a copy of the application and a copy of the notice to the Legal Profession Board, Law Society and any other relevant professional association.

783E. Registrar to consider application

(1) The Registrar must consider, not less than 2 days before the hearing date, any application and notice filed in accordance with rule 783C.

(2) If the Registrar is satisfied that the applicant has complied with the Commonwealth Act and this Division, the Registrar is to issue a certificate to that effect.

(3) A certificate is to be in the prescribed form.

(4) If the Registrar is not satisfied in accordance with subrule (2), the Registrar is to –

(a) state in writing any reasons for believing that –

(i) the applicant may not be entitled to admission under this Division; and

(ii) there exists any reason prescribed by the Commonwealth Act for postponement or refusal of admission; and

(b) forward those reasons to the applicant.

783F. Applicant not appearing at hearing

(1) An applicant for admission under this Division may elect not to appear in person at the hearing of the application.

(2) An applicant who elects not to appear must –

(a) take and subscribe the oath set out in Form 57BG; and

(b) sign a pro forma in the prescribed form for insertion in a roll of practitioners or barristers kept by the Registrar.

(3) The applicant is to sign the pro forma before –

(a) the Principal Registrar of the Supreme Court of any State or a Registrar of the High Court of New Zealand; or

(b) any officer of such a court the Chief Justice determines.

(4) Before the hearing of the application, the applicant must return to the Registrar –

(a) the signed pro forma; and

(b) a certificate of the administration of oaths in the prescribed form.

783G. Documents to be produced at hearing

At the hearing of the application, the Registrar is to produce to the Court, judge or Associate Judge –

(a) the certificate or statement of reasons referred to in rule 783E; and

(b) the notice accompanying the application; and

(c) any documents accompanying the notice.

783H. Person may show cause

Any person may show cause why an applicant should not be admitted under this Division.

Division 3 – Proceedings under the Settled Land Act 1884 and the Settled Land Act 1911

784. Interpretation of Division 3 of Part 32

In this Division –

Settled Land Act means the *Settled Land Act 1884* read together with the *Settled Land Act 1911*;

tenant for life includes –

(a) a tenant for life as defined by the Settled Land Act; and

(b) any person having the powers of a tenant for life under that Act.

785. Service

Service of an application under the Settled Land Act is to be in accordance with the following provisions:

(a) an application by a tenant for life as to the application of purchase money in respect of any estate or interest in land that is less than the fee simple or a reversion dependent on that estate or interest is to be served on the trustees;

(b) an application for the appointment of trustees under the settlement is to be served on the trustees, if any, and the tenant for life if the tenant for life is not the applicant;

(c) an application for directions in respect of a matter between a tenant for life and the trustees of the settlement is to be served on such of the tenant for life and the trustees as is not an applicant;

(d) an application by any person other than the tenant for life is to be served on the tenant for life;

(e) an application by a tenant for life not within the preceding provisions of this rule is to be made *ex parte* in the first instance.

786. Service on other persons

The Court or a judge may –

(a) order that an application under the Settled Land Act be served on any other person not referred to in rule 785; and

(b) revoke or vary the order at any time.

787. Dispensing with service

The Court or a judge, either unconditionally or on terms, may dispense with service on any person required to be served under rule 785 or 786.

788. Evidence as to title

The title of the tenant for life, trustees or other persons interested in an application under the Settled Land Act may be proved by affidavit, unless the Court or a judge otherwise requires.

789. Sales

A sale authorised or directed by the Court or a judge under the Settled Land Act is to be carried into effect out of Court, unless the Court or judge otherwise directs.

790. Leases

If the Court or a judge orders that the tenant for life may make leases or grants for building or mining purposes under section 10 of the Settled Land Act –

(a) it is not necessary that the order direct that any particular lease or grant be settled or approved by the Court or judge; and

(b) the order may –

(i) approve a lease or grant already prepared; or

(ii) direct that the lease or grant contain conditions specified in the order or any conditions as may be approved by the Court or judge without directing that the lease or grant be settled by the Court or judge.

791. Payment of capital money into Court

(1) A person who is directed by a tenant for life to pay into Court any capital money arising under

the Settled Land Act may apply to a judge sitting in chambers for leave to pay the money into Court.

(2) An application under subrule (1) is to be accompanied by an affidavit setting out the following:

(a) the name and address of the person wishing to make the payment;

(b) the place at which that person is to be served with notice of any proceeding relating to the money;

(c) the amount of money to be paid into Court and the account to the credit of which it is to be placed;

(d) the name and address of the tenant for life under the settlement by whose direction the money is to be paid into Court;

(e) brief details of the transaction in respect of which the money is payable.

(3) The order made on an application under subrule (1) may contain directions for –

(a) investment of the money on any securities authorised by section 19(a) of the Settled Land Act; and

(b) the payment of the income to the tenant for life, either immediately or on

production of the consent in writing of the applicant.

(4) If the transaction in respect of which the money arises is not complete at the date of payment into Court, the money is not to be ordered to be invested in any securities other than those in which cash under the control of the Court may be invested, except with the consent of the applicant.

792. Title of account

Any money paid into Court under the Settled Land Act is to be paid into an account to be entitled in the matter of the Settled Land Act and of the settlement, with such further description as may be necessary to identify it.

793. Costs of payment into Court

(1) Any person paying into Court any capital money arising under the Settled Land Act is entitled to deduct the costs of paying the money into Court.

(2) The costs of paying the money into Court may be taxed by the taxing officer.

Division 4 – Proceedings under the Trustee Act 1898

794. Payment into Court under section 48

(1) The payment of money or securities into Court by a trustee under section 48 of the *Trustee Act 1898* is to be accompanied by an affidavit,

entitled in the matter of the trust and in the matter of that Act, setting out –

(a) a short description of the trust and of the instrument creating it; and

(b) to the best of the knowledge and belief of the trustee, the name and address of each person interested in, or entitled to, the money or securities; and

(c) that the trustee submits to answer all such inquiries relating to the application of the money or securities paid into Court as the Court or a judge may make or direct; and

(d) the place at which the trustee is to be served with any proceedings, order or notice of any proceeding relating to the money or securities.

(2) If a trustee makes a payment into Court in accordance with subrule (1), the trustee is to give notice by post of that payment to each person who appears from the affidavit to be interested in, or entitled to, the money or securities paid into Court.

795. Applications in respect of money paid into Court

(1) A person who files an application relating to money or securities paid into Court is to specify in the application an address for service of documents.

(2) An application in respect of money or securities paid into Court is to be served on –

(a) the person who paid the money or securities into Court; and

(b) each person named in the affidavit as interested in, or entitled to, the money or securities; and

(c) any other person the Court or a judge directs.

(3) A person filing an application under subrule (1) may seek an order that service on a person required to be served by subrule (2) be dispensed with by so stating in the application.

(4) Any direction dispensing with service must be obtained and stated in the application before service of it on any other person.

796. Application under section 52

An application under section 52 of the *Trustee Act 1898* may be made by the trustee or other person authorised to dispose of the land in question.

Division 5 – Proceedings under the Variation of Trusts Act 1994

797. Parties

Unless the Court or a judge otherwise orders, the settlor and any other person who provided

property for the purposes of a trust to which an application under section 6 or 13 of the *Variation of Trusts Act 1994* relates are to be joined as respondents if they –

(a) are alive; and

(b) are not an applicant.

798. Unborn or unascertained beneficiaries

(1) Rule 303 applies to an application under the *Variation of Trusts Act 1994*.

(2) In relation to an application under the *Variation of Trusts Act 1994*, a judge, instead of making an order under rule 303, may –

(a) order that the interests of any unascertained person or class of persons be represented by a practitioner appointed by the judge; and

(b) make provision for the costs of such representation.

Division 6 – Proceedings under the Wills Act 1992 and the Wills Act 2008

799. Interpretation of Division 6 of Part 32

In this Division –

former Wills Act means the *Wills Act 1992* as continued under section 5 of the *Wills Act 2008*.

800. Application to dispense with requirements for execution of wills

An application for a grant of probate or letters of administration relying on section 26 of the former Wills Act or section 10 of the *Wills Act 2008* is to join as a respondent each person whose interests might be affected by the making of the order sought.

801. Application to validate dispositions to interested witnesses

(1) An application under section 45 of the former Wills Act or section 13 of the *Wills Act 2008* is to join as respondents –

(a) the personal representative of the deceased; and

(b) each person whose interests might be affected by the making of the order sought.

(2) On the hearing of the application, the personal representative of the deceased person is to produce the probate of the will to the Court.

(3) If an order is made on the application, the Court is to direct that a certified copy of the order be made on the probate of the will and for that purpose may retain the probate until the copy has been made.

802. Application for authorisation, alteration or revocation of wills by minors

(1) An application under section 20 of the *Wills Act 2008* –

(a) is to be made by an ex-parte application; and

(b) may be made without the intervention of a litigation guardian; and

(c) is to be supported by an affidavit of the applicant containing or, where appropriate, annexing the following:

(i) the full name, address, occupation and date of birth of the minor;

(ii) if the application is being made by a person other than the minor, the full name, address, occupation and date of birth of the applicant and an explanation of the facts and circumstances of the making of the application on behalf of the minor;

(iii) a draft of the will for which authorisation is sought or a copy of the will for which revocation or part revocation is sought;

(iv) details of the assets, liabilities, income and financial obligations of the minor;

(v) the name and address of any person who is wholly or partly dependent on the minor and the nature and extent of that dependency;

(vi) the name and address of each living child, parent or sibling of the minor;

(vii) if the minor has no living child, parent or sibling, the name and address of each person who would be entitled to share in the estate of the minor on intestacy if the minor were to die at the time of the making of the application;

(viii) whether the application has been made upon notice to any of the persons indicated in subparagraph (v), (vi) or (vii), or any other person with a legitimate interest in the proceedings, or whether notice is proposed to be given to such persons;

(ix) the facts and circumstances relied upon to satisfy the Court under section 20(3) of the *Wills Act 2008*.

(2) If the Court or a judge is of the opinion that a person who appears to have an interest in proceedings ought to be given notice of those proceedings, the Court or the judge may –

(a) direct that the person be served with the application; and

(b) give directions as to the future conduct of the proceedings.

(3) If revocation of a will or part of a will is sought, the original will is to be produced to the Court, or its absence explained by affidavit, at the hearing of the application.

803. Application for leave to apply for certain orders

(1) An application for leave under section 23 of the *Wills Act 2008* –

(a) may be made without the intervention of a litigation guardian; and

(b) is to be supported by an affidavit of the applicant containing the following:

(i) the full name, address, occupation and date of birth of the applicant;

(ii) the full name, address, occupation and date of birth of the person on whose behalf the application is made;

(iii) the full name, address, occupation and date of birth and relationship to the proposed testator of any of the persons described in section 23(2)(h), section 23(2)(j) and section

23(2)(k) of the *Wills Act 2008*; and

(c) is to be served personally on each of the persons described in section 23(2)(h), section 23(2)(j) and section 23(2)(k) of the *Wills Act 2008*, unless the Court or a judge otherwise orders.

(2) If the Court or a judge is of the opinion that a person who appears to have an interest in proceedings ought to be given notice of those proceedings, the Court or the judge may –

(a) direct that the person be served with the application; and

(b) give directions as to the future conduct of the proceedings.

(3) A person who wishes to object to the application for leave –

(a) is to file and serve, no later than 28 days after the service of the application, an affidavit setting out the basis of any objection and the facts and circumstances on which it is based; and

(b) is not required to enter an appearance.

(4) If revocation of a will or part of a will is sought, the original will is to be produced to the Court, or its absence explained by affidavit, at the hearing of the application for leave.

803A. Application to rectify a will

(1) An application under section 47 of the former Wills Act, or section 42 of the *Wills Act 2008* is to join as respondents –

(a) the personal representative of the deceased; and

(b) each person whose interests might be affected by the making of the order sought.

(2) On the hearing of the application, the personal representative of the deceased person is to produce the probate of the will to the Court.

(3) If an order is made on the application, the Court is to direct that a certified copy of the order be made on the probate of the will and for that purpose may retain the probate until the copy has been made.

Division 7 – Proceedings under the Trans-Tasman Proceedings Act 2010 (Commonwealth)

Subdivision 1 – Preliminary

803B. Interpretation of Division 7 of Part 32

Unless the contrary intention appears, an expression used in this Division has the same meaning as it has in the Trans-Tasman Proceedings Act.

803C. Application of Division 7 of Part 32

This Division applies to civil proceedings in which the Trans-Tasman Proceedings Act applies.

803D. Proceedings under the Trans-Tasman Proceedings Act

A party to a proceeding to which this Division applies must comply with –

(a) this Division; and

(b) any other of these rules that is relevant to, and consistent with, this Division.

Subdivision 2 – Commencement of proceeding under Trans-Tasman Proceedings Act

803E. Interlocutory application under Trans-Tasman Proceedings Act

In any proceedings that have already commenced, a party to the proceeding may apply for an order under the Trans-Tasman Proceedings Act by filing –

(a) an interlocutory application; and

(b) an affidavit to accompany the interlocutory application.

803F. Application for interim relief

(1) A person may apply to the Court for an order for interim relief, under section 25 of the Trans-Tasman Proceedings Act, by filing an originating application to a judge in chambers.

(2) An application under subrule (1) must be accompanied by an affidavit stating –

(a) if the person –

(i) has started a proceeding in a New Zealand court –

(A) that the person has started a proceeding in a New Zealand Court; and

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

(C) the steps taken in the New Zealand proceeding; or

(ii) intends to start a proceeding in a New Zealand court –

(A) when the person intends to start the proceeding; and

(B) the court in which the intended proceeding is to be started; and

(C) the relief to be sought in the intended proceeding; and

(b) the interim relief sought; and

(c) the material facts on which the application is based; and

(d) why the interim relief should be given.

803G. Application for leave to serve subpoena in New Zealand

(1) A person may apply for leave to serve a subpoena in New Zealand by filing an interlocutory application.

(2) An application under subrule (1) must be accompanied by –

(a) a copy of the subpoena in relation to which leave is sought; and

(b) an affidavit stating, briefly but specifically, the following matters:

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

(ii) whether or not the addressee has attained the age of 18 years;

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

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

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

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

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

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

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

(3) Before granting leave to serve a subpoena under the Trans-Tasman Proceedings Act, the Court may require the applicant to make an undertaking that he or she will meet the reasonable expenses incurred by the addressee in complying with the subpoena if the expenses are likely to exceed the amounts to be tendered to the addressee as specified in the affidavit accompanying the subpoena.

(4) In this rule –

addressee means the person named in a subpoena that is the subject of the application for leave under this rule.

803H. Application to set aside subpoena

(1) A person may apply to set aside a subpoena that was applied for under this Division and served in New Zealand.

(2) An application under subrule (1) –

(a) must be by an interlocutory application in the proceeding in which the subpoena, to which the application relates, was issued; and

(b) must be accompanied by –

(i) a copy of the subpoena; and

(ii) an affidavit stating –

(A) the material facts on which the application is based; and

(B) whether the person making the application requests that any hearing be held by audio link or audio visual link.

803I. Application for issue of certificate of non-compliance with subpoena

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

(2) An application under subrule (1) may be made –

(a) if the proceeding in which the subpoena was issued is before the Court, orally to the Court; or

(b) by filing an interlocutory application in the proceeding.

(3) An application under subrule (1) must be accompanied by –

(a) a copy of the subpoena; and

(b) a copy of the order, under section 31 of the Trans-Tasman Proceedings Act, of a certificate of non-compliance with a

subpoena, giving leave to serve the subpoena; and

(c) an affidavit of service for the subpoena; and

(d) a further affidavit stating the following:

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

(ii) if such an application referred to in subparagraph (i) is made –

(A) the material provided in support of the application; and

(B) any order that disposed of the application;

(iii) the material facts relied on for the application for the certificate of non-compliance.

803J. Documents relating to application

A person must not, without the leave of a judge, search in a registry for, or inspect or copy, a document in an application under the Trans-Tasman Proceedings Act for use in relation to the serving of a subpoena in New Zealand.

Subdivision 3 – Recognition and enforcement of NZ judgment

803K. Notice of registration of NZ judgment

(1) A registered NZ judgment is not enforceable in this State before the expiry of the period mentioned in section 74(2) of the Trans-Tasman Proceedings Act, unless the entitled person has filed an affidavit with the Court that states that the entitled person has complied with section 73 of the Trans-Tasman Proceedings Act.

(2) An affidavit under subrule (1) is to include proof of service of the notices of registration of the judgement required to be given under section 73 of the Trans-Tasman Proceedings Act.

(3) If a respondent against whom a registered NZ judgment is enforceable is out of Australia, the notice of the registration of judgement, specified in section 73 of the Trans-Tasman Proceedings Act, may be served without leave of the Court.

803L. Application for extension of time to give notice of registration of NZ judgment

(1) An entitled person who wants to apply for an extension of the time within which to give notice of the registration of NZ judgment, under section 73(3) of the Trans-Tasman Proceedings Act, must file an originating application to a judge in chambers.

(2) An application under subrule (1) must be accompanied by an affidavit stating –

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

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

(c) why notice was not, or will not be, given within time.

803M. Application to set aside registration of NZ judgment

(1) An application under section 72(1) of the Trans-Tasman Proceedings Act may only be made by filing an originating application, in the proceeding in which the judgement was registered, to a judge in chambers.

(2) An application under subrule (1) must be accompanied by an affidavit stating –

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

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

803N. Application for stay of enforcement of registered NZ judgment so that liable person can appeal judgment

(1) A liable person who wants to apply for a stay of the enforcement of a registered NZ judgment under section 76(1) of the Trans-Tasman Proceedings Act, must file an originating application to a judge in chambers.

(2) An application under subrule (1) must be accompanied by an affidavit stating –

(a) the order sought; and

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

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

803O. Application for extension of time to apply for stay of enforcement of registered NZ judgment so that liable person can appeal judgment

(1) A liable person who wants to apply for an extension of time within which to apply for the stay of enforcement of a registered NZ judgment under section 76(1) of the Trans-Tasman Proceedings Act, must file an originating application to a judge in chambers.

(2) An application under subrule (1) must be accompanied by an affidavit stating –

(a) the order sought; and

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

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

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

Subdivision 4 – Miscellaneous

803P. Application for order for use of audio link or audio visual link

(1) A party who wants to apply for an order that evidence be taken, or submissions be made, by audio link or audio visual link, from New Zealand must file –

(a) an interlocutory application; and

(b) an accompanying affidavit.

(2) Subrule (1) does not apply to a request mentioned in rule 803H(2)(b)(ii)(B).

PART 33 – ENTRY OF JUDGMENT AND ORDERS

804. Duties of associate

(1) The associate of a judge is to note the following in a book and in a record of proceedings to be kept in the file relating to proceedings dealt with by a Full Court or by a judge sitting in Court or chambers:

(a) the times at which a hearing, trial or other proceeding started and finished on each day;

(b) the names of the counsel and practitioner appearing for each party;

(c) the name of each witness examined;

(d) the name of the deponent of each affidavit read and the date on which it was sworn;

(e) any finding of fact that the Court or judge directs to be entered;

(f) any direction of the Court or judge as to the judgment;

(g) any order of the Court or judge;

(h) any certificate granted by the Court or judge.

(2) The book and record of proceedings referred to in subrule (1) may be kept in a computerised form.

805. Certificate for entry of judgment

A record of proceedings made by an associate under rule 804 to the effect that the Court or a judge has directed that a judgment be entered for a party or has made an order is a sufficient authority for the registrar to enter judgment or take out the order accordingly.

806. General relief

At any stage of a proceeding, the Court or a judge, on the application of a party, may give any judgment or may make any order as the case requires even though the judgment or order has not been sought in the originating process or other document of the party in the proceeding.

807. Date of effect of judgment or order

Unless otherwise ordered, a judgment or order of the Court or a judge –

(a) is to bear the date it is given or made; and

(b) takes effect on and from that date.

808. Date of effect of summary judgment

Unless otherwise ordered, a judgment directed to be entered by an order made under Division 3 or 4 of Part 11 –

(a) is to bear the date of the order; and

(b) takes effect on and from that date.

809. Date of effect of other judgments and orders

Except as provided by rules 807 and 808, a judgment or order –

(a) is to bear the date on which the requisite documents are left with the registrar for the purpose of it being entered; and

(b) takes effect on and from that date.

810. Judgment or order to state period for doing any act

(1) A judgment or order by which a person is ordered to do an act is to state the period within which the act is to be done.

(2) A copy of a judgment or order referred to in subrule (1) that is served on the person required to obey the order is to have endorsed on it a memorandum to the following effect:

"If you, A.B., neglect to obey this judgment (or order) by the time limited in the judgment (or order), you will be liable to process of execution to compel you to obey the judgment (or order)."

810A. Judgment or order to state applicable interest rate

If a judgment or order carries interest at a rate other than the prescribed rate of interest, that judgment or order is to include a statement of the rate of interest applicable.

811. Entry of satisfaction

(1) A memorandum of satisfaction of a judgment may be entered on the filing in the registry of a consent to the entry that is –

(a) signed by the party entitled to the benefit of the judgment; and

(b) attested and verified by the affidavit of the attesting witness.

(2) For the purposes of subrule (1), the attesting witness is to be a practitioner or a person approved by the Court or a judge.

812. Entry of judgment or order

(1) A judgment or order is not to be enforced, and an appeal instituted from a judgment or an order is not to be heard, until the judgment or order has been entered in accordance with this Part and filed, unless the Court or a judge otherwise orders.

(2) A memorandum or note, signed by the associate, of an order made by a judge together with an affidavit of non-compliance with that order is sufficient authority for the entry of judgment pursuant to that order in consequence of the failure to comply with it.

(3) An order that is not a final order is not required to be entered and filed unless –

(a) a party to the proceeding is acting in person; or

(b) the order is to be served on a person not a party to the proceeding; or

(c) the order is for committal, attachment or by way of an injunction; or

(d) the order is an order nisi for relief similar to *certiorari*, *mandamus*, prohibition, *procedendo* or *quo warranto* or an order absolute instead of the issue of such an order; or

(da) the order is an order nisi for the grant of a writ of habeas corpus or an order absolute instead of the issue of such a writ; or

(e) the Court or a judge so orders.

(4) If an order is made that is not required to be entered and filed, the record of proceedings maintained under rule 804 is sufficient authority for the doing of the act ordered.

813. Mode of entry of judgment or order

A judgment or order is entered when a form of judgment, drawn up and settled in accordance with this Part, is sealed by the registrar with the office seal.

814. Drawing up judgment or order

(1) The registrar is to settle the form of a judgment or order if requested to do so by a party.

(2) A judgment or order is not to include any matter not provided for in subrule (3).

(3) A judgment or order is to specify the following:

(a) the originating or other process on which the judgment or order was obtained;

(b) the judgment or the order made;

(c) any finding of fact by the Court or a judge essential to ground jurisdiction;

(d) the terms of any undertaking given by a party;

(e) any other matter the Court or judge directs.

(4) If the Court or a judge so orders, or a party so requires, a judgment or order is to identify by way of annexure the evidence before the Court or judge.

(5) Subject to any direction of the Court or a judge, the party in whose favour a judgment has been given or an order has been made may prepare a draft of the judgment or order and leave it with the registrar to be settled.

(6) If the party referred to in subrule (5) fails to leave the draft judgment or order with the registrar within 7 days after the judgment was given or order was made, any other party may do so.

(7) If a draft is left with the registrar more than one year after the judgment was given or order was

made, the registrar may decline to settle the draft without the leave of the Court or a judge.

815. Settlement of draft by registrar

(1) The registrar may settle a draft judgment or order without the attendance of any party.

(2) The registrar, by notice to the parties, may –

(a) appoint a date and time for them to attend to settle the draft; and

(b) on that date and time, settle the draft whether or not the parties attend.

(3) The registrar may adjourn the settling of the draft to a later date and time.

(4) A notice of the appointment is to be served on all the parties at least one clear day before the date and time fixed for settling the draft judgment or order.

(5) The parties are to –

(a) attend the appointment; and

(b) produce to the registrar all documents necessary to enable the draft to be settled.

(6) The registrar or other proper officer may –

(a) submit the draft to a judge; and

(b) may communicate with the judge as to the settlement of the draft.

(7) After the draft has been settled –

(a) it is to be marked as settled and returned to the party who brought it in; and

(b) that party is to engross it in duplicate and leave the settled draft and the engrossments with the registrar within 4 days after the return of the draft.

(8) On compliance with subrule (7), the judgment or order may be entered and filed.

816. Settlement of judgments and orders by judge

(1) A Full Court may direct any judgment given or order made to be settled by a judge in chambers or by the Associate Judge.

(2) A judge may direct that any judgment or order given or made by that judge be settled by that or some other judge or by the Associate Judge.

(3) If a party is dissatisfied with the judgment or order as settled by the registrar or other officer on the ground that it does not correspond with the judgment or order as pronounced, that party, on receipt of the settled draft, is to notify the registrar in writing of the party's dissatisfaction.

(4) On the registrar being notified under subrule (3) –

(a) the judgment or order is to be settled by a judge in chambers; and

(b) the registrar is to –

(i) obtain an appointment before a judge to settle the order; and

(ii) give 2 clear days' notice of the appointment to the parties.

(5) A judge may require any party to produce any counsel's brief or other document required for the purpose of settling any judgment or order.

(6) There is no appeal from the settlement of any judgment or order by a judge.

817. Failure to attend or produce documents

If a party fails to attend an appointment under rule 815 or 816 or fails to produce any document required to be produced, the judge, registrar or officer settling the draft may –

(a) settle it in the absence of the party; and

(b) dispense with the production of the document; and

(c) act on such material as is appropriate.

818. Statement of service of writ

In any judgment, the party seeking the entry of judgment is entitled to have a statement inserted in the judgment as to the manner and place in and at which the service of the writ or other process by which the proceedings were commenced was effected.

819. Entry on production of order or certificate

If, under any law, a judgment may be entered pursuant to any order or certificate or pursuant to the return of any writ, the production of the order or certificate sealed with the office seal, or the production of the return, is sufficient authority for the entry of judgment accordingly.

820. Filing of judgments and orders

(1) Every judgment or order which has been entered is to be filed in the registry.

(2) An entry of the filing of a judgment or order is to be made in books kept for that purpose.

(3) The books referred to in subrule (2) may be kept in computerised form.

(4) Every judgment and order filed is taken to be duly entered and the date of filing is the date of entry.

(5) A procedural order need not be entered before an attachment is issued for disobedience of the order.

821. Duplicates

On the request of a party, a registrar is to seal a reasonable number of copies of a judgment or order.

822. Forms

The prescribed forms of judgments and orders are to be used where appropriate.

PART 34 – FEES AND COSTS

Division 1 – . . . . . .

823 - 827. . . . . .

Division 2 – Security for costs

828. Security for costs

(1) The Court or a judge, on the application of a party to proceedings, may order an opposite party to give security for the costs of the party applying for security and that the proceedings against the party applying for security be stayed subject to the provision of security if the opposite party from whom security is sought is a plaintiff, applicant, defendant pursuing a counterclaim or respondent pursuing a cross application and if –

(a) the opposite party is ordinarily resident out of Tasmania; or

(b) the opposite party is a corporation; or

(c) the opposite party, not being a party who sues in a representative capacity, sues only for the benefit of some other person and there is reason to believe that the opposite party does not have sufficient assets in Tasmania to pay the costs of the party applying for security; or

(d) a proceeding by the opposite party in another court, in Tasmania or elsewhere, for the same claim is pending; or

(e) the address of the opposite party is not stated, or is not correctly stated, in the originating process; or

(f) the opposite party has changed address after the commencement of the proceedings in order to avoid the consequences of the proceeding; or

(g) under any law the Court may require security for costs.

(2) The Court or a judge is not to require a party to a proceeding founded on a judgment or order on a bill of exchange or other negotiable instrument to give security by reason only of subrule (1)(a), unless it appears to the Court or judge that there is some special reason the order should be made.

(3) The Court or a judge is not to require a party to give security by reason only of subrule (1)(e) if the party acted innocently and without intention to deceive.

829. Amount and form of security

(1) If an order for security for costs is made under rule 828 or security for costs is otherwise required, it is to be of any amount and be given at any time or times and in any manner and form the Court or a judge directs.

(2) Subject to any direction given as to the manner and form in which the security is to be given, it is to be given by an instrument that –

(a) is signed by the person to be bound, whether as principal or surety; and

(b) sets out that the person submits to the jurisdiction of the Court; and

(c) contains that person's consent to judgment being signed against that person for the amount for which the security is given on the happening of the event specified in the instrument.

(3) Subject to any direction to the contrary, security is to be given by 2 sureties approved by the Principal Registrar, each of whom is to be bound in the full amount of the security.

(4) An instrument for the purposes of subrule (2) –

(a) is to be entitled in the proceeding in which the security is given; and

(b) is to be executed by each surety in the presence of the registrar or a commissioner; and

(c) if there is more than one surety, may be executed by them either separately or together; and

(d) is to be filed; and

(e) becomes a record of the Court when it is filed.

(5) A person in whose presence an instrument is executed is to satisfy himself or herself that the surety understands –

(a) the liability which the surety incurs; and

(b) that the liability may be enforced against the surety in a summary way.

(6) A person is not to attest the execution of a security by another person for whom that person or the partner of that person is acting as practitioner or agent.

830. Bond as security

Unless otherwise ordered, a bond given as security is to be given to the party for whose benefit it is given.

831. Period for giving security

The period from and including the day on which an order for security for costs is served up to and including the day on which the security is given is not to be included in calculating the period allowed for –

(a) pleadings; or

(b) answering interrogatories; or

(c) taking any other step in the proceeding.

832. Period for filing security

A recognisance or other security must not be filed after the expiration of 6 months from the date of its execution otherwise than by order of the Court or a judge made on notice to all persons by whom the security was executed.

833. Security by payment into Court

A party directed to give security may give it by –

(a) paying it into Court; and

(b) giving to the party for whose benefit the security is to be given –

(i) notice of the payment; and

(ii) an original receipt for the money paid into Court.

834. Disposal of money paid into Court

If money is paid into Court as security for costs for a proceeding and the proceeding is finally disposed of –

(a) if the party by whom the payment was made is adjudged to pay any costs to another party, the money is to be applied in payment of those costs, unless the Court or a judge otherwise orders; and

(b) on the application of any party, the Principal Registrar is to pay to the party

any amount that the Principal Registrar is satisfied that party is entitled to.

835. Enforcement of security

On the application of a party claiming to be entitled to enforce a security, a judge may order that judgment be entered against the person by whom the security was given for any amount as is just, not exceeding the amount for which the security was given.

Division 3 – Costs

836. Interpretation and application of Division 3 of Part 34

(1) In this Division –

bill means a bill of costs, an account or a statement of charges;

costs includes disbursements;

party includes –

(a) a person not a party to a proceeding by or to whom costs in respect of the proceeding are payable by or under an Act, these rules or an order of the Court or a judge; and

(b) in the case of a proceeding in another court or before a tribunal or an arbitration, any person, by

or to whom costs in respect of the proceeding or arbitration are payable if, and by or under an Act, these rules or an order of the Court or a judge, those costs are to be taxed in the Court;

taxed costs means costs taxed in accordance with this Division;

trustee includes –

(a) an executor of a will; and

(b) an administrator of the estate of a deceased person.

(2) In this Division –

(a) a reference to a fund held by a trustee or out of which costs are to be paid includes a reference to any property held for the benefit of any person or class of persons, including the assets of a company in liquidation or held on trust for any purpose; and

(b) a reference to a fund held by a trustee includes a reference to any property to which the trustee is entitled as trustee, whether alone or together with any other person and whether the property is in the possession of the trustee or not.

(3) This Division applies to –

(a) costs payable or to be taxed under these rules or any order of the Court or a judge; and

(b) costs to be taxed in the Court under any Act.

837. Scales of costs

(1) The fees that a practitioner is entitled to charge are prescribed by Schedule 1.

(2) In special circumstances, instead of the fee prescribed for any item in Schedule 1, the taxing officer may allow a greater or lesser fee in respect of that item.

(3) Subject to section 13 of the Act, any other provision of these rules or an order, in a proceeding, other than one to which subrule (4) applies, a practitioner is entitled to charge the fees set out in Part 1 of Schedule 1.

(4) Subject to section 13 of the Act, a practitioner or barrister is only entitled to charge the fees provided for in Part 2 of Schedule 1 in an action if –

(a) the only claim or claims made by any party is or are for any one or more of the following:

(i) a sum of money, whether by way of liquidated demand or unliquidated damages;

(ii) land;

(iii) a chattel; and

(b) the total sum of money and value of property involved in the action does not exceed $50 000.

(5) In any proceeding, the Court or a judge may order that a party recover costs on the scale provided for in Part 2 of Schedule 1.

(6) In the case of a trial or assessment of damages, an order under subrule (5) is to be made immediately after judgment is given or the damages assessed.

(7) An application under subrule (6) may be adjourned for further hearing.

(8) If any costs, charges or expenses are incurred that are not within Schedule 1, the taxing officer is to allow in respect of those costs, charges or expenses –

(a) the fees prescribed by that Schedule for similar items; or

(b) fees otherwise reasonable in the circumstances.

(8A) An additional fee amount may be allowed by the taxing officer, having regard to the circumstances of the case, including the following circumstances:

(a) the complexity of the matter;

(b) the difficulty or novelty of the questions involved in the matter;

(c) the skill, specialised knowledge and responsibility involved and the time and labour expended by the legal practitioner;

(d) the number and importance of the documents prepared and perused, regardless of length;

(e) the amount or value of money or property involved;

(f) research and consideration of questions of law and fact;

(g) the general care and conduct of the legal practitioner, having regard to the instructions and all relevant circumstances;

(h) the time within which the work was required to be done;

(i) allowances otherwise made in accordance with this scale (including allowances for attendances);

(j) any other relevant matter.

(9) This Division does not derogate from the discretion and powers of the Court or judge to make any order as to costs as may be just in the circumstances of the case.

837A. Goods and services tax

An amount referable to tax paid or to be paid under the *A New Tax System(Goods and Services*

Tax) Act 1999 of the Commonwealth is not to be included in the bill of costs for taxation unless the party in whose favour the costs order operates can show that there is no entitlement to an input credit in respect of the tax.

838. Special fee

The taxing officer may allow a special fee if of the opinion that –

(a) because of the length of an attendance or the difficulty of a case, a fee allowable under rule 837 is insufficient remuneration for the services performed; or

(b) the preparation of a case has required skill and labour for which a fee has not been allowed; or

(c) a case has required and received from the practitioner extraordinary skill and labour.

839. Special orders as to costs

If costs are awarded to a party, the Court or a judge may do any or all of the following:

(a) order the taxation of those costs and payment of a proportion of them;

(b) order the taxation of those costs and payment of them less a specified sum;

(c) direct payment of a sum in gross instead of taxed costs;

(d) direct by and to whom or out of what estate, fund or property the costs are to be paid.

840. Non-attendance or neglect of parties or practitioners

(1) If, for any of the following reasons, a matter before the Court or a judge is adjourned or a hearing is unnecessarily prolonged, the Court or judge may order that the party, counsel or practitioner at fault pay any reasonable costs to another party:

(a) the non-attendance of a party or the counsel or practitioner for a party;

(b) the non-compliance by a party with any of these rules;

(c) the neglect of a party or the counsel or practitioner for a party in not being properly prepared to conduct the proceeding.

(2) The party at fault under subrule (1) is not allowed any costs in respect of the hearing.

841. Disallowance of costs in certain cases

(1) If, in any proceeding, a party improperly or unnecessarily does any act or makes any omission, the Court or a judge may direct that –

(a) the party not be allowed costs in respect of that act or omission; and

(b) any costs incurred by another party as a result be paid by the first-mentioned party.

(2) For the purposes of subrule (1) but without limiting its generality, the Court or judge is to take into account the following matters:

(a) the omission to do anything the doing of which would have been calculated to save costs;

(b) the doing of anything calculated to cause, or in a manner or at a time calculated to cause, unnecessary costs;

(c) any unnecessary delay in the proceeding.

842. Order for taxation not required

Costs may be taxed without an order for taxation if –

(a) the Court or a judge gives judgment, or makes an order for, costs; or

(b) a proceeding is dismissed with costs; or

(c) an application in a proceeding is dismissed with costs; or

(d) a party becomes liable under these rules to pay the costs of another party; or

(e) a party may tax costs under any of these rules; or

(f) parties have agreed in writing that costs payable by one party to another party may be taxed and that agreement has been filed.

843. Costs on award

Costs may be taxed on an award even though the time for an appeal against, or an application to set aside, the award has not expired.

844. Enforcement of order of taxing officer

If costs are taxed otherwise than under a judgment or order for costs, an order of the taxing officer for payment of any amount found to be due may be enforced in the same manner as a judgment for the payment of money.

845. Taxing of bill of costs

Unless otherwise ordered, a bill of costs in a proceeding is to be taxed by a taxing officer at –

(a) the registry in which the proceeding is pending; or

(b) such other place on which the taxing officer and the parties agree.

846. Powers of taxing officer

For the purpose of any proceeding before a taxing officer, that officer may –

(a) summon and examine witnesses; and

(b) administer oaths; and

(c) require the production of books, papers and documents by any person and for that purpose may direct subpoenas to be issued; and

(d) make separate certificates; and

(e) require any party to be represented by a separate practitioner; and

(f) do any other act and adopt any procedure as may be directed by these rules, the Court or a judge.

847. Form of bill of costs for taxation

A bill of costs for taxation –

(a) is to have 5 separate columns, as follows:

(i) the first or left-hand column for dates;

(ii) the second for consecutive numbers of the items;

(iii) the third for the particulars of the services charged for;

(iv) the fourth for disbursements ruled in dollars and cents;

(v) the fifth for the professional charges ruled in dollars and cents; and

(b) is to specify the date of each item in the bill; and

(c) is to show the total of each money column in a page of the bill at the foot of the column; and

(d) is to contain at the end of the bill a synopsis of the charges and disbursements showing the totals of each column.

848. Bill of costs to be filed

A bill of costs is to be filed before its taxation.

849. Notice of appointment of taxation

(1) Before a bill of costs is filed for taxation, the order or judgment directing or authorising the taxation must be filed.

(2) On the filing of a bill of costs for taxation and compliance with subrule (1), the taxing officer is to appoint a date and time for taxation.

(3) The party whose costs are to be taxed is to give to each other party a copy of the bill of costs and

2 days' notice of the taxing officer's appointment to tax the costs.

(4) In case of urgency, the taxing officer may direct that one day's notice be given.

(5) Copies of the bill of costs and notice of taxation are not required to be given to a party who has not appeared in the proceeding if an appearance was required to be entered.

850. Offer to settle costs

(1) Within 8 days after a party claiming costs serves an opposite party with a bill of costs, or within any other time the taxing officer may allow, the opposite party may –

(a) agree to pay the bill of costs; or

(b) signify his or her dissent from the bill of costs.

(2) On signifying dissent under subrule (1)(b), the opposite party may offer to settle the bill of costs.

(3) If the opposite party does not make an offer to settle, or if the party claiming costs refuses to accept the offer, the taxing officer is to proceed to tax the costs.

(4) If the taxed costs do not exceed the sum offered, the party claiming costs is to bear the costs of the taxation.

850A. Objection to bill of costs

(1) In this regulation –

appointed day means the day appointed under rule 849(2) for taxation of a bill.

(2) A taxing officer may, not less than 10 days before the appointed day, require a party on whom a bill is served to file a notice of objection –

(a) stating, by a list, each item in the bill to which the party objects; and

(b) stating specifically and concisely the grounds of objection to each item.

(3) The notice of objection is to be filed with the Court and served on the party claiming costs not less than three days before the appointed day.

851. Taxation in the absence of a party

If a party to a taxation does not attend at the date and time appointed, the taxing officer may proceed to tax the bill on being satisfied that the absent party had due notice of the date and time appointed.

852. Taxing officer may limit or extend time

(1) The taxing officer may limit or extend the time for any proceeding before him or her.

(2) Unless the Court or a judge otherwise directs, if, by any rule or any order of the Court or a judge, a date and time is appointed for any proceeding before the taxing officer, the taxing officer may extend it whether or not it has expired.

853. Party not required to attend taxation

Unless the taxing officer otherwise directs, a party who has filed a bill of costs for taxation is not required to attend the taxation of the bill if –

(a) the party notifies the taxing officer of the party's intention not to attend; or

(b) an appearance has not been entered in the proceeding; or

(c) each other party has notified the taxing officer of the party's intention not to object to any of the items in the bill or to attend.

854. Powers of taxing officer where costs to be paid out of fund

On the taxation of costs to be borne by an estate or fund, the taxing officer may –

(a) direct which parties are to attend; and

(b) direct the practitioner bringing in the bill to deliver or send to a client without charge –

(i) a copy of the bill, or any part of it; and

(ii) any statement which the taxing officer may direct; and

(iii) a letter informing the client that the bill of costs has been referred to the taxing officer for taxation and will be proceeded with at the time appointed by the taxing officer; and

(c) if a direction is given under paragraph (b), suspend the taxation for a reasonable time; and

(d) disallow the costs of any party whose attendance is, in the taxing officer's opinion, unnecessary.

855. Notice to party to file bill

(1) If a person entitled to costs does not file a bill, the taxing officer, whether or not any application has been made by any party, may –

(a) give notice to all parties to file their bills of costs for taxation; and

(b) limit a time for that purpose.

(2) Where a party entitled to costs neglects to file the bill of costs for taxation, the taxing officer, so as to prevent another party being prejudiced by the neglect, may –

(a) allow a nominal or other sum to the party neglecting to file the bill; and

(b) certify the sum allowed and the neglect.

856. Neglect or delay

Where, in proceedings before a taxing officer, a party is guilty of neglect or delay or puts another party to any unnecessary or improper expense, the taxing officer may exercise the powers referred to in rule 857(2).

857. Set-off of costs

(1) If a party is entitled to receive costs from another party and is also liable to pay costs to that party, the taxing officer may –

(a) tax the costs which the party is liable to pay; or

(b) adjust those costs by way of deduction or set-off; or

(c) delay the allowance of the costs that the party is entitled to receive until payment or tender of those costs; or

(d) allow or certify those costs to be paid and direct payment of them.

(2) If, in proceedings before the taxing officer, a party or the practitioner for a party is guilty of neglect or delay or puts another party to any

unnecessary or improper expense, the taxing officer may –

(a) direct the party or the practitioner to pay the costs caused by the neglect or delay and the expenses of that other party; and

(b) adjust those costs by way of deduction or set-off; and

(c) delay the allowance of the costs that the party is entitled to receive until the payment or tender of the costs that party is liable to pay.

(3) On any adjustment or direction being made under subrule (1) or (2), the Registrar is to draw up and sign an order to that effect.

(4) The order referred to in subrule (3) may be enforced in the same manner as an order for costs made by the Court or a judge.

858. Considerations relevant to taxing officer's discretion

If a fee or allowance is discretionary, the taxing officer is to take into consideration the following:

(a) any other fee or allowance in respect of the work to which the fee or allowance relates;

(b) the nature and importance of, and the amount involved in, the proceedings;

(c) the interest of the parties;

(d) the person, estate or fund by whom or by which the costs are to be borne;

(e) the general conduct and costs of the proceedings;

(f) any other relevant circumstances.

859. Costs allowed or not allowed on taxation

Subject to the provisions of this Division, on taxation, the taxing officer –

(a) is to allow all costs, charges and expenses as were necessary or proper for the attainment of justice or for maintaining or defending the rights of any party; and

(b) is not to allow costs that were not so necessary or proper or that were incurred through over-caution, negligence or mistake.

860. Particular rules applying to costs allowable

(1) The taxing officer may allow a party who is entitled to sign judgment for costs a fixed sum for the costs of the judgment.

(2) Subject to any order and except as to any amendment which was rendered necessary by the default of the opposite party, a party who amends a pleading without leave of the Court or

a judge is to pay the costs of, and caused by, the amendment and the taxing officer may –

(a) determine the amount of those costs; and

(b) direct payment; and

(c) give directions under rule 857.

(3) If a proceeding does not proceed to trial or hearing, any prematurely incurred costs of instructions for brief or of, and consequent on, the preparation and delivery of briefs are not to be allowed.

(4) The allowances for instructions for, and drawing of, an affidavit and for attending the deponent to be sworn, include all attendances on the deponent to settle and read over the affidavit.

(5) In taxing the costs of joint executors or trustees who defend separately, the taxing officer is to allow one set of costs only that is to be apportioned among them as the taxing officer considers appropriate.

(6) Costs reasonably incurred in connection with negotiations for the settlement of a proceeding may be allowed whether those negotiations were successful or not.

(7) If a notice to admit or produce comprises facts or documents that are not necessary for the conduct of the proceeding, the costs occasioned by the notice are to be borne by the party giving the notice.

(8) The costs of any affidavit that unnecessarily sets out matters of hearsay, argumentative matter or copies of, or extracts from, documents are to be paid by the party filing the affidavit.

(9) Unless the Court or a judge otherwise directs, a party is not allowed any costs of an appearance on any application or proceeding in Court or chambers in which that party is not interested, or on which, according to the practice of the Court, that party ought not to attend.

(10) The costs of counsel attending in the registry are not allowed, unless a judge certifies it to be a proper case for counsel to attend.

(11) Any properly charged counsel's fees are to be allowed on taxation whether or not they have been paid at the time of the taxation.

861. Costs if same practitioner acts

(1) A fee is not allowed for delivery or service of a document if the same practitioner acts for both parties, unless actual delivery or service was necessary for the purpose of making an affidavit of service.

(2) A fee is not allowed for perusal if the same practitioner acts for both parties.

(3) The taxing officer may disallow costs for unnecessary work if –

(a) 2 or more defendants are represented by the same practitioner; and

(b) the practitioner does work for one, some or all of them separately which could have been done for some or all of them together.

862. Reasonable and proper costs

(1) The taxing officer is to allow only that amount of costs as may be reasonable and proper if –

(a) the costs have been increased by –

(i) unnecessary delay; or

(ii) improper, vexatious or unnecessary proceedings; or

(iii) misconduct or negligence; or

(b) the amount of the costs is excessive having regard to –

(i) the nature of the business transacted; or

(ii) the nature of the interests involved; or

(iii) the amount involved; or

(iv) the value of the estate, fund or assets to which the proceedings relate; or

(v) any other circumstances.

(2) The taxing officer may do any or all of the following:

(a) reduce the costs claimed to any sum the taxing officer thinks proper;

(b) assess those costs at a lump sum;

(c) apportion the amount so allowed among the parties;

(d) file a report to the Court.

863. Counsel

(1) Except in a case to which Part 2 of Schedule 1 applies, fees may be allowed to counsel as are reasonable in the circumstances.

(2) A counsel's fee is not allowed in respect of any appearance before a judge in chambers unless –

(a) the judge has certified for counsel; or

(b) the matter is the hearing of an appeal from an inferior court or a statutory tribunal other than a court.

(3) A fee is not allowed for any conference with counsel in addition to the practitioner's and counsel's fees for drawing, settling, perusing or advising on any document or for advising, unless for some special reason a conference was necessary or proper.

(4) The costs of employing 2 or more counsel may be allowed in a proper case even though none of those counsel is one of Her Majesty's counsel.

(5) If the costs of employing 2 or more counsel are allowed, the costs of consultations between them may be allowed.

(6) Except in a case to which Part 2 of Schedule 1 applies, if any trial or hearing occupies more than 6 hours, whether on one or more days, the taxing officer may allow by way of a refresher for every subsequent 6 hours, or part of 6 hours, any fee as may be proper.

(7) The time occupied by any lunch adjournment is to be included as part of the trial or hearing for the purpose of subrule (6).

(8) On taxation as between party and party, a retaining fee to counsel is not allowed.

(9) If, pursuant to an order, a document or a draft document is settled by conveyancing counsel, the fees of other counsel in previously or subsequently settling that document on behalf of the same party on whose behalf the draft is settled are not allowed, unless the Court or a judge so directs.

(10) Only one fee to counsel is allowed for all affidavits that were or ought to have been filed at the same time.

(11) If a practitioner draws any document or appears as counsel, the taxing officer is to allow to the practitioner any counsel's fee as may be proper even though the practitioner may also be acting as solicitor in the proceeding, but if the practitioner has acted both as a solicitor and as

counsel then the taxing officer in fixing the fee is to have regard to that fact.

(12) If counsel is remunerated for an appearance only by salary, the taxing officer may allow the same counsel's fee as allowable to independent counsel.

864. Articled clerks

(1) Rule 863 does not apply to an articled clerk with a limited right of audience who appears as junior counsel in the Court.

(2) If an articled clerk with a limited right of audience appears as junior counsel in the Court, the taxing officer is to allow the practitioner with whom the articled clerk has entered into articles of clerkship or the practitioner's law practice any fees for the appearance as the taxing officer, having regard to all the circumstances of the case, including its complexity and the part taken by the articled clerk, considers to be reasonable and proper.

865. Disallowances if bill reduced by a sixth or more

If, on the taxation of a bill of costs, the amount of the professional charges contained in the bill is reduced by a sixth or more –

(a) costs are not allowed to the practitioner for preparing of the bill, attending the taxation or any matter relating to the

taxation, unless the taxing officer otherwise determines; and

(b) if costs are disallowed under paragraph (a), the taxing officer may allow to the party chargeable by the bill any costs arising from any necessary preparation for, and the attendance on, the taxation, as the taxing officer thinks proper; and

(c) if the taxing officer makes an allowance under paragraph (b) –

(i) the amount of that allowance is to be set off against any costs the party is liable to pay; and

(ii) the taxing officer is to certify in the certificate accordingly.

866. Certificate

(1) On the conclusion of a taxation, the taxing officer is to state the result of the taxation in the form of a certificate.

(2) A certificate is not to be signed until after the expiration of 48 hours after the taxation is completed.

(3) The taxing officer may make an interim certificate in respect of a portion of a bill of costs without waiting for the completion of the taxation.

867. Objections to taxation

(1) A party who is dissatisfied with any allowance or disallowance made by the taxing officer, or with the allowance of a lump sum under rule 862, may object before the final certificate is signed.

(2) An objection under subrule (1) is to be –

(a) in writing, specifying in a concise form the items or parts of items objected to and the grounds of each objection; and

(b) delivered to each party interested in the objection; and

(c) left with the taxing officer with a request to review the taxation in respect of the matters set out in the objection.

(3) Pending the determination of an objection, the taxing officer may sign a certificate in respect of the items in the bill of costs not the subject of any objection.

(4) After the determination of the objection, the taxing officer is to sign any further certificate as may be necessary.

(5) On an objection being made in accordance with subrule (2), the taxing officer –

(a) is to reconsider and review the taxation of the items the subject of the objection; and

(b) may receive further evidence in respect of those items; and

(c) if so required by a party, is to state in the certificate –

(i) the grounds and reasons of the decision on the objection; and

(ii) any special facts or circumstances relating to those grounds and reasons; and

(d) may tax the costs of the objection and add them to or deduct them from any sum payable by or to any party to the taxation.

(6) The taxing officer may not review a taxation after the certificate is signed except to correct a clerical or obvious error.

868. Review of taxing officer's decision by judge

(1) A party who objects under rule 867 and who is dissatisfied with the certificate of the taxing officer as to any item or part of an item, may apply to a judge to review the taxation as to that item or part of an item.

(2) An application under subrule (1) is to be made within 14 days after the date of the certificate, or any other time as the taxing officer, at the time of the signing of the certificate, may allow, whichever is the later.

(3) Unless the judge otherwise directs, the application is to be determined on the materials which were before the taxing officer.

(4) On an application under subrule (1), the judge may make any order as may be just but the certificate of the taxing officer is final as to all matters which are not the subject of the application.

869. Interim certificate

(1) If, during the taxation of any bill of costs or the taking of any account between practitioner and client, it appears to the taxing officer that there is money due from the practitioner to the client, the taxing officer may make an interim certificate as to the amount so payable by the practitioner.

(2) On the filing of a certificate under subrule (1), the Court or a judge may order that the money so certified be paid immediately to the client or brought into Court.

PART 35 – ENFORCEMENT AND EXECUTION

Division 1 – Enforcement of judgments and orders

870. Saving of existing process

This Division does not affect any existing right to enforce or give effect to any judgment or order against any person or property.

871. Order of issue of writs

This Division does not affect the order in which writs of execution may be issued.

872. Set-off costs

(1) A sum of money adjudged or ordered to be paid by one party to another party is to be set off against any sum adjudged or ordered in the same proceeding to be paid by that party to the first-mentioned party.

(2) Any set-off for costs operates notwithstanding the practitioner's lien for costs in the proceeding, unless the Court or a judge otherwise orders.

873. Payment of money

(1) A judgment or order for the payment of money into Court may be enforced by one or both of the following means:

(a) appointment of a receiver under Division 2 of Part 36;

(b) committal and sequestration, if rule 876 applies and subject to rule 883.

(2) A judgment or order for the payment of money not enforceable under subrule (1) may be enforced by one or more of the following means:

(a) writ of *fieri facias*;

(b) attachment of debt under Division 5 of Part 35;

(c) attachment of earnings under Division 6 of Part 35;

(d) charging order under Division 1 of Part 36;

(e) appointment of a receiver under Division 2 of Part 36;

(f) committal and sequestration if rule 876 applies and subject to rule 883.

(3) If a person fails to perform an undertaking given to the Court, a judge or to any person to pay a sum of money, other than into Court, the Court or a judge may make an order that may be enforced in the manner prescribed by subrule (2) for payment of the money.

874. Delivery of land

(1) A judgment or order for the recovery or the delivery of the possession of land may be enforced by –

(a) writ of possession on the filing of an affidavit showing due service of the judgment or order and that the judgment or order has not been obeyed; or

(b) committal and sequestration, if rule 876 applies and subject to rule 883.

(2) At the election of the party seeking to enforce a judgment or order for the recovery of any land and costs, the judgment or order may be enforced as to recovery of possession by a writ of possession.

(3) With the leave of the Court or a judge, a writ of restitution may be issued if possession of land has been delivered to a party under a writ of possession and that party is dispossessed by the party who was required to deliver up possession.

875. Delivery of goods

(1) A writ of delivery, as the judgment or order requires, is to be for –

(a) the delivery of the goods; or

(b) the recovery of their assessed value –

together with any sum recovered by way of damages for detention or costs.

(2) A judgment or order for the delivery of goods or the recovery of their assessed value may be enforced by one or more of the following means:

(a) by writ of delivery;

(b) committal and sequestration, if rule 876 applies and subject to rule 883;

(c) by writ of assistance.

(3) Unless the Court or a judge otherwise orders, in a case to which subrule (1)(a) applies, the writ is to require that if the property cannot be found in the State, the Sheriff is to distrain all the lands and chattels in the State of the defendant until the defendant delivers the property to the plaintiff.

(4) A writ of delivery may include provision for enforcing the payment of money required to be paid by the judgment or order and money recoverable under section 107(1) of the *Service and Execution of Process Act 1992* of the Commonwealth.

(5) A judgment or order for the assessed value of goods may be enforced by any of the means referred to in rule 873(2).

876. Judgment or order requiring any act

(1) This rule applies to a judgment or order requiring a person –

(a) to do any act, other than pay a sum of money, deliver possession of land or deliver up goods, within a period fixed by the judgment or order or by a subsequent order; and

(b) to abstain from doing any act.

(2) If a person fails to perform an undertaking given to the Court or a judge, or a practitioner fails to perform an undertaking given to any person, to do any act or to abstain from doing an act, the undertaking may be enforced in the same manner as a judgment requiring the doing of an act or the abstaining from doing an act.

(3) Subject to rule 883, a judgment or order to which this rule applies may be enforced by one or more of the following means:

(a) committal of the person bound by the judgment or order;

(b) sequestration of the property of the person bound;

(c) if the person bound is a corporation –

(i) committal of any officer of the corporation; or

(ii) sequestration of the property of any officer of the corporation.

877. Order that act be done at expense of party in default

(1) If a party fails to do an act required by an order for relief similar to *mandamus*, a mandatory order, an injunction or a judgment for the specific performance of any contract, the Court or a judge, in addition to, or instead of, proceedings against the party for contempt, may –

(a) direct that the act be done so far as practicable by the party by whom the judgment or order was obtained or some other person appointed by the Court or judge; and

(b) order that any expenses incurred in doing the act be paid by the disobedient party; and

(c) direct how those expenses are to be ascertained.

(2) The party by whom the judgment or order was obtained may enforce the payment of any expenses ascertained under subrule (1) and costs in accordance with rule 873(2).

878. Execution by or against person not a party

(1) A person not a party to a proceeding in whose favour any order is made may enforce the order by the same process as if the person were a party to the proceeding.

(2) A person not a party to a proceeding against whom any judgment or order may be enforced is liable to the same process for enforcing the judgment or order as if the person were a party to the proceeding.

879. Attendance of natural persons

(1) This rule applies if the Court or a judge makes an order in a proceeding for the attendance of a natural person for any purpose and after service

of the order the person does not attend in accordance with the order.

(2) In the circumstances referred to in subrule (1), the Court or a judge may –

(a) make an order for the issue of a warrant to the Sheriff or any other person specified in the order for –

(i) the arrest of the person in default and for the production of that person before the Court or a judge or other person for the purpose of the proceeding; and

(ii) the detention of that person in custody in the meantime; and

(b) order the person in default to pay any costs and expenses caused by the default.

880. Attendance of corporations

If the Court or a judge makes an order in any proceeding for the production by a corporation of any document or thing and after service of the order the corporation fails to produce the document or thing in accordance with the order, the Court or a judge may –

(a) make an order for the issue of a warrant to the Sheriff or any other person specified in the order for –

(i) the arrest of any officer of the corporation in default; and

(ii) the attendance of the officer before the Court or a judge or other person for the purpose of the proceeding; and

(iii) the detention of the officer in custody in the meantime; and

(b) order the corporation in default to pay any costs and expenses caused by the default.

881. Attendance before another court

Rules 879 and 880 apply, with any necessary modification, if under any Act or these rules the Court or a judge has authority to compel by subpoena the attendance of a person to give evidence or produce any document or thing for evidence –

(a) in any court; or

(b) before any person having by law or by consent of parties authority to hear, receive and examine evidence.

882. Contempt

Rules 879 and 880 do not affect the power of the Court or a judge to punish for contempt.

883. Service before committal or sequestration

(1) A judgment or order is not to be enforced by committal or sequestration unless –

(a) a copy of it is served personally on the person bound by the judgment or order; and

(b) if it requires the person bound to do an act within a fixed period, the copy is served a reasonable period before that period expires.

(2) If a corporation is bound by a judgment or order, the judgment or order is not to be enforced by committal of an officer of the corporation or by sequestration of the property of an officer of the corporation unless, in addition to service under subrule (1) on the corporation –

(a) a copy of the judgment or order is served personally on the officer; and

(b) if it requires the corporation to do an act within a fixed period, the copy is served a reasonable period before that period expires.

(3) A copy of a judgment or order served under this rule is to be endorsed with a notice naming the person served and stating that the person served is liable to imprisonment or sequestration of property if –

(a) where the judgment or order requires the person bound to do an act within a fixed

period, the person bound refuses or neglects to do the act within that period; or

(b) where the judgment or order requires the person bound to abstain from doing an act, the person disobeys the judgment or order.

884. Difficulty in enforcing judgment or order

If any difficulty arises in the execution or enforcement of a judgment or order for relief other than the payment of money, the Court or a judge may –

(a) make any order for giving effect to the judgment or order as may be just; and

(b) may make an order for the attendance and examination of any party or other person as to any matter concerning the execution or enforcement.

885. Non-performance of condition

If a person entitled to a judgment or order subject to the fulfilment of a condition fails to fulfil the condition –

(a) the person is to be taken to have abandoned the benefit of the judgment or order; and

(b) unless the Court or a judge otherwise orders, any other person interested may

take any steps warranted by the judgment or order or that might have been taken if such a judgment or order had not been given or made.

886. Order in aid of enforcement

(1) On the application of a judgment creditor, the Sheriff or any other person to whom a writ of execution is directed, the Court or a judge may make any appropriate order in aid of the enforcement of a writ of execution.

(2) For the purpose of subrule (1), the Court or a judge may make an order that any person, whether or not a party –

(a) attend before the Court or a judge to be examined; and

(b) do or abstain from doing any act.

(3) Rules 386 and 390 apply to an examination conducted under subrule (2).

887. Application to stay execution

(1) A party against whom judgment is given or an order is made may apply to the Court or a judge for a stay of execution or other relief against the judgment or order on the ground of a matter occurring after judgment.

(2) The Court or a judge may give relief on any terms as may be just.

887A. Interest on judgment or order

(1) Unless the Court at the time of giving judgment otherwise orders, a judgment or order under section 164(1) of the Act carries interest from the time of the trial or inquiry or, if there has not been a trial or inquiry, from the time of signing or entering up judgment at –

(a) the rate at which interest has been allowed up until the date of judgment in a case to which rule 347(1)(a) applies; or

(b) the prescribed rate of interest.

(2) Subrule (1) does not apply to any part of the judgment or order that consists of interest allowed under section 34 of the Act or rule 347(1).

Division 2 – Discovery in aid of enforcement

888. Interpretation of Division 2 of Part 35

In this Division –

judgment includes order;

material questions are –

(a) questions as to any debts that are owing to the person bound; and

(b) questions as to any other property or means of satisfying the judgment the person bound has; and

(c) any question concerning or in aid of the enforcement or satisfaction of the judgment specified in an order for examination or production.

889. Order for examination or production

(1) On the application of a person entitled to enforce a judgment against a person other than a corporation, the Court or a judge may order a person bound by the judgment to –

(a) attend before the Court or a judge and be orally examined on the material questions; and

(b) produce any document or thing in the possession, custody or power of the person bound relating to the material questions.

(2) On the application of a person entitled to enforce a judgment against a corporation, the Court or a judge may order an officer or former officer of the corporation to –

(a) attend before the Court or a judge and be orally examined on the material questions; and

(b) produce any document or thing in the possession, custody or power of the corporation relating to the material questions.

890. Procedure

(1) An application for an order under rule 889 may be made *ex parte*.

(2) An order under rule 889 is to be served personally on the person bound by the judgment and on any other person ordered to attend or to produce any document or thing.

891. . . . . .

892. Record of examination

Part 23 applies to the statement made by the person examined at an examination conducted under rule 889.

893. Impounded documents

(1) If any document or thing is produced on an examination under rule 889 it is to be impounded.

(2) An impounded document is not to be delivered out of the custody of the Court except on an order of the Court or a judge.

Division 3 – Writs of execution generally

894. Interpretation of Division 3 of Part 35

In this Division –

judgment includes order;

writ of execution means –

(a) a writ of *fieri facias*; or

(b) a writ of *venditioni exponas*; or

(c) a writ of delivery; or

(d) a writ of possession; or

(e) a writ of restitution.

895. Judgment to be obeyed without demand

If a judgment requires a person to pay any money or to deliver up or transfer any real or personal property, that person is bound to obey the judgment on being served with it without demand.

896. Execution to issue within 6 years

Execution may issue between the original parties to a judgment or order at any time within 6 years from the recovery of the judgment on the making of the order.

897. Leave to issue execution

(1) A writ of execution to enforce a judgment is not to be issued in the following circumstances without the leave of the Court or a judge:

(a) if 6 years have elapsed since the judgment;

(b) if any change has taken place in the identity of the persons entitled or liable to execution under the judgment;

(c) if the judgment is against the assets of a deceased person coming to the hands of the executor or administrator after the date of the judgment and execution is sought against those assets;

(d) if a person is entitled to enforce a judgment subject to or on the fulfilment of any condition or contingency;

(e) if the writ is against property in the hands of –

(i) a receiver appointed by the Court or a judge; or

(ii) a sequestrator;

(f) if a party is entitled to execution on a judgment of assets *in futuro*;

(g) if the judgment is for a sum of money in a currency other than Australian.

(2) Subrule (1) does not affect the provision of any Act requiring the leave of the Court or a judge to be obtained before a judgment may be enforced.

(3) Unless the Court or a judge otherwise orders, an application under subrule (1) –

(a) may be made *ex parte*; and

(b) is to be supported by evidence on affidavit showing –

(i) if the judgment is for the payment of money, the amount, including any interest, due on the date of the application; and

(ii) that the applicant is entitled to proceed to execution on the judgment; and

(iii) that the person against whom execution is sought is liable to execution on the judgment.

(4) The application is to be supported by further evidence on affidavit showing –

(a) in the case of an application under subrule (1)(a), the reasons for the delay; and

(b) in the case of an application under subrule (1)(b) –

(i) the changes that have taken place; and

(ii) that a demand to satisfy the judgment has been made on the person liable; and

(iii) that person has not satisfied the judgment; and

(c) in the case of an application under subrule (1)(c) or (d) –

(i) that a demand to satisfy the judgment has been made on the person liable; and

(ii) that person has not satisfied the judgment.

898. Affidavit of debt

(1) In the case of a judgment entered up under any warrant of attorney or *cognovit actionem*, the plaintiff is to file an affidavit before execution may issue setting out the amount actually due and payable to the plaintiff under the judgment.

(2) The facts in the affidavit are to be deposed to by the plaintiff or the plaintiff's practitioner or agent.

899. Execution of judgment for money and costs

A person entitled to enforce a judgment entered or given with costs may –

(a) execute to enforce the judgment; and

(b) when the costs become payable, execute separately to enforce their payment.

900. Issue of writ of execution

(1) A writ of execution is issued when it is sealed with the office seal.

(2) A writ of execution is to bear the date of its issue.

(3) A writ of execution is to be in accordance with any of the prescribed forms, as is appropriate.

(4) A writ of execution for the recovery of money is to be endorsed with a direction to the Sheriff to levy –

(a) the money sought to be recovered under the judgment or order, stating the amount; and

(b) any interest on the money sought to be recovered, at the rate at which the judgment amount bears interest.

901. Renewal of writ

(1) An unexecuted writ of execution remains in force for one year from its issue.

(2) Notwithstanding subrule (1), the Court or a judge may, at any time before its expiration, grant leave to a party to renew a writ of execution for one year from the date of renewal, and so on at any time during the continuance of a renewed writ.

(3) If leave is granted under subrule (2), the writ may be renewed –

(a) by being marked with an office seal bearing the date of the renewal; or

(b) by the party who obtained leave giving to the Sheriff a written notice of renewal, signed by the party or the practitioner for

the party and marked with an office seal bearing the date of the renewal.

(4) A renewed writ of execution has effect, and is entitled to priority, according to the time of the delivery of the original writ.

(5) The production of the marked writ of execution or notice renewing a writ is sufficient evidence of it having been so renewed.

902. Expenses of execution

A writ of execution may be endorsed with a direction to levy the costs of the writ as provided for by Schedule 3.

903. Bailiff of inferior court may execute writ of execution

(1) A writ of execution may be executed by a bailiff or other similar officer of an inferior court in the same manner as it may be executed by the Sheriff.

(2) A person executing a writ under subrule (1) –

(a) is taken to be an officer of the Court and of the Sheriff; and

(b) is subject to the order and direction of the Court or a judge; and

(c) for the purpose of performing the duties of office, has the same powers,

authorities and immunities, and is subject to the same liabilities, as the Sheriff.

904. Return of writ

(1) An order is not to be issued for the return of any writ.

(2) A party at whose instance a writ is issued may give notice to the Sheriff to –

(a) return the writ; or

(b) make a report within a specified period, being not less than 8 days.

(3) If the Sheriff fails to comply with a notice under subrule (2), the Sheriff is liable to attachment on the application of the party giving the notice.

Division 4 – Writ of fieri facias

905. Interpretation of Division 4 of Part 35

In this Division –

creditor means a person at whose instance a writ is issued;

debtor means a person against whose property a writ is to be executed;

Sheriff includes any officer charged with the execution of a writ;

Sheriff's list means a list prepared under rule 907(2);

writ means a writ of *fieri facias* and, where the context permits, a writ of *venditioni exponas*.

906. Execution of writ of *fieri facias*

(1) A writ of *fieri facias* may be issued and executed in the same cases and in the same manner as it was immediately before these rules took effect.

(2) Subject to subrules (3) and (4), if it appears to the Sheriff that property subject to levy under a writ is more than sufficient to satisfy the amount to be levied, the Sheriff is to take or sell so much of the property as appears to be sufficient.

(3) Subject to subrule (4), the Sheriff is to take or sell property –

(a) in the order as appears best for the prompt execution of the writ without undue expense; and

(b) subject to paragraph (a), in the order the debtor directs in writing; and

(c) subject to paragraphs (a) and (b), in the order as seems to the Sheriff best for minimising hardship to the debtor or other persons.

(4) If there is a reasonable possibility of satisfying the amount to be levied out of the personal property of the debtor, the Sheriff is to sell the personal property before proceeding to sell real

property unless there is a contrary direction by the Court or a judge.

(5) The Court or a judge may order that property subject to levy under the writ be taken or sold otherwise than in accordance with this rule.

907. Application for private sale

(1) Notwithstanding the *Civil Process Act 1870*, if a writ has been issued, a party may apply to the Court or a judge for an order that a sale under the writ be made otherwise than by public auction.

(2) On the filing of an application under subrule (1) the Sheriff, at the request of a party, is to provide that party with a list of the name and address of every person at whose instance any other writ of execution against the property of the debtor has been lodged with the Sheriff.

(3) An application under subrule (1) is to –

(a) contain a short statement of the grounds of the application; and

(b) be served –

(i) if the applicant is the creditor, on the Sheriff and every person named in the Sheriff's list referred to in subrule (2); or

(ii) if the applicant is the debtor, on the creditor, the Sheriff and every

other person named in the Sheriff's list; and

(c) be served at least 4 clear days before the return date.

(4) Notwithstanding the *Civil Process Act 1870*, if a writ has been issued –

(a) the Sheriff may apply to the Court or a judge for an order that a sale under the writ be made otherwise than by public auction; and

(b) an application under paragraph (a) is to –

(i) contain a short statement of the grounds of the application; and

(ii) be served on every person at whose instance any other writ of execution against the property of the debtor has been lodged with the Sheriff; and

(iii) be served at least 4 clear days before the return date.

908. Hearing of application for private sale

On the hearing of an application under rule 907 –

(a) the applicant is to produce the Sheriff's list to the Court or judge; and

(b) every other person served with the application is entitled to be heard; and

(c) the Court or judge may –

(i) make any order as to the method of sale as may be just; and

(ii) direct that all or any part of the costs be borne by any of the persons attending or otherwise.

909. Writ of *venditioni exponas*

When it appears on the return of a writ of *fieri facias* that the Sheriff has seized, but not sold, any goods of the debtor, the creditor may have issued a writ of *venditioni exponas*.

Division 5 – Attachment of debts

910. Interpretation and application of Division 5 of Part 35

(1) In this Division –

garnishee means a person from whom a judgment creditor claims that a debt is due or accruing to the judgment debtor on the day an application for a provisional garnishee order is made;

judgment includes an order;

judgment creditor means a person entitled to enforce a judgment for the payment of

money other than a judgment for the payment of money into Court;

judgment debtor means a person required by a judgment to pay money other than into Court.

(2) This Division does not apply to debts that are earnings within the meaning of Division 6 of Part 35.

(3) Subject to subrule (4), this Division applies to and binds the Crown.

(4) If a debt owing or accruing to the judgment debtor by or from the Crown is recoverable from an officer, servant or agent of the Crown, the garnishee proceedings are to be taken against the officer, servant or agent.

911. Attachment of debts

(1) A debt or periodical payment owing by, or accruing due from, a firm carrying on business in Tasmania may be attached under this Division notwithstanding that one or more members of the firm may reside out of the jurisdiction.

(2) A provisional garnishee order is to be served on a person having the control or management of the partnership business or a member of the firm within the jurisdiction.

912. Provisional garnishee order

(1) On the application in writing of a judgment creditor accompanied by an affidavit in accordance with the prescribed form, a judge or a registrar, without requiring any attendance, may make a provisional order that –

(a) all debts owing or accruing from the garnishee to the judgment debtor be attached to satisfy the judgment and the costs of the garnishee proceedings; and

(b) the garnishee hold any debt due to the judgment debtor, or as much of that debt as is sufficient to satisfy the judgment and those costs, until the provisional order is made final or discharged.

(2) An order under subrule (1) is to be in accordance with the prescribed form.

(3) The costs of the garnishee proceedings are as provided for in the Table in Part 4 in Schedule 1.

913. Service of provisional order

(1) A provisional order is to be served on the garnishee and the judgment debtor as soon as possible after it is made.

(2) Service on the judgment debtor may be effected as provided by rule 144 –

(a) at the address for service, if the judgment debtor has given one; or

(b) at the judgment debtor's usual residence or place of employment or business; or

(c) in any other manner as a judge, or registrar directs.

(3) Service of a provisional order binds the debts due or accruing to a judgment debtor in the garnishee's hands.

914. Final order

(1) If, after the expiration of 21 days after service of a provisional order on the garnishee and the judgment debtor, neither disputes the debt claimed to be due or accruing by filing a notice in the Court disputing the liability, the Court or a judge, on proof of service in accordance with rule 913 and without requiring any attendance, may order –

(a) that the provisional order be made final; and

(b) if the garnishee has not paid into Court the amount bound by the provisional order, that execution issue for that amount and those costs.

(2) If, within 21 days after service of the provisional order on the garnishee and the judgment debtor, either files a notice disputing the garnishee's liability, the dispute is to be determined by the Court or a judge.

(3) The registrar is to cause to be served on the garnishee, the judgment creditor and the judgment debtor notice of the hearing of the dispute.

(4) For the purposes of determining the dispute, the Court or judge may make any order as to how an issue of fact or question necessary for determining the liability of the garnishee is to be tried.

(5) If the garnishee disputes liability on the ground that the debt sought to be attached belongs to a third person, or that a third person has a lien or charge on it, the Court or judge may –

(a) order that third person to appear, and state the nature and particulars of the claim; and

(b) make any other order as to how the claim of that third person is to be tried.

(6) On the determination of a dispute, the Court or a judge may –

(a) make a final order; or

(b) discharge the provisional order; or

(c) make any other order as is appropriate.

(7) A final garnishee order is to be in accordance with the prescribed form.

915. Service of final order

As soon as possible after a final order is made, it is to be served on the garnishee.

916. Service of order discharging provisional order

As soon as possible after an order discharging a provisional order is made, it is to be served on the garnishee and the judgment debtor.

917. Discharge of garnishee

Payment made by, or execution levied on, the garnishee under this Division is a valid discharge to the garnishee as against the judgment debtor to the extent of the amount paid or levied, even though the judgment afterwards may be set aside or the provisional garnishee order discharged.

918. Costs

(1) Except where specific provision is made, the costs of any proceedings under this Division are to be in the discretion of the Court or a judge.

(2) Unless otherwise directed, any costs of the garnishee proceedings to which a judgment creditor is entitled are to be retained out of the money recovered by the judgment creditor under the garnishee order in priority to the amount of the money due under the judgment.

919. Priority of orders

Where 2 or more provisional orders in respect of a debt have been served on a garnishee –

(a) those orders have priority according to the order in which they were served; and

(b) the order which is the first to be served on the garnishee is to be satisfied in full before payment is made in order to satisfy any order which is served later.

Division 6 – Attachment of wages and salaries

920. Interpretation of Division 6 of Part 35

(1) In this Division –

earnings, in relation to a judgment debtor, means any amount payable to the judgment debtor –

(a) by way of wages or salary or any other emolument payable in addition to wages or salary; or

(b) by way of pension –

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and

(ii) periodical payments in respect of, or by way of,

compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office; or

(c) by way of any other payment payable periodically, other than a pension, benefit or an allowance payable to the judgment debtor under any law of the Commonwealth;

judgment includes an order;

judgment creditor means a person entitled to enforce a judgment for the payment of money other than a judgment for the payment of money into Court;

judgment debtor means a person required by a judgment to pay money other than into Court;

net earnings, in relation to a pay-day, means the amount of earnings due to the judgment debtor less any usual deductions made by the garnishee in respect of the following:

(a) income tax instalments required to be deducted from those earnings under Division 2 of Part VI of the *Income Tax Assessment Act 1936* of the Commonwealth;

(b) premiums to a medical or hospital benefits fund;

(c) superannuation contributions due and payable;

(d) periodical payments due and payable by the judgment debtor to the garnishee;

(e) other attachment orders made by any court having jurisdiction in the State, according to their priority;

pay-day means an occasion on which earnings to which a garnishee order relates become payable;

prescribed amount means 20% of net earnings.

(2) Subject to subrule (3), this Division applies to and binds the Crown.

(3) If earnings payable to the judgment debtor by or from the Crown are recoverable from an officer, servant or agent of the Crown, the garnishee proceedings are to be taken against that officer, servant or agent.

921. Provisional garnishee order for attachment of earnings

(1) On the application of a judgment creditor accompanied by an affidavit in accordance with the prescribed form, a judge, the Registrar or a

district registrar, without requiring any attendance, may make a provisional order that –

(a) on each pay-day the garnishee deduct from the earnings of the judgment debtor the prescribed amount until the judgment and the costs of the garnishee proceedings have been paid or satisfied; and

(b) the garnishee holds every sum so deducted for the judgment creditor until the provisional order is made final or discharged.

(2) An order under subrule (1) is to be in accordance with the prescribed form.

(3) An order may be made under subrule (1) even though –

(a) at the time there are no earnings due or owing by the garnishee to the judgment debtor; and

(b) the amount of the earnings is uncertain or is dependent on a contingency.

(4) The costs of the garnishee proceedings are as provided for by the Table in Part 4 in Schedule 1.

922. Service of provisional garnishee order

(1) As soon as possible after a provisional order is made, it is to be served on the garnishee and on the judgment debtor.

(2) Service on the judgment debtor may be effected as provided by rule 144 –

(a) at the address for service, if the judgment debtor has given one; or

(b) at the judgment debtor's usual residence or place of employment or business; or

(c) in any other manner as a judge, or registrar directs.

(3) Service of a provisional order binds the earnings of the judgment debtor as and when they are earned or become due and owing in the hands of the garnishee.

923. Final garnishee order

(1) On the expiration of 21 days after service of the provisional order on the garnishee and judgment debtor and on proof of service in accordance with rule 922, the Court or a judge, without requiring any attendance, may order that a provisional order be made final if –

(a) neither the garnishee nor the judgment debtor by filing a notice in the Court disputes that there are earnings payable by the garnishee to the judgment debtor; and

(b) the judgment debtor does not file a notice of objection claiming a reduction in the prescribed amount and accompanied by a full statement of the financial position of

the judgment debtor verified on oath or by statutory declaration.

(2) The Court or a judge may order execution to issue in default of the garnishee paying to the judgment creditor the amounts deducted in accordance with the provisional order or the amounts deducted in accordance with the final order.

(3) If, within 21 days after service of the provisional order on the garnishee and the judgment debtor, either files a notice disputing that earnings are payable to the judgment debtor, the dispute is to be determined by the Court or a judge.

(4) If, within 21 days after service of the provisional order on the judgment debtor, the judgment debtor files a notice and statement in accordance with subrule (1)(b) the matter is to be determined by the Court or a judge.

(5) Rule 914(3) and (4) applies to any determination under subrules (3) and (4).

(6) On the determination of a matter under subrule (3) or (4), the Court or a judge may –

(a) make the order final; or

(b) vary the prescribed amount and make the order final subject to the variation.

(7) A final order is to be in accordance with the prescribed form.

924. Service of final garnishee order

As soon as possible after a final order is made, it is to be served on the garnishee.

925. Service of order discharging provisional garnishee order

As soon as possible after an order discharging a provisional order is made, it is to be served on the garnishee and the judgment debtor.

926. Discharge of garnishee

Payment made by, or execution levied on, the garnishee under this Division is a valid discharge to the garnishee as against the judgment debtor to the extent of the amount paid or levied, even though the judgment may afterwards be set aside or the provisional garnishee order discharged.

927. Garnishee debt attachment book

All garnishee proceedings and names and dates and statements of the amounts recovered are to be entered in a debt attachment book to be kept by the registrar in each registry.

928. Costs of garnishee proceedings

Rule 918 applies to proceedings under this Division.

929. Priority of garnishee orders

If 2 or more provisional orders in respect of a judgment debtor have been served on a garnishee, those orders have priority according to the order in which they were served, subject to the following:

(a) if 2 or more orders are served on the same day, each order has the same priority and the garnishee is to deduct one prescribed amount only and distribute that amount equally to each relevant judgment creditor;

(b) in any other case, the garnishee is to comply with any later order as if the net earnings to which that order relates were the residue of the debtor's earnings after the deduction of the prescribed amount under any earlier order.

PART 36 – MISCELLANEOUS ENFORCEMENT AND PENAL PROCEDURES

Division 1 – Charging orders, stop orders and notices

930. Interpretation of Division 1 of Part 36

In this Division –

charging order means –

(a) an order imposing a charge on the beneficial interest of a judgment debtor in any securities, interests or funds to secure the payment of a judgment debt; and

(b) an order under section 166 or 167 of the Act;

claimant means a person claiming under rule 936;

corporation has the same meaning as in the Corporations Law of Tasmania;

funds means any of the following standing or to be placed to the credit of an account in the books of the Court:

(a) money;

(b) any stock issued by, or any funds of, or annuity granted by, the Commonwealth or by a State or Territory of the Commonwealth;

(c) any stock of a corporation;

judgment means a judgment or order for the payment of an ascertained sum of money other than into Court;

judgment creditor means a person entitled to enforce a judgment;

judgment debtor means a person against whom a judgment may be enforced;

security means –

(a) any stock issued by, any funds of, or any annuity granted by, the Commonwealth or by a State or Territory of the Commonwealth; and

(b) any stock of a corporation; and

(c) any dividend or interest payable on stock;

stock includes the following:

(a) shares;

(b) debentures;

(c) debenture stock;

(d) bonds;

(e) notes;

(f) any other security;

stop notice means a notice under rule 936;

stop order means an order under rule 937.

931. Service of application and order

(1) An application for a charging order in respect of a judgment debtor's interest in any property of a kind referred to in section 166 of the Act or section 28 of the *Partnership Act 1891* or any funds in court or otherwise is to be made in the first instance by way of an application for an order to show cause why a charging order should not be made.

(2) An application to show cause why a charging order should not be made is to be supported by an affidavit stating –

(a) the date and other particulars of the judgment; and

(b) that the judgment is unsatisfied, either wholly or to a stated extent; and

(c) the nature of the securities, interests or funds in respect of which the order is sought and the name of the person or persons in whose name such securities, interests or funds stand or are registered; and

(d) the nature and extent of the judgment debtor's beneficial interest in such securities, interests or funds.

(3) The hearsay rule does not apply to evidence in an affidavit referred to in subrule (2) if the party who adduces the evidence also adduces evidence of its source.

932. Order to identify securities, &c.

(1) An order to show cause why a charging order should not be made is to identify the securities, interests or funds in respect of which it is made.

(2) In the case of an order to show cause in respect of securities, the order is also to state –

(a) that on service of the order on the Commonwealth or State or Territory of the Commonwealth, corporation or person to which or whom it is addressed –

(i) the officer or person having the registry, control or management of the securities, or of their transfer, must not permit their transfer until the order is made final or discharged; and

(ii) if the securities constitute the stock of a corporation, the corporation must not permit their transfer; and

(b) on service of the order on the judgment debtor, a disposition by the judgment debtor of the securities is not valid or

effective as against the judgment creditor.

933. Service of order

(1) In the case of an order to show cause in respect of the interest of a partner in the property or profits of a partnership, the order is to be served on –

(a) the judgment debtor; and

(b) any of the partners of the judgment debtor who are within the jurisdiction.

(2) In the case of an order to show cause in respect of funds in Court, the order is to be served on –

(a) the judgment debtor; and

(b) the Principal Registrar.

(3) An order referred to in subrule (2) may order that a charge be imposed on the judgment debtor's beneficial interest in any funds in Court.

934. Application under *Partnership Act 1891*

(1) An application by a partner of a judgment debtor under section 28 of the *Partnership Act 1891* and any order made on that application is to be served on –

(a) the judgment creditor; and

(b) the judgment debtor; and

(c) any of the partners of the judgment debtor who do not join in the application and are within the jurisdiction.

(2) An application or order served under this rule on a partner of the judgment debtor who is within the jurisdiction is taken to be service on all the partners.

935. Final order

(1) On the return of an order to show cause, the Court or a judge may –

(a) make the order final in respect of those securities, interests or funds to which the order relates and, in the case of funds in Court, order that they be applied in satisfaction of the amount payable under the judgment and paid to the person entitled under the judgment; or

(b) discharge the order.

(2) A charging order which has been made final has the same effect, and gives the judgment creditor the same remedies for enforcing it, as if it were a valid charge made by the judgment debtor.

(3) The Court or a judge may at any time vary or discharge a charging order which has been made final.

936. Stop notice on corporation

(1) A person claiming a beneficial interest in any stock of a corporation, other than stock in Court, may –

(a) file in a registry –

(i) an affidavit in accordance with the prescribed form; and

(ii) a notice in accordance with the prescribed form; and

(b) serve an office copy of the affidavit and a sealed copy of the notice on the corporation.

(2) A claimant may amend the description of the stock referred to in a notice under subrule (1) by filing an amended notice and serving a sealed copy of it on the corporation.

(3) If a claimant serves an amended notice, service of the notice is taken to have been effected on the day of service of the amended notice.

(4) An affidavit under subrule (1) is to be endorsed with a note stating –

(a) the claimant's particulars; and

(b) an address to which any notice for the claimant is to be sent.

(5) The claimant may alter the address specified under subrule (4) by notice to the corporation.

(6) A notice to a claimant may be served by post addressed to the claimant at the address for service last specified by the claimant under subrule (4) or (5).

(7) Service of a notice and affidavit in accordance with subrule (1) prevents any dealing with the relevant stock until the notice is withdrawn or discharged in accordance with this rule.

(8) A notice under subrule (1) may be –

(a) withdrawn by the claimant filing and serving on the corporation a notice of withdrawal; or

(b) discharged by the Court or a judge on the application of a person claiming to be interested in the relevant stock which has been served on the claimant.

(9) If an affidavit and notice are served on a corporation and during the time the notice is in force the corporation is requested to register a transfer of the stock to which the notice relates or the payment of any dividend or interest on the stock falls due, the corporation –

(a) is to serve on the claimant a notice informing the claimant of the request; and

(b) except with the authority of the Court or a judge, must not register the transfer or pay the dividend or interest before the expiration of 10 days after the day that notice is served.

937. Stop order for funds in Court

(1) The Court or a judge may make an order that any funds in Court, or any part of them or income from them, not be transferred, sold, delivered, paid or otherwise dealt with unless notice is first given to the person applying for the order.

(2) The following persons may apply for an order:

(a) any person who has a mortgage or charge on the interest of any person in the funds in Court;

(b) any person to whom that interest has been assigned;

(c) any person who is a judgment creditor of the person entitled to that interest.

(3) The application is to be made by interlocutory application in the proceeding in which the funds are in Court or, if there is no proceeding, by originating application.

(4) The application and a copy of any affidavit in support –

(a) are to be served on every person who has an interest in the funds in Court which may be affected by the order sought; and

(b) need not be served on any other person.

(5) On an application under this rule, the Court or a judge may make any order as may be just for the costs and expenses of any party or any other person against whom an order is sought.

Division 1A – Freezing orders

937A. Interpretation of Division 1A of Part 36

In this Division, unless the contrary intention appears –

ancillary order has the meaning given by rule 937C;

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

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

freezing order has the meaning given by rule 937B;

judgment includes an order;

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

937B. Freezing orders

(1) The Court or a judge may make an order (a "**freezing order**"), upon or without notice to a respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court or a judge will be wholly or partly unsatisfied.

(2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with or diminishing the value of those assets.

937C. Ancillary orders

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

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

(a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;

(b) determining whether the freezing order should be made.

937D. Respondent need not be party to proceeding

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

937E. Order against judgment debtor or prospective judgment debtor or third party

(1) This rule applies if –

(a) judgment has been given in favour of an applicant by –

(i) the Court; or

(ii) in the case of a judgment to which subrule (2) applies, another court; or

(b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable –

(i) in the Court or by a judge; or

(ii) in the case of a cause of action to which subrule (3) applies, in another court.

(2) This rule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(3) This rule applies to a cause of action if –

(a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and

(b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(4) The Court or a judge may make a freezing order or an ancillary order, or both, against a judgment debtor or prospective judgment debtor if the Court or judge is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur:

(a) the judgment debtor, prospective judgment debtor or another person absconds;

(b) the assets of the judgment debtor, prospective judgment debtor or another person are –

(i) removed from Australia or from a place inside or outside Australia; or

(ii) disposed of, dealt with or diminished in value.

(5) The Court or a judge may make a freezing order or an ancillary order, or both, against a person other than a judgment debtor or prospective judgment debtor (a "**third party**") if the Court or judge is satisfied, having regard to all the circumstances, that –

(a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because –

(i) the third party holds or is using, or has exercised or is exercising,

a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

(ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

(b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

(6) Nothing in this rule affects the power of the Court or a judge to make a freezing order or an ancillary order if the Court or judge considers it is in the interests of justice to do so.

937F. Jurisdiction

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

937G. Service outside Australia of application for freezing order or ancillary order

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

937H. Costs

(1) The Court or a judge may make any order as to costs as the Court or judge considers appropriate in relation to a freezing order or an ancillary order made under this Division.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or an ancillary order.

Division 1B – Search orders

937I. Interpretation of Division 1B of Part 36

In this Division, unless the contrary intention appears –

applicant means an applicant for a search order;

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

premises includes a vehicle or vessel of any kind;

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

search order has the meaning given by rule 937J.

937J. Search orders

The Court or a judge may make an order (a "**search order**") in any proceeding, or in anticipation of any proceeding, in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing or preserving evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

937K. Requirements for grant of search order

The Court or a judge may make a search order if the Court or judge is satisfied that –

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that –

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

937L. Jurisdiction

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

937M. Terms of search order

(1) A search order may direct each person who is named or described in the order –

(a) to permit, or arrange to permit, such other persons as are named or described in the order –

(i) to enter premises specified in the order; and

(ii) to take any steps that are in accordance with the terms of the order; and

(b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and

(c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and

(d) not to disclose any information about the order, for up to 3 days after the date on which the order is served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any act as the Court or judge considers appropriate.

(2) Without limiting the generality of subrule (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include –

(a) searching for, inspecting and removing the thing; and

(b) making or obtaining a record of the thing and any information it may contain.

(3) A search order may contain such other provisions as the Court or judge considers appropriate.

(4) In subrule (2), "**record**" includes a copy, photograph, film and sample.

937N. Independent practitioners

(1) If the Court or a judge makes a search order, the Court or judge must appoint one or more practitioners, each of whom is independent of the applicant's practitioners, (the "**independent practitioners**") to supervise the execution of the order, and to do such other things in relation to the order as the Court or judge considers appropriate.

(2) The Court or a judge may appoint an independent practitioner to supervise execution of the order at any one or more premises, and a different independent practitioner or practitioners to supervise execution of the order at other premises, with each independent practitioner having power to do such other things in relation to the order as the Court or judge considers appropriate.

937O. Costs

(1) The Court or a judge may make any order as to costs that it considers appropriate in relation to a search order made under this Division.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

Division 2 – Enforcement by appointment of a receiver

938. Procedure

(1) An application for the appointment of a receiver by way of equitable execution is to be made to a judge.

(2) Subject to subrule (1), an application for the appointment of a receiver by way of equitable execution may be made in accordance with Part 18 and that part is to apply to such a receiver as it applies to a receiver appointed for any other purpose.

939. Appointment

On the hearing of an application for the appointment of a receiver by way of equitable execution, the Court or judge, in determining whether an order ought to be made –

(a) is to have regard to the following:

(i) the amount claimed by the judgment creditor;

(ii) the amount likely to be obtained by the receiver;

(iii) the probable costs of the appointment; and

(b) may direct inquiries on the matters referred to in paragraph (a) or any other

matters before determining the application.

Division 3 – Contempt

940. Interpretation of Division 3 of Part 36

In this Division –

Court includes a judge sitting in chambers;

respondent means a person who is alleged or appears to be guilty of contempt of court.

941. Contempt in face of Court

(1) If it is alleged or appears to the Court that a person is guilty of contempt of court committed in the face of the Court, the Court may –

(a) by oral order, direct that the respondent be arrested and brought before the Court; or

(b) issue a warrant for the arrest of the respondent.

(2) If the respondent is brought before the Court, the Court is to –

(a) inform the respondent of the contempt charged; and

(b) require the respondent to defend the charge; and

(c) determine the matter of the charge after having heard the respondent; and

(d) if it finds the respondent guilty of contempt, make any order for the punishment or discharge of the respondent as may be just.

(3) The respondent is to be detained in custody until the charge is disposed of, unless the Court grants bail.

942. Other procedure for contempt

(1) An application for punishment for contempt of court, other than contempt in the face of the Court, is to be –

(a) on notice to the respondent; and

(b) specify the nature of the alleged contempt.

(2) If the application is made in relation to a pending proceeding, the application is to be made by interlocutory application.

(2A) If the application is not made in relation to a pending proceeding, the application is to be made by originating application.

(3) Unless the Court or a judge otherwise orders, the application is to be served personally on the respondent.

(4) If an application has been filed and it appears to a judge that the respondent is likely to abscond,

the judge, by warrant directed to the Sheriff, may direct that the respondent be arrested and brought before the Court or a judge.

(5) A respondent brought before the Court or a judge under a warrant is to be detained in custody until the charge is disposed of, unless the Court or a judge grants bail.

(6) On the hearing of the application, the Court may order the respondent to answer on oath within 4 days interrogatories relating to the alleged contempt.

(7) The respondent, unless otherwise ordered, is to answer the interrogatories by affidavit.

(8) If the respondent is ordered to answer interrogatories, the hearing of the application is to be adjourned for a sufficient time to allow the answers to be made and filed.

(9) On the hearing of the application, the Court may –

(a) commit the respondent to prison for a fixed term or until the occurrence of some event; and

(b) impose a fine, either instead of or in addition to ordering committal; and

(c) if it imposes a fine, commit the respondent to be imprisoned, or further imprisoned, until the fine is paid; and

(d) make any order as to costs as is appropriate.

(10) If the accused person is ordered to be committed to a prison, the order of committal is to specify which prison.

(11) The Court may order the discharge of a respondent committed to prison, even though the time for which the respondent was ordered to be committed has not expired.

Division 4 – Attachment

943. Attachment

(1) A writ of attachment is to be in accordance with the prescribed form.

(2) A writ of attachment has the same effect as a writ of attachment issued out of the Court in its equity jurisdiction before the commencement of the Act.

(3) A writ of attachment is not to be issued without the leave of the Court or a judge granted on an application made on notice to the party against whom the attachment is to be issued.

944. Return of the writ

(1) An order is not to issue for the return of a writ.

(2) The party at whose suit the writ was issued may give notice to the Sheriff requiring the Sheriff to return the writ or make a report or bring in the

body within a specified time, being not less than 8 days.

(3) If the Sheriff does not comply with the notice, the Sheriff is liable to attachment on the application of the person giving the notice.

Division 5 – Sequestration

945. Writ of sequestration

(1) A writ of sequestration is to be in accordance with the prescribed form.

(2) If a person fails to comply with a judgment or order within the period limited by the judgment or order, the person prosecuting the judgment or order is entitled, at the expiration of that period, to issue a writ of sequestration against the estate and effects of the person failing to comply, without obtaining an order for that purpose.

(3) A writ of sequestration under this rule has the same effect as a writ of sequestration issued out of the Court in its jurisdiction in equity before the commencement of the Act and the proceeds of such a sequestration may be dealt with in the same manner as the proceeds of a writ of sequestration were dealt with by the Court in its equity jurisdiction before that commencement.

946. No subpoena for costs

A subpoena for the payment of costs is not to be issued.

947. No sequestration for costs without leave

A writ of sequestration for the payment of costs is not to be issued without the leave of the Court or a judge granted on an application made on notice to the party against whom the writ is sought to be issued.

Division 6 – Proceedings under a judgment

948. Interpretation of Division 6 of Part 36

In this Division –

administration proceeding means a proceeding for the administration of the estate of a deceased person or the execution of a trust under the direction of the Court;

judgment includes order.

949. Directions in judgment

(1) If by a judgment further proceedings are necessary, the Court or a judge, when giving the judgment or at any later stage, may give directions for the conduct of those proceedings.

(2) The Court or a judge may give directions with respect to any or all of the following:

(a) the taking of any account or the making of any inquiry;

(b) the evidence to be adduced on the account or inquiry;

(c) the preparation of any draft instrument directed by the judgment to be settled and the making of any objections to the draft;

(d) the parties required to attend the proceedings;

(e) the representation –

(i) by the same practitioner of parties who constitute a class; and

(ii) by different practitioners of parties who ought to be separately represented;

(f) the time for taking each step in the proceedings and the day or days for the further attendance of the parties;

(g) the publication of advertisements for creditors or other claimants and the time for creditors and claimants to respond.

(3) The Court or a judge may revoke or vary any direction given under this Division.

950. Dispensing with service of notice of judgment

(1) If it appears to the Court or a judge that service on a party of notice of a judgment by which further proceedings are necessary cannot be

made or ought to be dispensed with, the Court or judge may order that service –

(a) be dispensed with; or

(b) be by way of any form of substituted service instead of personal service.

(2) In addition to an order under subrule (1), the Court or a judge may order that a person in respect of whom the order is made be bound by the judgment as if it had been served personally on that person, except if the judgment has been obtained by fraud or non-disclosure of material facts.

951. Attendance of parties not directed to attend

(1) A party who has not been directed to attend further proceedings under a judgment may –

(a) attend at his or her own cost and may be ordered to pay any costs caused by that attendance; and

(b) by order of the Court or a judge, be permitted to attend at the cost of the estate; and

(c) by order of the Court or a judge, have the conduct of the matter in addition to, or in substitution of, any of the parties who have been directed to attend.

(2) The Court or judge is to certify which of the parties have been directed to attend and which, if

any, of the parties have elected to attend at their own expense.

952. Stoppage of proceedings

If, on further proceedings under a judgment, it appears that all necessary parties are not parties to the relevant proceeding or have not been served with notice of the judgment –

(a) the Court or a judge may give directions as to –

(i) advertising for creditors; and

(ii) leaving the accounts in chambers; and

(iii) the parties who are to attend on the proceedings; and

(b) the Court or a judge may give directions under rule 949; and

(c) the adjudication on creditors' claims and the accounts is not to be proceeded with, and other proceedings are not to be taken, until all necessary parties have been served or service has been dispensed with.

953. Classifying interests of parties

(1) If, on proceedings under this Division, or at any time during the prosecution of a judgment, it appears to the Court or a judge, with respect to

the whole or any portion of the proceeding, that the interests of the parties can be grouped into a class, the Court or judge –

(a) may direct what parties may attend all or any part of the proceedings; and

(b) may require the parties constituting each or any class to be represented by the same practitioner; and

(c) if the parties constituting a class cannot agree on the practitioner to represent them, may nominate a practitioner for the purpose of the proceedings.

(2) If a party declines to authorise the practitioner nominated under subrule (1)(c) to act for the party and is represented by a different practitioner, that party is to pay –

(a) the costs of that practitioner; and

(b) any costs incurred by any other party because of the representation by a practitioner other than the nominated practitioner.

954. Settling instrument in case parties differ

(1) If a judgment requires an instrument to be settled and the parties do not agree on the form of the instrument, the party entitled to prepare the draft instrument may apply for the settlement of the draft.

(2) An application under subrule (1) is to be –

(a) accompanied by a draft of the instrument; and

(b) served on each other party not less than 14 days before the return date; and

(c) endorsed with a notice stating the effect of subrule (3).

(3) Within 7 days after being served with an application under subrule (1), a party must file and serve a statement of any objections to the draft.

955. Advertisements

An advertisement directed under rule 949(2)(g) is to –

(a) be prepared by the party prosecuting the judgment and approved by the registrar; and

(b) be signed by that party's practitioner or, if the party has no practitioner, by the registrar, if the advertisement is for creditors; and

(c) be signed by the registrar, if the advertisement is for claimants other than creditors; and

(d) be published –

(i) in the *Gazette*, unless otherwise directed; and

(ii) in any newspaper, whether published in the State or elsewhere, as may be directed; and

(e) be in accordance with the prescribed form; and

(f) fix a time within which a claimant is to send any person the Court or judge directs, who is to be named and described in the advertisement, the name and address of the claimant and the full particulars of the claim; and

(g) contain –

(i) notice of the time appointed for adjudicating on claims; and

(ii) a direction that a claimant not residing in the State must send with particulars of the claim the name and address of a person within the State to whom notices to the claimant can be sent; and

(iii) a statement that a notice sent to such a person is equivalent to a notice sent to the claimant; and

(iv) a statement that a claimant who does not comply with the direction referred to in subparagraph (ii) is not entitled to receive any further notice.

956. Claims

(1) A claimant who does not send full particulars of the claim in accordance with and within the time fixed by an advertisement under rule 955 is excluded from the benefit of the judgment unless the Court or a judge otherwise orders.

(2) A notice to be served on or given to a claimant may be sent by pre-paid post to the claimant at the address given in the claim sent in by the claimant unless otherwise ordered.

(3) If required by notice in accordance with the prescribed form, given by any party a judge directs, a claimant is to produce at a time and place specified in the notice all documents relevant to the substantiation of the claim.

957. Determination of claims

(1) If the judgment in an administration proceeding directs the taking of an account of debts or other liabilities of a deceased person, the Court or a judge may direct a party to –

(a) examine the claims of any person claiming to be a creditor of the estate and determine, so far as the party is able, to which of the claims the estate is liable; and

(b) determine, so far as the party is able, what are the other debts and liabilities of the deceased; and

(c) file an affidavit stating the party's conclusions and reasons for those conclusions.

(2) If the judgment in an administration proceeding directs an inquiry for unascertained persons entitled, the Court or a judge may direct a party to –

(a) examine the claims of any person claiming to be entitled and determine, so far as the party is able, which of them are valid; and

(b) determine, so far as the party is able, what other persons are entitled; and

(c) file an affidavit stating the party's conclusions and reasons for those conclusions.

(3) If the party directed to examine claims under subrule (1) or (2) is not the personal representative or trustee concerned, that personal representative or trustee is to join with the party in making the affidavit unless otherwise ordered.

(4) A copy of the affidavit under subrule (1) or (2) is to be served on each other party not less than 7 days before the date and time appointed for adjudicating on claims.

(5) For the purpose of adjudicating on claims, the Court or a judge may –

(a) direct any claim to be investigated in any manner as may be appropriate; or

(b) require any claimant to attend and prove the claim or to furnish further particulars or evidence of it; or

(c) allow any claim with or without proof.

(6) The Court or a judge may give directions for service on any person claiming to be a creditor of notice of the result of the adjudication.

(7) With any necessary modifications, this rule applies to a judgment in any proceeding other than an administration proceeding that directs an account of debts or other liabilities to be taken or an inquiry to be made.

958. Costs

(1) A creditor who establishes a debt under a judgment or order is entitled to the costs of doing so unless the Court or a judge otherwise directs.

(2) The costs referred to in subrule (1) are to be –

(a) added to the debt established; and

(b) fixed by the Court or judge unless the Court or judge directs the taxation of those costs.

(3) The Court or a judge may –

(a) disallow any costs of a creditor unnecessarily or improperly incurred; and

(b) order a creditor to pay the costs of a party incurred in opposing a claim, or any part of a claim, that the creditor fails to establish.

959. Interest on debts

(1) If a judgment directs an account of the debts of a deceased person, unless the estate is insolvent or it is otherwise ordered, interest is to be allowed –

(a) on any debt which carries interest at the rate it carries; and

(b) on any other debt at the prescribed rate of interest for each calendar year from the date of the judgment.

(2) A creditor whose debt does not carry interest and who establishes the debt in proceedings under the judgment is, unless otherwise ordered, entitled to interest on the debt in accordance with subrule (1)(b) payable out of any assets which remain after satisfying –

(a) the costs of the proceeding; and

(b) the debts established; and

(c) the interest on those debts which by law carry interest.

960. Interest on legacies

If a judgment directs an account of legacies, subject to any order or provision in the will to

the contrary, interest is allowed on those legacies at the prescribed rate of interest for each calendar year from the end of one year after the testator's death.

961. Account or inquiry

(1) The Associate Judge is to take any account or make any inquiry with respect to further proceedings under a judgment unless otherwise ordered.

(2) The result of proceedings before the Associate Judge under subrule (1) is to be stated in the form of an order.

(3) An order under subrule (2) immediately binds the parties to the proceeding.

(4) A copy of the order is to be served on such parties as the Associate Judge directs.

(5) The Associate Judge may give directions as to the further consideration of the proceeding.

(6) Subject to any direction under subrule (5) or otherwise, an order under subrule (2) has effect as a final order disposing of the proceeding in which it is made.

(7) If an account or inquiry is made other than by the Associate Judge, subrules (2), (3), (4), (5) and (6) apply to the account or inquiry, subject to any necessary modifications.

(8) On the application of a party filed and served within 8 days after the making of the order, the

Court or a judge may by order discharge or vary an order made under subrule (2) by the Associate Judge or by a person appointed for the purpose of taking any account or making any inquiry.

(9) On the application of a party filed and served within 8 days after the making of an order under subrule (8), the Full Court may discharge or vary an order made under that subrule or subrule (2).

PART 37 – THE ASSOCIATE JUDGE

962. Jurisdiction of Associate Judge

(1) The Associate Judge sitting in chambers or in court may exercise all of the powers of the court, including the exercise of inherent jurisdiction, which may be exercised by a single judge sitting in chambers or by a single judge sitting in court without a jury, except for the hearing and determination of the following:

(a) appeals, other than a review of a taxation of costs by an officer of the Court;

(b) an application for relief similar to *certiorari*, *mandamus* or prohibition;

(c) an application for an order of review under the *Judicial Review Act 2000*;

(d) proceedings for the declaration of a public right;

(e) proceedings to determine a question of construction, arising under a statute, regulation, letters patent, by-law or other written instrument of a public nature made by the Crown or a public or local authority, and a declaration of the rights of persons interested under that instrument;

(f) proceedings under section 27J of the *Commercial Arbitration Act 2011*;

(g) proceedings for admission to the legal profession, other than by an application made in accordance with the mutual recognition principle;

(h) proceedings to require a practitioner to answer an affidavit;

(i) proceedings to strike a practitioner off the roll or to suspend or otherwise discipline a practitioner;

(j) proceedings to disbar or otherwise discipline a barrister;

(k) subject to subrule (2), other proceedings commenced under rule 88 or 89.

(2) The Associate Judge may hear and determine proceedings referred to in subrule (1)(k) if –

(a) the parties consent or a judge so orders; or

(b) the hearing is consequent upon the entry of an interlocutory judgment under rule 348 following a failure to appear to a writ.

963. Reference to judge

At any time before giving judgment, the Associate Judge may –

(a) adjourn the hearing of any matter to a judge sitting in chambers or in court; or

(b) reserve any matter or any point or question in a matter for the consideration of a judge sitting in chambers or in court.

964. Recording of proceedings

The provisions of Part 23 apply to proceedings before the Associate Judge.

965. . . . . .

PART 38 – SERVICE OF FOREIGN PROCESS

966. Application of Part 38

This Part applies to the service on a person in the State of any document in connection with civil or commercial proceedings pending before a court or other tribunal in a foreign country, other than a Hague Convention country, if the Principal Registrar receives –

(a) a letter from the court or tribunal requesting service on the person in the State and –

(i) it is in accordance with a Convention; or

(ii) it is not in accordance with a Convention and the Attorney-General certifies that effect ought to be given to it; or

(b) a letter from the consular or other authority of the foreign country requesting service on the person in the State and the request is in accordance with a Convention.

967. Documents required

(1) For service to be effected in accordance with this Part, unless the Principal Registrar otherwise directs, the following are to be delivered to the Principal Registrar:

(a) the document to be served and 2 copies of it;

(b) a copy of the letter of request;

(c) if the document to be served or the letter of request is not in English, a translation of it into English and a copy of the translation.

(2) A translation under subrule (1) is to bear a certificate of the translator, in English, stating that it is an accurate translation of the relevant document.

968. Service

(1) The Principal Registrar is to request the Sheriff to have the document, a copy of the letter of request and a copy of any relevant translation served by a process server appointed by the Sheriff for the purpose.

(2) Service is to be effected in the manner provided for by these rules for the service of originating process including substituted service.

(3) An application for substituted service is to be made *ex parte* by originating application by the Attorney-General.

969. Affidavit of service

(1) After the document, copy letter of request and any translation have been served or attempts to serve them have failed, the Sheriff is to file an

affidavit made by the person who effected or attempted to effect service.

(2) The affidavit is to –

(a) be in accordance with the prescribed form, if the document, copy letter of request and any translation have been served; or

(b) describe the attempts made to serve the document, copy letter of request and any translation if they have not been served.

970. Certificate

(1) If the letter of request is in accordance with a Convention, the Principal Registrar is to give –

(a) a certificate sealed with the seal of the Court certifying –

(i) that the document, copy letter of request for service and any translation were served on the person to be served on the date and in the manner specified in the certificate or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and

(ii) the amount of the costs incurred; or

(b) such other certificate as is appropriate in the terms of the relevant Convention.

(2) If the letter of request is not in accordance with a Convention, the Principal Registrar is to give –

(a) a certificate sealed with the seal of the Court –

(i) annexing the letter of request, a copy of the document to be served and of any translation and a copy of the affidavit under rule 969; and

(ii) identifying the annexures; and

(iii) certifying that the manner of service of the documents and the proof of service are as required by the rules regulating the service of originating process of the Court in the State or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and

(iv) certifying the amount of the costs incurred; or

(b) any other certificate as is appropriate in the terms of the letter of request.

(3) The Principal Registrar is to send the certificate to –

(a) the Attorney-General; or

(b) the appropriate consul or other authority, if the letter of request or any relevant Convention so requires.

PART 38A – SERVICE UNDER THE HAGUE CONVENTION

Division 1 – Preliminary

Note 1 This Part forms part of a scheme to implement Australia's obligations under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as "other" or "additional" authorities (under Article 18 of the Convention).

Note 2 This Part provides (in Division 2) for service in overseas Hague Convention countries of local judicial documents (documents that relate to proceedings in the Court) and (in Division 3) for default judgment in proceedings in the Court after service overseas of such a document. Division 4, on the other hand, deals with service by the Court or arranged by the Court in its role as an other or additional authority, of judicial documents emanating from overseas Convention countries.

Note 3 Information about the Hague Convention, including a copy of the Hague Convention, a list of all Contracting States, details of declarations and reservations made under the Hague Convention by each of those States and the names and addresses of the central and other authorities of each of those States, can be found at the website of the Hague Conference on Private International Law.

970A. Interpretation of Part 38A

In this Part –

additional authority, for a Hague Convention country, means an authority that is –

(a) for the time being designated by the country, under Article 18 of the Hague Convention, to be an

authority (other than the Central Authority) for the country; and

(b) competent to receive requests for service abroad emanating from Australia;

applicant, for a request for service abroad or a request for service in this jurisdiction, means the person on whose behalf service is requested;

Note The term "applicant" may have a different meaning in other provisions of these rules.

Central Authority, for a Hague Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Convention, to be the Central Authority for that country;

certificate of service means a certificate of service that has been completed for the purposes of Article 6 of the Hague Convention;

certifying authority, for a Hague Convention country, means the Central Authority for the country or some other authority that is for the time being designated by the country, under Article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention;

civil proceedings means any judicial proceedings in relation to civil or commercial matters;

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served;

foreign judicial document means a judicial document that originates in a Hague Convention country and that relates to civil proceedings in a court of that country;

forwarding authority means –

(a) for a request for service of a foreign judicial document in this jurisdiction, the authority or judicial officer of the Hague Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under Article 3 of the Hague Convention); or

(b) for a request for service of a local judicial document in a Hague Convention country, the Registrar;

Hague Convention – see rule5;

Hague Convention country – see rule 5;

initiating process means any document by which proceedings (including proceedings on any cross-claim or third-party notice) are commenced;

local judicial document means a judicial document that relates to civil proceedings in the Court;

request for service abroad means a request for service in a Hague Convention country of a local judicial document mentioned in rule 970D(1);

request for service in this jurisdiction means a request for service in this jurisdiction of a foreign judicial document mentioned in rule 970M(1);

this jurisdiction means Tasmania.

970B. Provisions of this Part to prevail

The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of these rules.

Division 2 – Service abroad of local judicial documents

970C. Application of Division

(1) Subject to subrule (2), this Division applies to service in a Hague Convention country of a local judicial document.

(2) This Division does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

970D. Application for request for service abroad

(1) A person may apply to the Registrar, in the Registrar's capacity as a forwarding authority, for a request for service in a Hague Convention country of a local judicial document.

(2) The application must be accompanied by 3 copies of each of the following documents:

(a) a draft request for service abroad, which must be in accordance with Part 1 of the prescribed form;

(b) the document to be served;

(c) a summary of the document to be served, which must be in accordance with the prescribed form;

(d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or one of the official languages of that country, a translation into that language of both the document to be

served and the summary of the document to be served.

(3) The application must contain a written undertaking to the Court, signed by the practitioner on the record for the applicant in the proceedings to which the local judicial document relates or, if there is no practitioner on the record for the applicant in the proceedings, by the applicant –

(a) to be personally liable for all costs that are incurred –

(i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Hague Convention country in which the documents are to be served; or

(ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served; and

(b) to pay the amount of those costs to the Registrar within 28 days after receipt from the Registrar of a notice specifying the amount of those costs under rule 970F(3); and

(c) to give such security for those costs as the Registrar may require.

(4) The draft request for service abroad –

(a) must be completed (except for signature) by the applicant; and

(b) must state whether (if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before service is effected) the applicant wants service to be attempted after the expiry of that time; and

(c) must be addressed to the Central Authority, or to an additional authority, for the Hague Convention country in which the person is to be served; and

(d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.

(5) Any translation required under subrule (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating –

(a) that the translation is an accurate translation of the documents to be served; and

(b) the translator's full name and address and his or her qualifications for making the translation.

970E. How application to be dealt with

(1) If satisfied that the application and its accompanying documents comply with rule 970D, the Registrar –

(a) must sign the request for service abroad; and

(b) must forward 2 copies of the relevant documents –

(i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Hague Convention country in which service of the document is to be effected, to the nominated additional authority; or

(ii) in any other case, to the Central Authority for the Hague Convention country in which service of the document is to be effected.

(2) The relevant documents mentioned in subrule (1)(b) are the following:

(a) the request for service abroad (duly signed);

(b) the document to be served;

(c) the summary of the document to be served;

(d) if required under rule 970D(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).

(3) If not satisfied that the application or any of its accompanying documents complies with rule 970D, the Registrar must inform the applicant of the respects in which the application or document fails to comply.

970F. Procedure on receipt of certificate of service

(1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the Registrar –

(a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and

(b) must send a copy of the certificate to –

(i) the practitioner on the record for the applicant in the proceedings; or

(ii) if there is no practitioner on the record for the applicant in the proceedings, the applicant.

(2) For the purposes of subrule (1), a certificate of service is in due form if –

(a) it is in accordance with Part 2 of the prescribed form; and

(b) it has been completed by a certifying authority for the Hague Convention country in which service was requested; and

(c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.

(3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), the Registrar must send to the practitioner or applicant who gave the undertaking mentioned in rule 970D(3) a notice specifying the amount of those costs.

(4) For the purposes of subrule (3), a statement of costs is in due form if –

(a) it relates only to costs of a kind mentioned in rule 970D(3)(a); and

(b) it has been completed by a certifying authority for the Hague Convention country in which service was requested.

(5) Subrule (1) does not apply unless –

(a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 970D(3)(c); or

(b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which

those costs exceed the security so given has been paid to the Registrar.

970G. Payment of costs

(1) On receipt of a notice under rule 970F(3) in relation to the costs of service, the practitioner or applicant, as the case may be, must pay to the Registrar the amount specified in the notice as the amount of the costs.

(2) If the practitioner or applicant fails to pay that amount within 28 days after receiving the notice –

(a) except by leave of the Court, the applicant may not take any further step in the proceedings to which the local judicial document relates until those costs are paid to the Registrar; and

(b) the Registrar may take such steps as are appropriate to enforce the undertaking for payment of those costs.

970H. Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of rule 970F(2)) that certifies that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that –

(a) service of the document was effected by the method specified in the certificate on that date; and

(b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Hague Convention country in which service was effected.

Division 3 – Default judgment following service abroad of initiating process

970I. Application of Division

This Division applies to civil proceedings for which an initiating process has been forwarded following a request for service abroad to the Central Authority (or to an additional authority) for a Hague Convention country.

970J. Restriction on power to enter default judgment if certificate of service filed

(1) This rule applies if –

(a) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form (within the meaning of rule 970F(2)) that states that service has been duly effected; and

(b) the defendant has not appeared or filed a notice of address for service.

(2) In circumstances to which this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that –

(a) the initiating process was served on the defendant –

(i) by a method of service prescribed by the internal law of the Hague Convention country for the service of documents in domestic proceedings on persons who are within its territory; or

(ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is compatible with the law in force in the country, by that method; or

(iii) if the applicant did not request a particular method of service, in circumstances where the defendant accepted the document voluntarily; and

(b) the initiating process was served in sufficient time to enable the defendant to enter an appearance in the proceedings.

(3) In subrule (2)(b) –

sufficient time means –

(a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date on which service of the process was effected; or

(b) such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the defendant to enter an appearance in the proceedings.

970K. Restriction on power to enter default judgment if certificate of service not filed

(1) This rule applies if –

(a) a certificate of service of initiating process has not been filed in the proceedings; or

(b) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of rule 970F(2)) that states that service has not been effected –

and the defendant has not appeared or filed a notice of address for service.

(2) If this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that –

(a) the initiating process was forwarded to the Central Authority, or to an additional

authority, for the Hague Convention country in which service of the initiating process was requested; and

(b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which initiating process was so forwarded; and

(c) every reasonable effort has been made –

(i) to obtain a certificate of service from the relevant certifying authority; or

(ii) to effect service of the initiating process –

as the case requires.

970L. Setting aside judgment in default of appearance

(1) This rule applies if default judgment has been entered against the defendant in proceedings to which this Division applies.

(2) If this rule applies, the Court may set aside the judgment on the application of the defendant if it is satisfied that the defendant –

(a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and

(b) has a prima facie defence to the proceedings on the merits.

(3) An application to have a judgment set aside under this rule may be filed –

(a) at any time within 12 months after the date on which the judgment was given; or

(b) after the expiry of that 12-month period, within such time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.

(4) Nothing in this rule affects any other power of the Court to set aside or vary a judgment.

Division 4 – Local service of foreign judicial documents

970M. Application of Division

(1) This Division applies to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court –

(a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following a referral under rule 970N; or

(b) by a forwarding authority.

(2) Subject to subrule (3), a request for service in this jurisdiction is in due form if it is in

accordance with Part 1 of the prescribed form and is accompanied by the following documents:

(a) the document to be served;

(b) a summary of the document to be served, which must be in accordance with the prescribed form;

(c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating –

(a) that the translation is an accurate translation of the document; and

(b) the translator's full name and address and his or her qualifications for making the translation.

970N. Certain documents to be referred back to Attorney-General's Department of Commonwealth

If, after receiving a request for service in this jurisdiction, the Registrar is of the opinion –

(a) that the request does not comply with rule 970M; or

(b) that the document to which the request relates is not a foreign judicial document; or

(c) that compliance with the request may infringe Australia's sovereignty or security; or

(d) that the request seeks service of a document in some other State or Territory of the Commonwealth –

the Registrar must refer the request to the Attorney-General's Department of the Commonwealth together with a statement of his or her opinion.

Note The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

970O. Service

(1) Subject to rule 970N, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.

(2) The relevant documents mentioned in subrule (1) are the following:

(a) the document to be served;

(b) a summary of the document to be served;

(c) a copy of the request for service in this jurisdiction;

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Service of the relevant documents may be effected by any of the following methods of service:

(a) by a method of service prescribed by the law in force in this jurisdiction –

(i) for the service of a document of a kind corresponding to the document to be served; or

(ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Court;

(b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction, by that method;

(c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.

970P. Affidavit as to service

(1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must lodge with the Court an affidavit specifying –

(a) the time, day of the week and date on which the document was served; and

(b) the place where the document was served; and

(c) the method of service; and

(d) the person on whom the document was served; and

(e) the way in which that person was identified.

(2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must lodge with the Court an affidavit specifying –

(a) details of the attempts made to serve the document; and

(b) the reasons that have prevented service.

(3) When an affidavit as to service of a document has been lodged in accordance with this rule, the Registrar –

(a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and

(b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

(4) A certificate of service must be –

(a) in accordance with Part 2 of the prescribed form; or

(b) if a form of certificate of service that substantially corresponds to Part 2 of the prescribed form accompanies the request for service, in that accompanying form.

PART 39 – OBTAINING EVIDENCE FOR EXTERNAL COURT OR TRIBUNAL

971. Interpretation of Part 39

In this Part –

Evidence Act means Part 2 of the *Evidence on Commission Act 2001*; and

examiner means a person appointed under rule 973 as a person before whom a examination is to be conducted.

972. Procedure

(1) An application for an order under the Evidence Act may be made by a person nominated for that purpose by the court or tribunal concerned or, if no person is so nominated, by the Attorney-General.

(2) An application under subrule (1) is to be –

(a) made *ex parte*; and

(b) accompanied by an affidavit to which is exhibited the request for the application; and

(c) if the request is not in English, accompanied by a translation of it into English bearing a certificate of the translator, in English, that it is an accurate translation of the relevant document.

973. Examiner

On or after making an order for the examination of a witness under the Evidence Act, the Court or a judge is to order that the examination be conducted before a fit and proper person specified in the order.

974. Manner of taking examination

(1) The examiner is to conduct an examination in accordance with this rule unless the Court or a judge otherwise orders.

(2) Subject to this Part, rule 475 to rule 481, inclusive, and rule 483 to rule 487, inclusive, apply to the examination as if –

(a) the proceeding pending before the external court or tribunal concerned were a proceeding in the Court; and

(b) the order for the examination were made under rule 476 in that proceeding; and

(c) if the examiner is a judge or the Associate Judge, an order were made under rule 476 for the examination before a judge or the Associate Judge.

975. Examination to be forwarded to Registrar

Unless otherwise ordered –

(a) an examiner, on completion of the examination, is to forward the

depositions taken to the Principal Registrar; and

(b) a person to whom any document is produced pursuant to an order under section 152(3)(b) of the *Evidence Act 1910* is to forward the document to the Principal Registrar; and

(c) a person who has done anything in connection with an examination, other than conduct the examination or receive a document, is to –

(i) prepare a certificate setting out what that person has done; and

(ii) forward the certificate to the Principal Registrar; and

(d) the Principal Registrar, on receipt of a deposition, document or certificate sent under this rule, is to –

(i) append to it a certificate in accordance with the prescribed form, duly sealed with the seal of the Court, for use out of the jurisdiction; and

(ii) forward to the Attorney-General the deposition, document or certificate so certified, and the request for transmission to the external court or tribunal.

PART 40 – MISCELLANEOUS

976. Transitional provisions

Schedule 4 has effect in respect of transitional provisions.

977. *Rules of the Supreme Court 1965* amended

The *Rules of the Supreme Court 1965* are amended as set out in Schedule 5.

978. *Civil Process Rules 1985* rescinded

The *Civil Process Rules 1985* are rescinded.

SCHEDULE 1 – FEES AND COSTS

Rule 837

PART 1 – SCALE OF FEES TO BE ALLOWED TO PRACTITIONERS AND COUNSEL

Item		Fee ($)
	Instructions –	
1.	To institute or defend any original proceeding (including instructions to institute or defend interpleader proceedings) and to appeal However – (a) no fee is allowable under this item to the Sheriff for instructions to interplead; and (b) no fee is allowable for instructions to take or oppose any interlocutory proceedings in a cause or matter, unless the taxing officer is satisfied that instructions were necessary, except in the case of a person, not a party to the action or matter, who is respondent to an application in a pending cause or matter	211.70
2.	For a statement of claim, defence, counterclaim or special case Where – (a) the instructions for a defence cover, or include, the instruction for a counterclaim, only one fee is allowable; and (b) separate instructions – (i) are not required for pleadings, no fee should be allowed under this item; or	211.70

	Item	Fee ($)
	(ii) are required for pleadings, the fee allowed under this item is an amount that the taxing officer determines after taking into account the fee allowed under item 1 and after being satisfied of the need for those instructions, the time spent taking them and the status of the person taking them	
3.	For other pleadings, processes, statements of fact, reports, accounts and other similar documents when proper and not otherwise provided for, for interrogatories, for affidavits verifying interrogatories and other special affidavits and for payment into or out of Court, if the taxing officer is satisfied that any special further instruction was necessary Where separate instructions – (a) are not required for pleadings, no fee should be allowed under this item; or (b) are required for pleadings, the fee allowed under this item is an amount that the taxing officer determines after taking into account the fee allowed under item 1 and after being satisfied of the need for those instructions, the time spent taking them and the status of the person taking them	156.80
4.	To amend a pleading if the taxing officer is satisfied that any further special instruction was necessary	102.40
5.	For particulars to be supplied if the taxing officer is satisfied that any further special instruction was necessary	102.40
6.	For brief, such fee may be allowed as the taxing officer thinks fit having regard to all the circumstances of the case No allowance is to be made under item 6 in respect of any attendance, perusal, work or service which is allowed for under some other item and, in fixing the amount to be allowed under item 6, the taxing officer is to have regard to any allowance made for earlier instructions in the cause or matter so that, in no case, are any instructions to be allowed for more than once *Process* –	

	Item	Fee ($)
7.	An originating process	146.70
8.	The renewal of a writ	61.00
9.	A subpoena	87.40
	The names of any number of witnesses may be included in a subpoena to give evidence and the taxing officer is not to allow any costs in respect of such a subpoena which has been issued unnecessarily	
10.	A writ of execution or other writ to enforce a judgment or an order	141.10
11.	A writ not included above	146.70
	The fees specified in items 7 to 11 include drawing and engrossing and any endorsement and copy to be filed on the sealing of the writ, any attendance to issue the writ and any copy for service, but exclude the service of the writ	
12.	An interlocutory application to attend in chambers or in Court as in chambers (including drawing and engrossing and copy for judge and attending to issue the interlocutory application and copies for service)	from 73.90 up to and including 107.90
13.	A certificate of readiness	107.90
	Appearances –	
14.	Entering an appearance (including preparation of notice and attending to enter appearance, copy and service)	60.90
	Drawing documents –	
15.	Drawing a document, including a pleading, particulars, affidavit, brief, judgment, bill of costs and any other document not otherwise provided for, for each 100 words	19.50
	No fee is allowable for drawing in respect of a matter which is a copy, repetition or adaptation of an existing document or part of an existing document (including the title of the Court and the cause or matter)	
	Copies –	

	Item	Fee ($)
16.	A copy of a document, if no other provision is made –	
	(a) for each 100 words of an original copy	10.40
	(b) for each page of a photocopy	1.30
	Perusals –	
17.	Perusal of all necessary documents, other than formal and ordinary letters and entries of appearance, for each 100 words	9.20
	However –	
	(a) no allowance is to be made for perusal of a document when preparing for trial, but the time occupied in that perusal may be considered in fixing an allowance under item 6; and	
	(b) if the practitioner is already familiar with the contents of the document, no allowance, or a smaller allowance than that mentioned above, is to be made as the taxing officer thinks proper; and	
	(c) the allowance for perusal is to be allowed once only for each document	
	Attendances –	
18.	A proper attendance of a practitioner –	
	(a) being other than a formal attendance –	
	(i) for each hour, a fee may be allowed as the taxing officer thinks fit, having regard to the degree of difficulty of the case, the experience and any particular expertise of the practitioner and all the circumstances of the case	from 217.30 up to and including 473.80
	(ii) proportionately for part of an hour	
	(b) being a formal attendance	29.90

	Item	Fee ($)
19.	A proper attendance of a clerk –	
	(a) being other than a formal attendance –	
	(i) for each hour	85.60
	(ii) proportionately for part of an hour	
	(b) being a formal attendance	19.50
	(c) for sending a document by facsimile transmission anywhere in Australia, including disbursements (or, if a very long document, at the discretion of the taxing officer)	10.40
	Services –	
20.	The following fees are allowable:	
	(a) For service, or filing instead of service, of any writ, application, order or notice on a person proper to be served therewith who has not entered an appearance, and if not authorised to be served by post (or any other fee as in special circumstances the taxing officer thinks proper)	70.00
	(b) If served at a distance of more than 2 kilometres from the nearest place of business or office of the practitioner (whether principal or agent) serving the same or through whom service is effected –	
	(i) if served by the practitioner or the practitioner's clerk, for each 2 kilometres (one way) beyond each such 2 kilometres, and in addition to the fee allowed under paragraph (a)	7.80
	(ii) if served by any other person, the sum actually and reasonably paid	
	(c) If, in the opinion of the taxing officer, a more expensive means of service has been adopted than should have been adopted, the taxing officer is to allow for the service only the fee as would have been paid if the less or the least expensive means of service had been adopted	

Item		Fee ($)
	(d) If more than one attendance is necessary to effect service or to ground an application for substituted service, a further allowance may be made as the taxing officer thinks fit	
	(e) For service out of the jurisdiction, an allowance may be made as the taxing officer thinks fit	
	(f) If any writ, application, order, notice of motion, summons, petition, notice or other process or any 2 of them have to be, are or ought to be, or the taxing officer is of the opinion that they should have been, served together, one fee only for service is to be allowed	
	Correspondence, &c. –	
21.	The following fees are allowable:	
	(a) formal letter	29.90
	(b) ordinary letter	39.00
	(c) special letter	67.40
	or, if very long or very special, at the discretion of the taxing officer	
	(d) circular letters after the first	7.80
	If 2 or more letters in similar terms are to be sent to 2 or more persons, all the letters except the first are to be allowed for as circular letters	
	No letter (other than a letter before action) is to be allowed for, unless the taxing officer is satisfied that it was necessary	
22.	For any necessary postage, carriage or transmission of a document, at the discretion of the taxing officer	
	Default judgments –	
23.	Entering judgment by default without an order (including any instructions, drawing, engrossing any copy and attendance to have judgment entered)	85.60

PART 2 – FEES

Fees on the scale specified in Part 1 of Schedule 1 to the *Magistrates Court (Civil Division) Rules 1998* as applicable to the amount involved in the action

PART 3 – COSTS TO BE ENDORSED ON WRITS AND CLAIMED ON SIGNING JUDGMENT

	Item	**Fee - claim exceeding $50 000.00 ($)**
1.	Costs of writ for service within the jurisdiction	309.00
2.	Costs of writ for service outside the jurisdiction	412.00
	In addition to the fees allowed in items 1 and 2, the practitioner may claim the Court fees set out in the *Supreme Court (Fees) Rules 2017*, and the fee, if any, prescribed under section 5(1) of the *Appeal Costs Fund Act 1968*	
3.	Costs of signing judgment	80.80

PART 4 – GARNISHEE AND JUDGMENT SUMMONS PROCEEDINGS (INCLUSIVE OF COURT COSTS)

Rules 912 and 921

Judgment creditor's costs	Fee ($)
In respect of a debt exceeding $50 000.00	234.00
In respect of a debt not exceeding $50 000.00	157.00

PART 5 – COSTS TO BE ENDORSED ON APPLICATION UNDER SECTION 146(1) OF THE *LAND TITLES ACT 1980* FOR POSSESSION OF PROPERTY

Rule 601

1.	Costs of the application	$484.00

In addition to the above fee, the practitioner may claim the Court fees set out in the *Supreme Court (Fees) Rules 2017*, and the fee, if any, prescribed under section 5(1) of the *Appeal Costs Fund Act 1968*.

SCHEDULE 2 – . . . . . .

SCHEDULE 3 – EXPENSES OF EXECUTION

Rule 902

Costs of a writ of execution which may be directed to be levied

1. In a case where the amount of debt does not exceed $50 000	$77.50
2. In a case where the amount of debt exceeds $50 000	$112.00

SCHEDULE 4 – TRANSITIONAL PROVISIONS

Rule 976

1. Interpretation

In this Schedule –

commencement date means the date on which these rules take effect;

former rules means Part 1 of the *Rules of the Supreme Court 1965* and the *Civil Process Rules 1985*;

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

2. Application

(1) Subject to subclause (3), these rules apply to a civil proceeding commenced in the Court on or after the commencement date.

(2) Subject to this Schedule, these rules apply, with any necessary modification, to a pending proceeding, and anything required or permitted to be done under these rules with respect to a proceeding commenced on or after the commencement date is required or permitted to be done in a pending proceeding.

(3) These rules do not apply to a civil proceeding commenced in the Court on or after the

commencement date to which any other Part of the *Rules of the Supreme Court 1965* applies except as that Part provides.

(4) The repeal of the former rules does not affect anything done or omitted to be done in a pending proceeding before the commencement date and, except as provided in this Schedule, anything so done or omitted to be done before the commencement date is taken to have been done or omitted under these rules.

(5) Where the time for entering an appearance in any pending proceeding is limited by the originating process in the proceeding and before the commencement date any defendant or respondent had not entered an appearance in the proceeding, the time limited for the purpose of entering an appearance by that defendant or respondent under these rules is the time limited in the originating process.

(6) If before the commencement date, originating process issued in a pending proceeding for service on a defendant out of Tasmania had not been served on that defendant, the former rules continue to apply with respect to the service of the originating process on that defendant as if these rules had not been made and, in particular –

(a) the Court may make an order authorising service of the originating process on that defendant; and

(b) nothing in these rules affects any order authorising such service made before the commencement date; and

(c) if the defendant is served out of Tasmania in accordance with an order of the Court, and does not enter an appearance within the time limited, the plaintiff is entitled to enter or apply for judgment, and Part 11 applies, with any necessary modification, as if the proceeding had been commenced by writ after the commencement date and the writ served on the defendant within Tasmania.

(7) If originating process issued in a pending proceeding has not been served on a defendant or respondent who is out of Tasmania, the former rules continue to apply with respect to the service of the originating process on the defendant or respondent out of Tasmania as if these rules had not been made, and, in particular, concurrent originating process may, in accordance with Order 6 of the former rules, be issued for the purpose of such service.

(8) If an endorsement of claim on a writ in a pending proceeding did not stand in place of or otherwise constitute a statement of claim under the former rules, then, in respect of any defendant to whom the plaintiff had not delivered a statement of claim before the commencement date, the plaintiff is to deliver a statement of claim to that defendant –

(a) if the defendant entered an appearance before the commencement date, within 21 days after the commencement date; or

(b) if the defendant enters an appearance after the commencement date, within 21 days after appearance.

(9) An endorsement of claim on a writ in a pending proceeding which stood in place of or otherwise constituted a statement of claim under the former rules is taken to be a statement of claim for the purpose of these rules.

3. Jurisdiction not affected

Nothing in these rules limits the jurisdiction, power or authority which the Court had immediately before the commencement date.

4. Proceeding in another court

(1) Except as the Court otherwise orders these rules apply, with any necessary modification, to proceedings commenced in another court and remitted or transferred to or removed into the Court on or after the commencement date as if they were a proceeding commenced in the Court on the day they were remitted, transferred or removed.

(2) For the purpose of this Schedule, proceedings commenced in another court and remitted or transferred to or removed into the Court before

the commencement date are taken to be a pending proceeding.

5. Judgment in pending proceeding

(1) In this clause references to a judgment entered or given include references to an order made.

(2) Except as provided in this clause, these rules apply to a judgment entered or given in a pending proceeding as if it had been entered or given in a proceeding commenced after the commencement date.

(3) A judgment entered or given in a pending proceeding before the commencement date may be enforced in accordance with these rules, but otherwise the judgment has the same force and effect as if these rules had not been made.

(4) Without limiting subclause (3) –

(a) no appeal may be brought, application to set aside or vary made or other proceeding taken in respect of a judgment entered or given before the commencement date which could not have been brought, made or taken in respect of that judgment under the former rules immediately before the commencement date; and

(b) process commenced under the former rules to enforce a judgment entered or given before the commencement date

may be continued or carried out and aided in accordance with those rules.

6. Costs

(1) The amount of costs for work done in a pending proceeding before the commencement date is to be determined in accordance with the former rules and the amount of costs for work done in the proceeding on or after that date is to be determined in accordance with these rules.

(2) For the purpose of this clause, work done in a pending proceeding on or after the commencement date in accordance with the former rules, so far as practicable, is to be taken to have been done in accordance with these rules.

SCHEDULE 5 – *RULES OF THE SUPREME COURT 1965* AMENDED

Rule 977

1. *Rules of the Supreme Court 1965* amended

(1) Parts I, III, V, VI, VII, VIII and XI of the *Rules of the Supreme Court 1965* are rescinded.

(2) Part II of the *Rules of the Supreme Court 1965* is amended as follows:

(a) by omitting from rule 38(1) "Order 70" and substituting "Division 2 of Part 34 of the *Supreme Court Rules 2000*";

(b) by omitting from rule 44(1) "Table C in Appendix M" and substituting "Part 4 of Schedule 1 to the *Supreme Court Rules 2000*".

(3) Part IV of the *Rules of the Supreme Court 1965* is amended as follows:

(a) by omitting from rule 1(1) "Orders and rules contained in Part I, including rule 32 of Order 21" and substituting "*Supreme Court Rules 2000*";

(b) by omitting from rule 24 "Orders 18 and 20 of Part I" and substituting "Division 12 of Part 7 of the *Supreme Court Rules 2000*";

(c) by omitting from rule 31 "Order 24 of Part I" and substituting "Part 8 of the *Supreme Court Rules 2000*";

(d) by omitting rule 56 and substituting the following rule:

56. Transfer of admiralty action

(1) The Court or a judge may order that an admiralty action be transferred from one registry to another.

(2) If an admiralty action is transferred to another registry, any document filed in that action is to be transferred to the other registry.

(e) by omitting from the opening words to Appendix Q "Appendices to Part I" and substituting "*Supreme Court Forms Rules 2000*".

(4) Part IX of the *Rules of the Supreme Court 1965* is amended as follows:

(a) by omitting from rule 2 "Schedule 1 to the *Civil Process Rules 1985*" and substituting "the *Supreme Court Forms Rules 2000*";

(b) by omitting subrule (4) of rule 3 and substituting the following subrule:

(4) Rule 10 of the *Supreme Court Rules 2000* applies, with any necessary modifications, to proceedings under the Act.

(c) by omitting from rule 6(4) "Division I of Order 76 of Part I of these rules" and substituting "Division 1 of Part 27 of the *Supreme Court Rules 2000*";

(d) by omitting from rule 10(2) "Form 3 of Part II of Appendix B to Part I to these rules" and substituting "the appropriate form in the *Supreme Court Forms Rules 2000*".

(5) Part XII of the *Rules of the Supreme Court 1965* is amended as follows:

(a) by omitting from rule 2(1)(b) "in Appendix L" and substituting "in Schedule 2 to the *Supreme Court Rules 2000*";

(b) by omitting from rule 9 "Order 9 of Part 1" and substituting "Division 9 of Part 7 of the *Supreme Court Rules 2000*".

(6) Part XIII of the *Rules of the Supreme Court 1965* is amended by omitting from rule 3(a) "*Civil Process Rules 1985*" and substituting "*Supreme Court Rules 2000*".

(7) Part X of the *Rules of the Supreme Court 1965* is rescinded.

W. J. E. COX
Chief Justice

P. G. UNDERWOOD
Puisne Judge

E. C. CRAWFORD
Puisne Judge

P. E. EVANS
Puisne Judge

Countersigned,

I. G. RITCHARD
Registrar

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 15 March 2000.

These Rules of Court are administered in the Department of Justice and Industrial Relations.

NOTES

The foregoing text of the *Supreme Court Rules 2000* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 29 July 2026 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
Supreme Court Rules 2000	S.R. 2000, No. 8	1.5.2000
Supreme Court Amendment Rules 2000	S.R. 2000, No. 105	26.7.2000
Supreme Court Amendment Rules 2001	S.R. 2001, No. 100	12.9.2001
Supreme Court Amendment (Judicial Review) Rules 2002	S.R. 2002, No. 22	17.4.2002
Supreme Court Amendment (Mutual Recognition) Rules 2002	S.R. 2002, No. 23	17.4.2002
Supreme Court Amendment (Miscellaneous) Rules 2002	S.R. 2002, No. 80	10.7.2002
Supreme Court Amendment Rules 2003	S.R. 2003, No. 28	7.5.2003
Supreme Court Amendment (Miscellaneous) Rules 2003	S.R. 2003, No. 139	26.11.2003
Supreme Court Amendment (Rates of Interest) Rules 2003	S.R. 2003, No. 142	3.12.2003
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Rule 799	Substituted by S.R. 2009, No. 75
Rule 800	Substituted by S.R. 2009, No. 75 Amended by S.R. 2012, No. 90
Rule 801	Amended by S.R. 2002, No. 80 Substituted by S.R. 2009, No. 75
Rule 802	Substituted by S.R. 2009, No. 75
Rule 803	Substituted by S.R. 2009, No. 75
Rule 803A	Inserted by S.R. 2009, No. 75
Division 7 of Part 32	Inserted by S.R. 2012, No. 66
Subdivision 1 of Division 7 of Part 32	Inserted by S.R. 2012, No. 66
Subdivision 2 of Division 7 of Part 32	Inserted by S.R. 2012, No. 66
Subdivision 3 of Division 7 of Part 32	Inserted by S.R. 2012, No. 66
Subdivision 4 of Division 7 of Part 32	Inserted by S.R. 2012, No. 66
Rule 804	Amended by S.R. 2008, No. 128
Rule 810A	Inserted by S.R. 2001, No. 100
Rule 811	Amended by S.R. 2008, No. 128
Rule 812	Amended by S.R. 2011, No. 26
Rule 814	Amended by S.R. 2001, No. 100
Rule 816	Amended by S.R. 2008, No. 2
Division 1 of Part 34	Rescinded by S.R. 2017, No. 101
Rule 823	Rescinded by S.R. 2017, No. 101
Rule 824	Rescinded by S.R. 2009, No. 74 and S.R. 2017, No. 101
Rule 825	Rescinded by S.R. 2017, No. 101
Rule 826	Amended by S.R. 2004, No. 57 Rescinded by S.R. 2017, No. 101
Rule 827	Amended by S.R. 2009, No. 74 Rescinded by S.R. 2017, No. 101
Rule 829	Amended by S.R. 2008, No. 128

Provision affected	How affected
Rule 837	Amended by S.R. 2008, No. 128, S.R. 2009, No. 74, S.R. 2009, No. 111 and S.R. 2017, No. 101
Rule 837A	Inserted by S.R. 2000, No. 105 Substituted by S.R. 2015, No. 99
Rule 838	Amended by S.R. 2008, No. 128
Rule 840	Amended by S.R. 2008, No. 128
Rule 846	Amended by S.R. 2008, No. 128
Rule 850A	Inserted by S.R. 2014, No. 46
Rule 854	Amended by S.R. 2008, No. 128
Rule 855	Amended by S.R. 2003, No. 139
Rule 857	Amended by S.R. 2008, No. 128
Rule 861	Amended by S.R. 2008, No. 128
Rule 863	Amended by S.R. 2008, No. 128
Rule 864	Amended by S.R. 2008, No. 128
Rule 865	Amended by S.R. 2008, No. 128
Rule 868	Amended by S.R. 2014, No. 46
Rule 869	Amended by S.R. 2008, No. 128
Rule 876	Amended by S.R. 2008, No. 128
Rule 877	Amended by S.R. 2011, No. 26
Rule 887A	Inserted by S.R. 2001, No. 100
Rule 891	Rescinded by S.R. 2006, No. 25
Rule 898	Amended by S.R. 2008, No. 128
Rule 901	Amended by S.R. 2008, No. 128
Rule 906	Amended by S.R. 2015, No. 91
Rule 907	Amended by S.R. 2015, No. 91
Rule 930	Amended by S.R. 2005, No. 71
Rule 931	Amended by S.R. 2004, No. 56
Rule 933	Amended by S.R. 2005, No. 71
Rule 935	Amended by S.R. 2005, No. 71
Division 1A of Part 36	Inserted by S.R. 2006, No. 72
Rule 937A of Part 36	Inserted by S.R. 2006, No. 72
Rule 937B of Part 36	Inserted by S.R. 2006, No. 72
Rule 937C of Part 36	Inserted by S.R. 2006, No. 72
Rule 937D of Part 36	Inserted by S.R. 2006, No. 72
Rule 937E of Part 36	Inserted by S.R. 2006, No. 72
Rule 937F of Part 36	Inserted by S.R. 2006, No. 72
Rule 937G of Part 36	Inserted by S.R. 2006, No. 72
Rule 937H of Part 36	Inserted by S.R. 2006, No. 72
Division 1B of	Inserted by S.R. 2006, No. 72

Provision affected	How affected
Part 36	
Rule 937I of Part 36	Inserted by S.R. 2006, No. 72
Rule 937J of Part 36	Inserted by S.R. 2006, No. 72
Rule 937K of Part 36	Inserted by S.R. 2006, No. 72
Rule 937L of Part 36	Inserted by S.R. 2006, No. 72
Rule 937M of Part 36	Inserted by S.R. 2006, No. 72
Rule 937N of Part 36	Inserted by S.R. 2006, No. 72
Rule 937N	Amended by S.R. 2008, No. 128
Rule 937O of Part 36	Inserted by S.R. 2006, No. 72
Rule 942	Amended by S.R. 2011, No. 39
Rule 949	Amended by S.R. 2008, No. 128
Rule 955	Amended by S.R. 2008, No. 128
Rule 959	Amended by S.R. 2003, No. 142
Rule 960	Amended by S.R. 2003, No. 142
Rule 961	Amended by S.R. 2008, No. 2
Part 37	Heading amended by S.R. 2008, No. 2
Rule 962	Substituted by S.R. 2005, No. 100 Amended by S.R. 2008, No. 2, S.R. 2008, No. 128, S.R. 2011, No. 26, S.R. 2012, No. 90 and S.R. 2019, No. 50
Rule 963	Substituted by S.R. 2005, No. 100 Amended by S.R. 2008, No. 2
Rule 964	Amended by S.R. 2008, No. 2
Rule 965	Rescinded by S.R. 2005, No. 100
Rule 966	Amended by S.R. 2009, No. 52
Part 38A	Inserted by S.R. 2009, No. 52
Division 1	Inserted by S.R. 2009, No. 52
Division 2	Inserted by S.R. 2009, No. 52
Division 3	Inserted by S.R. 2009, No. 52
Division 4	Inserted by S.R. 2009, No. 52
Rule 971	Amended by S.R. 2004, No. 56
Rule 974	Amended by S.R. 2008, No. 2
Schedule 1	Substituted by S.R. 2005, No. 109, S.R. 2009, No. 111, S.R. 2011, No. 2 and S.R. 2022, No. 80
Part 1 of Schedule 1	Amended by S.R. 2002, No. 80 Substituted by S.R. 2005, No. 109, S.R. 2009, No. 111, S.R. 2011, No. 2, S.R. 2014, No. 91, S.R. 2017, No. 101, S.R. 2022, No. 80 and S.R. 2026, No. 48
Part 2 of Schedule 1	Substituted by S.R. 2005, No. 109 Amended by S.R. 2009, No. 74 Substituted by S.R. 2009, No. 111, S.R. 2011, No. 2 and S.R. 2022, No. 80
Part 3 of Schedule 1	Amended by S.R. 2001, No. 100 Substituted by S.R. 2004, No. 57

Provision affected	How affected
	Amended by S.R. 2004, No. 74
	Substituted by S.R. 2005, No. 109
	Amended by S.R. 2009, No. 74
	Substituted by S.R. 2009, No. 111, S.R. 2011, No. 2, S.R. 2014, No. 91
	Amended by S.R. 2018, No. 9
	Substituted by S.R. 2022, No. 80
Part 4 of Schedule 1	Substituted by S.R. 2004, No. 57, S.R. 2005, No. 109
	Amended by S.R. 2009, No. 74
	Substituted by S.R. 2009, No. 111, S.R. 2011, No. 2, S.R. 2014, No. 91 and S.R. 2022, No. 80
Part 5 of Schedule 1	Inserted by S.R. 2000, No. 105
	Substituted by S.R. 2004, No. 57
	Amended by S.R. 2005, No. 71
	Substituted by S.R. 2005, No. 109, S.R. 2009, No. 111, S.R. 2011, No. 2
	Amended by S.R. 2018, No. 9
	Substituted by S.R. 2018, No. 65 and S.R. 2022, No. 80
Schedule 2	Amended by S.R. 2004, No. 57, S.R. 2008, No. 128, S.R. 2009, No. 74, S.R. 2012, No. 58, S.R. 2015, No. 99
	Rescinded by S.R. 2017, No. 101
Schedule 3	Amended by S.R. 2005, No. 71, S.R. 2012, No. 58
	Substituted by S.R. 2022, No. 80
Schedule 5	Amended by S.R. 2009, No. 74