

Version No. 005
**Supreme Court (Miscellaneous Civil
Proceedings) Rules 2008**

S.R. No. 94/2008

Version incorporating amendments as at 1 November 2009

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Version No. 005
**Supreme Court (Miscellaneous Civil
Proceedings) Rules 2008**

S.R. No. 94/2008

Version incorporating amendments as at 1 November 2009

The Judges of the Supreme Court make the following Rules:

ORDER 1

PRELIMINARY

PART 1—GENERAL

1.01 Object

The object of these Rules is to remake with amendments the Rules which establish procedures for certain miscellaneous civil proceedings in the Court.

1.02 Title

These Rules constitute Chapter II of the Rules of the Supreme Court and are entitled the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008.

1.03 Authorising provisions

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

1.04 Commencement

These Rules come into operation on 4 August 2008.

1.05 Revocation

The Rules set out in the Schedule are **revoked**.

1.06 Application

These Rules apply to any proceeding in the Court with respect to which provision is made by these Rules, whether the proceeding was commenced before, on or after the day on which they come into operation.

1.07 Rules of general procedure

Except so far as is otherwise provided by these Rules or any Act, Chapter I of the Rules of the Supreme Court for the time being in force and the general practice of the Court apply so far as practicable in relation to a proceeding to which these Rules apply.

PART 2—TRIAL DIVISION

1.08 Application of Part

This Part applies to any proceeding in the Trial Division of the Court to which these Rules apply.

1.09 Process

Subject to these Rules—

- (a) a proceeding to which this Part applies shall be commenced by originating motion in accordance with Chapter I;
- (b) an interlocutory or other application in a proceeding to which this Part applies and made on notice to any person shall be by summons in accordance with Chapter I.

1.10 Address for service

A person served with any process by which a proceeding is commenced shall not take any step in the proceeding or be heard by the Court unless the person has first—

- (a) when required to file an appearance, filed an appearance in accordance with Rule 8.05 of Chapter I; or
- (b) when not required to file an appearance, filed and served a notice of address for service in Form 2–1A.

1.11 Jurisdiction of Associate Judges

Rule 1.11
(Heading)
amended by
S.R. No.
100/2008
rule 14(1).

- (1) Except where otherwise provided by these Rules, an Associate Judge, in addition to exercising the powers and authorities conferred on an Associate Judge by any other provision of these Rules or by any Act may, in any proceeding to which this Part applies, give any judgment or make any order, including any judgment or order in the exercise of the inherent jurisdiction of the Court.

Rule 1.11(1)
amended by
S.R. No.
100/2008
rule 14(2)(a).

- (2) Subject to paragraph (3) and these Rules—

- (a) the trial of a proceeding shall not be held before an Associate Judge; and

Rule 1.11(2)(a)
amended by
S.R. No.
100/2008
rule 14(2)(a).

- (b) an Associate Judge shall not give any judgment or make any order at the trial of a proceeding.

Rule 1.11(2)(b)
amended by
S.R. No.
100/2008
rule 14(2)(a).

r. 1.12

S.R. No. 94/2008

Rule 1.11(3)
amended by
S.R. No.
100/2008
rule 14(2)(a),
substituted by
S.R. No.
44/2009
rule 12(1).

(3) Except as provided by paragraph (4), an Associate Judge may—

- (a) at the trial of a proceeding give judgment or make an order by consent of all parties;
- (b) hear and determine a trial of an undefended civil proceeding.

Rule 1.11(4)
amended by
S.R. No.
100/2008
rule 14(2)(b)(i).

(4) An Associate Judge shall not have authority to hear or determine—

Rule 1.11(4)(a)
amended by
S.R. No.
100/2008
rule 14(2)(b)(ii).

(a) any application which by these Rules or any Act is required to be heard only by a Judge of the Court; or

(b) any proceeding relating to the liberty of the subject.

Rule 1.11(5)
amended by
S.R. No.
100/2008
rule 14(3).

(5) Subject to these Rules, this Rule has effect as if it contained, modified as necessary, Rules 77.03, 77.04, 77.05 and 77.08 of Chapter I.

Rule 1.12
substituted by
S.R. No.
100/2008
rule 15.

1.12 Reference by Judge of the Court to Associate Judge

(1) If a matter before a Judge of the Court, which matter would not otherwise be within the authority of an Associate Judge, is a matter to which these Rules apply and it appears to the Judge to be proper for the determination of an Associate Judge, the Judge of the Court, by order, may refer the matter to an Associate Judge.

(2) If a Judge of the Court refers a matter to an Associate Judge, the Associate Judge may—

- (a) hear and determine the matter, subject to any directions in the order referring the matter; or
 - (b) refer the matter back to the Judge of the Court for hearing and determination.
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- (3) In hearing and determining a matter referred by a Judge of the Court to an Associate Judge, the Associate Judge has the same powers as a Judge of the Court would have in hearing and determining such a matter, subject to any directions in the order referring the matter.

Rule 1.12(3)
inserted by
S.R. No.
44/2009
rule 12(2).

1.13 Application to be supported by affidavit

- (1) In a proceeding to which this Part applies, evidence shall be given by affidavit except—
- (a) where otherwise provided by any Act or these Rules; or
 - (b) where the Court otherwise orders.
- (2) An affidavit in support of an application made without notice to any person shall show the parties interested and their interests.
- (3) Any document referred to as an exhibit to an affidavit shall be made available for inspection by any person on whom service of a copy of the affidavit is required.
-

Rule 1.13
inserted by
S.R. No.
100/2008
rule 15.

ORDER 2

COMMERCIAL LIST

2.01 Definitions

In this Order—

Commercial List or **List** means a list of commercial proceedings compiled by the Prothonotary;

Commercial List Judge means a Judge of the Court, not being the Judge in charge, nominated by the Chief Justice;

commercial proceeding means any proceeding commenced by writ or originating motion—

- (a) which arises out of ordinary commercial transactions, including any proceeding relating to—
 - (i) the construction of commercial, shipping or transport documents;
 - (ii) the export or import of merchandise;
 - (iii) the carriage of goods for the purpose of trade or commerce;
 - (iv) insurance;
 - (v) banking;
 - (vi) finance;
 - (vii) commercial agency;
 - (viii) commercial usage; or

Rule 2.01
def. of
**Commercial
List Judge**
amended by
S.R. No.
100/2008
rule 16(1)(a)(i).

- (b) in which there is a question that has importance in trade or commerce;

Judge in charge means a Judge of the Court nominated by the Chief Justice to be in charge of the Commercial List.

Rule 2.01
def. of
*Judge in
charge*
amended by
S.R. No.
100/2008
rule 16(1)(a)(ii).

2.02 Judge to control List

- (1) The Judge in charge shall have control of the proceedings in the List.
- (2) A Commercial List Judge has the powers of the Judge in charge in relation to any proceeding in the List.
- (3) The powers of the Court in relation to a proceeding in the List shall, subject to paragraphs (4) and (5), be exercised only by the Judge in charge or a Commercial List Judge.
- (4) The powers of the Court in relation to a proceeding in the List may be exercised by a Judge of the Court other than the Judge in charge or a Commercial List Judge—
 - (a) if the Judge in charge or a Commercial List Judge so requests; or
 - (b) if in special circumstances that other Judge of the Court thinks fit to exercise them.
- (5) Subject to Rules 1.11 and 1.12, an Associate Judge may exercise the powers of the Court in relation to a proceeding in the List on a reference by or by leave of the Judge in charge or a Commercial List Judge.

Rule 2.02(4)
amended by
S.R. No.
100/2008
rule 16(1)(b)(i).

Rule 2.02(4)(b)
amended by
S.R. No.
100/2008
rule 16(1)(b)(ii).

Rule 2.02(5)
amended by
S.R. No.
100/2008
rule 16(1)(c).

Rule 2.02(6)
amended by
S.R. Nos
100/2008
rule 16(1)(d),
44/2009
rule 12(3).

- (6) Subject to paragraph (4) and Rule 1.11(5), an appeal from any judgment given or order made by an Associate Judge shall be heard by the Judge in charge or a Commercial List Judge.

2.03 Entry into Commercial List

- (1) At the option of the plaintiff, the originating process in a commercial proceeding may be marked in the top left-hand corner with the words "Commercial List" and, upon the filing of such originating process so marked, the proceeding shall be entered in the List.
- (2) Any party to a commercial proceeding in which the originating process has not been so marked may, within 14 days after appearance, apply to the Judge in charge for an order entering the proceeding in the List, and the Judge shall make an order entering the proceeding in the List unless satisfied that there is good reason for not making such an order.

2.04 Summons for directions

- (1) When originating process marked in accordance with Rule 2.03(1) is filed, the plaintiff shall apply for directions.
- (2) The application for directions shall be by summons and shall—
- (a) be addressed to the defendant or the defendants; and
 - (b) be served with the originating process.
- (3) Upon the hearing or further hearing of a summons for directions or when hearing an application under Rule 2.03(2), the Judge in charge may give any directions for the conduct of the proceeding which the Judge thinks conducive to its effective, complete, prompt and economical determination.
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- (4) A summons for directions may be brought on for further hearing from time to time by any party on giving reasonable notice to any other party and to the Court.
 - (5) Nothing in this Order shall prevent a party from applying under Order 21 or 22 of Chapter I.
 - (6) If originating process marked in accordance with Rule 2.03(1) is served out of Australia in accordance with Part 1 of Order 7 of Chapter I, a summons for the purpose only of paragraph (2) may without order of the Court be served with it.

2.05 No certificate of readiness

No certificate of readiness for trial shall be necessary in a commercial proceeding.

2.06 Removal from Commercial List

The Judge in charge may at any time order that a proceeding in the List be removed from the List.

Order 3
(Heading and
rules 3.01–
3.05)
amended by
S.R. No.
100/2008 rule
16(1)(e)–(h),
substituted as
Order 3
(Heading and
rules 3.01–
3.06) by
S.R. No.
30/2009 rule 4.

Rule 3.01
substituted by
S.R. No.
30/2009 rule 4.

ORDER 3

TECHNOLOGY, ENGINEERING AND CONSTRUCTION CASES

3.01 Definitions

In this Order—

technology includes—

- (a) telecommunications equipment, devices, systems and networks;
- (b) computers, computer modules, computer systems and networks and computer software;
- (c) electrical circuits and circuit boards;
- (d) machines or machinery;
- (e) processing operations and facilities;
- (f) any component, module, equipment, machine or system which is produced by the application of technology, mechanics or applied science;

technology, engineering and construction case and *TEC case* means any proceeding in relation to—

- (a) the design or carrying out of TEC works;
 - (b) the supervision or inspection of the construction of TEC works;
-

- (c) the performance by an architect, designer, engineer, quantity surveyor or other expert of any other services in relation to the design or construction or the supervision or inspection of TEC works;
- (d) the manufacture or provision of any materials for inclusion in TEC works;
- (e) the performance of anything produced, manufactured or constructed as a result of TEC works which involves or is likely to involve expert evidence of a technical nature;
- (f) the sale or supply of anything produced, manufactured or constructed as a result of TEC works which involves or is likely to involve expert evidence of a technical nature—

but does not include any proceeding that includes a claim for personal injury;

Technology, Engineering and Construction List, TEC List or List means a list of technology, engineering and construction cases compiled by the Prothonotary;

TEC works means technology, engineering or building construction works of any description whatsoever;

the Judge means the Judge in charge of the TEC List.

3.02 Judge to control TEC List

- (1) A Judge nominated by the Chief Justice shall be in charge of the TEC List and shall have control of the proceedings in the List.

Rule 3.02
substituted by
S.R. No.
30/2009 rule 4.

- (2) Subject to any directions of the Judge and to paragraphs (3) and (4), the powers of the Court in relation to a proceeding in the List shall be exercised only by the Judge.
- (3) The powers of the Judge in relation to a proceeding in the List may be exercised by another Judge—
 - (a) if the Judge so requests; or
 - (b) if in special circumstances that other Judge thinks fit to exercise them.
- (4) Subject to Rule 1.11, an Associate Judge may exercise the powers of the Court in relation to a proceeding in the List on a reference by or by leave of the Judge.

Rule 3.03
substituted by
S.R. No.
30/2009 rule 4.

3.03 Entry into TEC List

- (1) At the option of the plaintiff, the originating process in a TEC case may be marked in the top left-hand corner with the words "TEC List" and upon the filing of an originating process so marked, the proceeding shall be entered in the List.
 - (2) Any party in a TEC case in which the originating process has not been marked in accordance with paragraph (1) may, within 14 days after appearance, apply to the Judge for an order entering the case in the List, and the Judge shall make an order entering the proceeding in the List unless satisfied that there are good reasons for not making such an order.
 - (3) By leave of the Judge, a proceeding may be entered in the TEC List upon a reference from another Judge or an Associate Judge.
 - (4) On 19 June 2009, all proceedings which have been entered in the Building Cases List are entered in the TEC List.
-

3.04 Summons for directions

- (1) In a proceeding in the TEC List the plaintiff, within 7 days after the first appearance in the proceeding, shall apply to the Judge for directions.
- (2) If the plaintiff fails to apply for directions in accordance with paragraph (1), a defendant, within 7 days after the expiration of the time referred to in paragraph (1), may apply to the Judge for directions.
- (3) Upon the hearing or further hearing of a summons for directions or when hearing an application under Rule 3.03(2), the Judge may give such directions as the Judge thinks conducive to the effective, complete, prompt and economical determination of the proceeding.

**Rule 3.04
substituted by
S.R. No.
30/2009 rule 4.**

3.05 Directions—limited time trials

- (1) The Judge, at any stage of a proceeding in the TEC List, may by direction limit—
 - (a) the time to be taken in examining, cross-examining or re-examining a witness;
 - (b) the number of witnesses (including expert witnesses) that a party may call;
 - (c) the time to be taken in making any oral submissions;
 - (d) the time to be taken by a party in presenting the party's case;
 - (e) the time to be taken by a trial.
- (2) The Judge may vary or revoke a direction under paragraph (1).
- (3) The discretion of the Judge to give a direction under paragraph (1) shall be exercised having regard to the following matters, in addition to any other relevant matter—

**Rule 3.05
substituted by
S.R. No.
30/2009 rule 4.**

- (a) the time or number limited shall be reasonable;
- (b) the direction shall not prejudice the right of each party to a fair trial, and in particular, to a reasonable opportunity to adduce evidence and cross-examine witnesses;
- (c) the degree of complexity of the case;
- (d) the number of witnesses a party intends or seeks to call;
- (e) the volume and character of the evidence a party intends or seeks to adduce;
- (f) the time expected to be taken for the trial;
- (g) the importance of the proceeding as a whole or of any question in the proceeding.

Rule 3.06
inserted by
S.R. No.
30/2009 rule 4.

3.06 Removal from TEC List

The Judge may at any time order that a proceeding in the TEC List be removed from the List.

ORDER 4

APPEALS FROM TRIBUNALS

PART 1—INTRODUCTION

4.01 Application

- (1) Subject to paragraph (2), this Order applies to—
 - (a) an appeal to the Court from a tribunal; and
 - (b) an application for leave to appeal from a tribunal.
- (2) This Order does not apply to a proceeding to which Order 7, 7A, 8, 12, 14, 15 or 23 applies, save to the extent provided by that Order.

Rule 4.01(2)
amended by
S.R. No.
42/2009 rule 4.

4.02 Definitions

In this Order—

order includes decision or determination;

tribunal means any person or body, not being a court, in relation to whose orders a right of appeal to the Court is conferred by an Act.

PART 2—APPEAL TO TRIAL DIVISION

4.03 Appeal to Court constituted by a Judge of the Court

Except as otherwise provided by any Act or Rule, an appeal to the Court from a tribunal shall be heard by a Judge of the Court.

Rule 4.03
(Heading)
amended by
S.R. No.
100/2008
rule 16(1)(i).
Rule 4.03
amended by
S.R. No.
100/2008
rule 16(1)(j).

4.04 Commencement of appeal

Except as otherwise provided by any Act or Rule—

- (a) an appeal under this Part is commenced by filing a notice of appeal in the Court;
- (b) the appeal shall be commenced—
 - (i) within 28 days after the day of the order of the tribunal; or
 - (ii) if leave to appeal is necessary, within 14 days of leave being granted;
- (c) the appeal shall not operate as a stay of proceedings unless the Court otherwise orders.

4.05 Leave to appeal

- (1) Except as otherwise provided by any Act or Rule, an application for leave to appeal from a tribunal shall be made in accordance with Rules 4.06, 4.07, 4.08 and 4.09.
- (2) If an extension of time is needed within which to apply for leave to appeal—
 - (a) an application for that extension may be made to, and determined by, the Associate Judge in conjunction with the application for leave to appeal; and
 - (b) if granted, the extension may be granted retrospectively.

Rule 4.05(2)(a)
amended by
S.R. No.
100/2008
rule 16(1)(k).

4.06 Application for leave

- (1) An application for leave to appeal shall be made within 28 days after the day of the order of the tribunal.
- (2) An application for leave to appeal shall be made by originating motion.

-
- (3) The application is taken to be made when the originating motion is filed.
 - (4) As soon as practicable after filing the originating motion, the applicant shall—
 - (a) deliver a sealed copy of the originating motion to the registrar or other proper officer of the tribunal; and
 - (b) serve the originating motion on the proposed respondent to the appeal.

4.07 Affidavit in support

- (1) Within seven days after filing the originating motion, the applicant shall file an affidavit in support of the application for leave to appeal.
- (2) The affidavit shall set out the acts, facts, matters and circumstances relating to—
 - (a) the order of the tribunal;
 - (b) the grounds in the proposed notice of appeal.
- (3) There shall be included as exhibits to the affidavit—
 - (a) a copy of the order from which the appeal is to be brought;
 - (b) a copy of any reasons given for the order; and
 - (c) a copy of the proposed notice of appeal—or their absence as exhibits shall be accounted for in the affidavit.

r. 4.08

S.R. No. 94/2008

Rule 4.08
(Heading)
amended by
S.R. No.
100/2008 rule
16(1)(l).

4.08 Summons before Associate Judge

Rule 4.08(1)
amended by
S.R. No.
100/2008 rule
16(1)(m)(i).

- (1) Within seven days after filing the originating motion, the applicant shall apply on summons to an Associate Judge for the leave sought in the originating motion.
- (2) The application is taken to be made when the summons is filed.
- (3) The applicant shall serve the summons and a copy of the affidavit in support and of any exhibit on the proposed respondent to the appeal not less than 14 days before the day for hearing named in the summons.
- (4) The proposed respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit not less than five days before the day for hearing named in the summons.
- (5) If at any time the Associate Judge is satisfied that the hearing of the summons should be expedited, the Associate Judge may of his or her own motion or on the application of the respondent bring the summons on for hearing.

Rule 4.08(5)
amended by
S.R. No.
100/2008 rule
16(1)(m)(ii).

4.09 Hearing of application

Rule 4.09(1)
amended by
S.R. No.
100/2008 rule
16(1)(n).

- (1) On the hearing of the summons the Associate Judge may grant or refuse leave to appeal.

Rule 4.09(2)
amended by
S.R. No.
100/2008 rule
16(1)(n).

- (2) Without limiting paragraph (1), the Associate Judge may refuse leave to appeal if satisfied—
 - (a) that the applicant does not have a prima facie case on appeal; or

- (b) that to refuse leave would impose no substantial injustice.
- (3) If leave to appeal is granted, the Associate Judge shall give directions with respect to the appeal.
- (4) If directions are given with respect to affidavits, no affidavit in respect of which directions have not been complied with shall be used without leave of the Court.
- (5) The Associate Judge may in a proper case grant a stay of proceedings under the order of the tribunal.

Rule 4.09(3)
amended by
S.R. No.
100/2008
rule 16(1)(n).

Rule 4.09(5)
amended by
S.R. No.
100/2008
rule 16(1)(n).

4.10 Appeal

Except as otherwise provided by any Act or Rule, an appeal from a tribunal shall be brought in accordance with Rule 4.11 and, unless leave to appeal has been given, Rules 4.12 and 4.13.

4.11 Notice of appeal

- (1) A notice of appeal under this Part shall—
- (a) be in writing signed by the appellant or the appellant's solicitor;
- (b) set out—
- (i) the order of the tribunal;
- (ii) whether the appeal is from the whole or part only of the order and, if so, what part;
- (iii) if the appeal is brought by leave, when leave was given and by whom;

- (iv) the question of law, if any, upon which the appeal is brought or which is involved in the order, as the case requires;
 - (v) concisely the grounds of appeal; and
 - (c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.
- (2) As soon as practicable after filing the notice of appeal, the appellant shall—
- (a) deliver a copy to the registrar or other proper officer of the tribunal; and
 - (b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal.
- (3) The Court may give leave to amend the grounds of appeal or make any other order to ensure the proper determination of the appeal.

4.12 Appellant to file affidavit

- (1) Within seven days after filing the notice of appeal, the appellant shall file an affidavit setting out the acts, facts, matters and circumstances relating to—
- (a) the order of the tribunal;
 - (b) the grounds set out in the notice of appeal.
- (2) There shall be included as exhibits to the affidavit—
- (a) a copy of the order from which the appeal is or is proposed to be brought; and
 - (b) a copy of any reasons given for the order—
- or their absence as exhibits shall be accounted for in the affidavit.

4.13 Directions

- (1) Within seven days after filing the notice of appeal, the appellant shall apply on summons to an Associate Judge for directions.
- (2) The application is taken to be made when the summons is filed.
- (3) The appellant shall serve the summons and a copy of the affidavit filed under Rule 4.12 and of any exhibit on the respondent to the appeal not less than 14 days before the day for hearing named in the summons.
- (4) The respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit not less than five days before the day for hearing named in the summons.
- (5) If at any time the Associate Judge is satisfied that the hearing of the summons should be expedited, the Associate Judge may of his or her own motion or on the application of the respondent bring the summons on for hearing.
- (6) Subject to paragraph (7), the Associate Judge shall give directions with respect to the appeal.
- (7) The Associate Judge may dismiss the appeal if satisfied—
 - (a) that the applicant does not have a prima facie case on appeal; or
 - (b) that to dismiss the appeal would impose no substantial injustice.
- (8) If directions are given with respect to affidavits, no affidavit in respect of which the directions have not been complied with shall be used without leave of the Court.

Rule 4.13(1)
amended by
S.R. No.
100/2008
rule 16(1)(o)(i).

Rule 4.13(5)
amended by
S.R. No.
100/2008 rule
16(1)(o)(ii).

Rule 4.13(6)
amended by
S.R. No.
100/2008 rule
16(1)(o)(ii).

Rule 4.13(7)
amended by
S.R. No.
100/2008 rule
16(1)(o)(ii).

Rule 4.13(9)
amended by
S.R. No.
100/2008 rule
16(1)(o)(ii).

- (9) The Associate Judge may in a proper case grant a stay of proceedings under the order of the tribunal.

4.14 Expedition

- (1) If it is satisfied that the delay caused by proceeding in accordance with this Part would or might entail injustice, the Court may make an order under this Part without notice to any party upon such terms as to costs or otherwise and subject to such undertaking, if any, as is thought fit.
- (2) The Court may set aside any order made under paragraph (1) on the application of any person affected.
- (3) If it is satisfied that the justice of the case requires, the Court may order that, subject to any order otherwise, an application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal and may give directions accordingly.

PART 3—APPEAL TO COURT OF APPEAL

4.15 Commencement of appeal

Except as otherwise provided by any Act or Rule—

- (a) an appeal to the Court of Appeal from a tribunal is commenced by filing a notice of appeal in the Court;
- (b) the appeal shall be commenced within 28 days after the day of the order of the tribunal or, if leave to appeal is necessary, within 14 days of leave being granted;

- (c) the appeal shall not operate as a stay of proceedings unless the Court of Appeal otherwise orders.

4.16 Application for leave to appeal

Except as otherwise provided by any Act or Rule, if leave to appeal is necessary—

- (a) an application for leave to appeal shall be made within 28 days after the day of the order of the tribunal;
- (b) an application for leave to appeal shall be made by summons supported by affidavit and otherwise under and in accordance with Order 65 of Chapter I;
- (c) the application is taken to be made when the summons is filed;
- (d) as soon as practicable after filing the summons, the applicant shall deliver a sealed copy of the summons to the registrar or other proper officer of the tribunal.

4.17 Notice of appeal

- (1) A notice of appeal under this Part shall—
- (a) be in writing signed by the appellant or the appellant's solicitor;
 - (b) set out—
 - (i) the order of the tribunal;
 - (ii) whether the appeal is from the whole or part only of the order and, if so, what part;
 - (iii) if the appeal is brought by leave, when leave was given and by whom;

- (iv) the question of law, if any, upon which the appeal is brought or which is involved in the order, as the case requires;
 - (v) concisely the grounds of appeal; and
 - (c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.
- (2) As soon as practicable after filing the notice of appeal, the appellant shall—
- (a) deliver a copy of the notice to the registrar or other proper officer of the tribunal; and
 - (b) unless the Court of Appeal or a Judge of Appeal otherwise orders, serve a copy of the notice on all persons directly affected by the appeal.
- (3) As soon as practicable after serving the notice of appeal the appellant shall file a list signed by or on behalf of the appellant of the persons upon whom the notice has been served.

4.18 Affidavit to be filed if leave not needed

If leave to appeal is not necessary, Rule 4.12 applies to the appeal.

4.19 Application of Order 64 of Chapter I

- (1) Except as otherwise provided by any Act and by this or any other Rule, Order 64 of Chapter I shall apply to an appeal under this Part.
- (2) Order 64 shall apply as if in Order 64 a reference to the court of first instance were a reference to the tribunal.
- (3) Rules 64.02, 64.03, 64.04, 64.05 and 64.07 shall not apply to the appeal.

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- (4) Rule 64.08 shall apply to the appeal as if the time fixed by paragraph (1) of that Rule were 30 days after the filing of the notice of appeal.
 - (5) Order 64 shall apply to the appeal with any other necessary modifications.

4.20 Exercise of jurisdiction and powers

The jurisdiction and powers of the Court of Appeal under Order 64 as applied in relation to an appeal under this Part may be exercised by a single Judge of Appeal or by two Judges of Appeal, as the case may be, in accordance with Rules 64.26 and 64.27.

ORDER 5

CASE STATED BY A TRIBUNAL

5.01 Application

- (1) This Order applies if by any Act provision is made for a question of law to be reserved in the form of a special case or case stated for the opinion of the Court by a person or body other than a court.
- (2) This Order does not apply to a referral under section 33 of the **Charter of Human Rights and Responsibilities Act 2006**.

5.02 Definitions

In this Order—

chairman means—

- (a) in the case of a body which may reserve a question of law, the presiding member of that body;
- (b) in the case where a person alone may reserve a question of law, that person;

recording officer means the registrar, secretary or other person who performs the duties of a registrar for the tribunal;

special case includes case stated;

tribunal means the person who or body which may reserve a question of law.

5.03 Preparation of draft

- (1) A tribunal which intends to reserve a question of law may direct a party—
 - (a) to prepare a draft of the special case;

(b) to deliver the draft to the other party within 21 days or such other time as the tribunal directs.

(2) The draft of the special case shall—

- (a) state the question of law for the opinion of the Court and the facts necessary to enable the Court to give proper consideration to that question;
- (b) list all documents referred to in the special case;
- (c) be divided into paragraphs numbered consecutively;
- (d) if the question of law cannot be reserved without the consent of a specified person, state whether that person has consented.

5.04 Approved or altered draft

- (1) Within 14 days after receiving the draft or such other time as the tribunal directs, the other party shall return the draft either approved or altered to the party who prepared the draft.
- (2) If the draft is approved or the alterations are accepted, the party who prepared the draft shall prepare a sufficient number of copies of the draft.

5.05 Settling of the draft

- (1) If the draft is not returned within the time allowed or the parties cannot agree on the form of the draft within seven days of its return, the party who prepared the draft shall forward it to the chairman without delay.

- (2) Upon receiving the draft, the chairman may hear the parties or any of them or their counsel or solicitors as the chairman thinks fit and shall settle the draft and return it to the party who prepared the draft and that party shall prepare a sufficient number of copies of the settled draft.

5.06 Delivery to recording officer

- (1) Within seven days after the draft has been agreed or settled all copies, one of which shall be signed by the parties, shall be delivered to the recording officer.
- (2) The recording officer shall submit the signed copy to the chairman for signature and that copy, if and when signed by the chairman, shall be the special case.

5.07 Delivery of special case and certification of copies

The recording officer shall—

- (a) certify all copies of the special case;
- (b) retain one copy as a record for the tribunal;
- (c) deliver the special case to the Prothonotary;
- (d) deliver to the Prothonotary one copy of the special case or, if the question of law is reserved for the opinion of the Court of Appeal, three copies;
- (e) deliver one copy to each party;
- (f) deliver any remaining copies to the party who prepared the copies.

5.08 Reference to documents

Upon the hearing of the special case, the Court or a party may refer to the whole contents of any document referred to in the special case.

5.09 Copies of documents

If the question of law is reserved for the opinion of the Court of Appeal, the Registrar of the Court of Appeal shall direct a party to provide for the use of the Court of Appeal and for any other party a sufficient number of copies of a document or part of a document to which the party proposes to refer at the hearing.

ORDER 6

REFERENCE BY A TRIBUNAL OF A QUESTION OF LAW

6.01 Application

- (1) This Order applies if by any Act provision is made for a question of law to be referred to the Court by a person or body other than a court.
- (2) This Order does not apply to a referral under section 33 of the **Charter of Human Rights and Responsibilities Act 2006**.

6.02 Procedure on reference

A question of law shall be referred to the Court in accordance with Order 5 which shall apply to the reference—

- (a) as if reserving a question of law in the form of a special case or case stated meant referring a question of law to the Court;
 - (b) as if "the special case" meant the reference; and
 - (c) with such further or other modifications as may be necessary.
-

ORDER 7

VICTORIAN TAXATION APPEALS

PART 1—GENERAL

7.01 Definitions

In this Order—

objection means an objection made in writing under any Act to an assessment, decision or determination in respect of liability for any tax, duty, levy, fee, charge or other impost;

objector means the maker of an objection;

the Commissioner means the maker of a decision upon an objection, other than the Victorian Civil and Administrative Tribunal;

the Tribunal means the Victorian Civil and Administrative Tribunal.

7.02 Application

- (1) Subject to paragraph (2), this Order applies to a proceeding in the Trial Division of the Court—
 - (a) following a decision of the Commissioner upon an objection when the objector requests that the objection be treated as an appeal to the Court;
 - (b) by way of appeal on a question of law (including the application for leave to appeal) from an order of the Tribunal upon an objection;
 - (c) by way of referral by the Tribunal of a question of law arising in the review by the Tribunal of a decision of the Commissioner on an objection.

- (2) This Order does not apply—
 - (a) to a proceeding in the Trial Division to which Order 8 applies; or
 - (b) to a proceeding in the Court of Appeal.
- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(b) or (c) is to be conducted in accordance with Order 4 or 6, as the case requires.

7.03 Procedure

- (1) Rules 7.04 to 7.07 apply to a proceeding described in Rule 7.02(1)(a).
- (2) Subject to Rule 7.04, Order 4, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 7.02(1)(b).
- (3) Subject to Rule 7.04, Order 6, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 7.02(1)(c).

7.04 Interlocutory applications in Trial Division

- (1) In a proceeding to which this Order applies, an interlocutory application shall be made by summons to a Judge of the Court.
- (2) The applicant shall comply with Rule 46.05(1) of Chapter I not later than seven days before the day for hearing named in the summons.
- (3) If a Judge of the Court gives directions with respect to affidavits, no affidavit in respect of which the directions have not been complied with shall be used without leave of a Judge of the Court.

Rule 7.04(1)
amended by
S.R. No.
100/2008 rule
16(1)(p).

Rule 7.04(3)
amended by
S.R. No.
100/2008 rule
16(1)(p).

PART 2—APPEALS FROM THE COMMISSIONER

7.05 Setting down

- (1) The Commissioner shall file in the Court the objection which an objector has requested be treated as an appeal to the Court.
- (2) When the objection is filed, the objection is set down as an appeal.
- (3) Upon the setting down of the appeal the Prothonotary shall notify the objector in writing that the appeal has been set down.

7.06 Relevant documents

Within seven days after the day on which the appeal is set down, the Commissioner shall file in the Court a copy of—

- (a) the assessment, order, decision or determination to which the objection was made;
- (b) the notice given to the objector of the decision of the Commissioner upon the objection;
- (c) the request to treat the objection as an appeal; and
- (d) any other documents in the Commissioner's possession or control which are necessary for the hearing and determination of the appeal.

7.07 Affidavit and directions

Within 14 days after receiving the notice given under Rule 7.05(3) the objector shall—

- (a) file in the Court and serve on the Commissioner an affidavit setting out the acts, facts, matters and circumstances relating to—

r. 7.07

S.R. No. 94/2008

- (i) the assessment, order, decision or determination to which the objection was made;
 - (ii) the ground or grounds upon which the objector relies;
- (b) apply for directions.
-

ORDER 7A

APPEALS UNDER THE UNCLAIMED MONEY ACT 2008

PART 1—GENERAL

7A.01 Definitions

In this Order—

objection means a written objection made under section 56 of the Act;

objector means a person who lodges an objection under section 56(1) of the Act;

the Act means the **Unclaimed Money Act 2008**;

the Registrar means the person appointed as Registrar of Unclaimed Money appointed under section 4 of the Act.

7A.02 Application

- (1) Subject to paragraph (2), this Order applies to a proceeding in the Trial Division of the Court—
 - (a) following a determination of an objection by the Registrar under section 57 of the Act when the objector requests, under section 59(2)(b) of the Act, that the objection be treated as an appeal to the Court;
 - (b) by way of appeal on a question of law (including the application for leave to appeal) from an order of VCAT upon an objection;
 - (c) by way of referral by VCAT of a question of law arising in the review by VCAT of a determination of an objection by the Registrar.

Order 7A
(Headings
and rules
7A.01–7A.07)
inserted by
S.R. No.
42/2009 rule 5.

Rule 7A.01
inserted by
S.R. No.
42/2009 rule 5.

Rule 7A.02
inserted by
S.R. No.
42/2009 rule 5.

- (2) This Order does not apply—
 - (a) to a proceeding in the Trial Division to which Order 8 applies; or
 - (b) to a proceeding in the Court of Appeal.
- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(b) or (c) is to be conducted in accordance with Order 4 or 6, as the case requires.

Rule 7A.03
inserted by
S.R. No.
42/2009 rule 5.

7A.03 Procedure

- (1) Rules 7A.04 to 7A.07 apply to a proceeding described in Rule 7A.02(1)(a).
- (2) Subject to Rule 7A.04, Order 4, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 7A.02(1)(b).
- (3) Subject to Rule 7A.04, Order 6, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 7A.02(1)(c).

Rule 7A.04
inserted by
S.R. No.
42/2009 rule 5.

7A.04 Interlocutory applications in Trial Division

- (1) In a proceeding to which this Order applies, an interlocutory application shall be made by summons to a Judge of the Court.
- (2) The applicant shall comply with Rule 46.05(1) of Chapter I not later than 7 days before the day for hearing named in the summons.
- (3) If a Judge of the Court gives directions with respect to affidavits, no affidavit in respect of which the directions have not been complied with shall be used without leave of a Judge of the Court.

PART 2—APPEALS FROM THE REGISTRAR

7A.05 Setting down

- (1) The Registrar shall file in the Court the objection which an objector has requested be treated as an appeal to the Court.
- (2) When the objection is filed, the objection is set down as an appeal.
- (3) Upon the setting down of the appeal, the Prothonotary shall notify the objector in writing that the appeal has been set down.

Rule 7A.05
inserted by
S.R. No.
42/2009 rule 5.

7A.06 Relevant documents

Within seven days after the day on which the appeal is set down, the Registrar shall file in the Court a copy of—

- (a) the assessment, reassessment, decision or determination to which the objection was made;
- (b) the notice given to the objector of the determination of the objection by the Registrar under section 57(3) of the Act;
- (c) the request under section 59(2)(b) of the Act to treat the objection as an appeal; and
- (d) any other documents in the Registrar's possession or control which are necessary for the hearing and determination of the appeal.

Rule 7A.06
inserted by
S.R. No.
42/2009 rule 5.

7A.07 Affidavit and directions

Within 14 days after receiving the notice given under Rule 7A.05(3), the objector shall—

- (a) file in the Court and serve on the Registrar an affidavit setting out the acts, facts, matters and circumstances relating to—

Rule 7A.07
inserted by
S.R. No.
42/2009 rule 5.

- (i) the assessment, reassessment, decision or determination to which the objection was made;
 - (ii) the ground or grounds upon which the objector relies;
- (b) apply for directions.
-

ORDER 8

VALUATION OF LAND

PART 1—GENERAL

8.01 Definitions

In this Order—

the Judge means the Judge of the Court in charge of the List;

Rule 8.01
def. of
the Judge
amended by
S.R. No.
100/2008
rule 16(1)(q).

the List means the Valuation, Compensation and Planning List referred to in Rule 8.03.

8.02 Application of Order

- (1) This Order applies to any proceeding in the Trial Division of the Court—
 - (a) under Division 4 of Part III of the **Valuation of Land Act 1960**;
 - (b) under Part 10 of the **Land Acquisition and Compensation Act 1986** or to which the procedure under Part 10 applies;
 - (c) by way of appeal on a question of law (including the application for leave to appeal) from the land valuation list or the planning and environment list of the administrative division of the Victorian Civil and Administrative Tribunal;
 - (d) by way of referral from the land valuation list or the planning and environment list of the administrative division of the Victorian Civil and Administrative Tribunal of a question of law;

(e) which has been entered in the List by order of the Judge under Rule 8.03(2)—

and in respect of which there is no order in force under Rule 8.03(3).

- (2) This Order does not apply to a proceeding in the Court of Appeal.
- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(c) or (d) is to be conducted in accordance with Order 4 or 6, as the case requires.

8.03 List

- (1) A list of proceedings to which this Order applies shall be compiled by the Prothonotary and that list shall be known as the Valuation, Compensation and Planning List.
- (2) At any time, upon being satisfied that a proceeding in the Trial Division which is not in the List—
 - (a) raises a question relating to the valuation of land or compensation for resumption of land; or
 - (b) raises a question relating to land use or environment protection—and that the proceeding may be conveniently dealt with in the List, the Judge may order that that proceeding be entered in the List.
- (3) The Judge may at any time order that a proceeding be removed from the List.

8.04 Judge in charge

- (1) A Judge of the Court nominated by the Chief Justice shall be in charge of the List.

Rule 8.04(1)
amended by
S.R. No.
100/2008
rule 16(1)(r).

- (2) The Judge shall have control of the proceedings in the List, and, subject to any directions of the Judge and to paragraph (3), all interlocutory applications in a proceeding in the List shall be made to the Judge.
- (3) The powers of the Judge in relation to a proceeding in the List may be exercised by another Judge of the Court—
- (a) if the Judge so requests; or
 - (b) if in special circumstances that other Judge of the Court thinks fit to exercise them.

Rule 8.04(3)
amended by
S.R. No.
100/2008
rule 16(1)(s)(i).

Rule 8.04(3)(b)
amended by
S.R. No.
100/2008
rule 16(1)(s)(ii).

8.05 Directions

- (1) An applicant for directions under this Order shall comply with Rule 46.05(1) of Chapter I not later than seven days before the day for hearing named in the summons for directions.
- (2) The Judge may at any time, whether on the hearing of a summons for directions or otherwise—
- (a) direct that each party furnish to the other—
 - (i) the names of the valuers whose evidence that party proposes to use;
 - (ii) the amount of the valuation placed by each valuer on the subject land;
 - (iii) particulars of any comparable sales on which the party proposes to rely;
 - (b) give directions with respect to the filing and serving of affidavits; and
 - (c) give any other directions for the conduct of the proceeding which the Judge thinks conducive to its effective, complete, prompt and economical determination.

- (3) Unless the Judge otherwise orders, no material in respect of which there has been a failure to comply with a direction under paragraph (2) shall be adduced in evidence.

8.06 Application of Orders 4 and 6

- (1) Subject to Rules 8.04 and 8.05, Order 4, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 8.02(1)(c).
- (2) Subject to Rules 8.04 and 8.05, Order 6, so far as applicable to a proceeding in the Trial Division, applies to a proceeding described in Rule 8.02(1)(d).

PART 2—VALUATION OF LAND ACT 1960

8.07 Definitions

In this Part—

rating authority has the same meaning given in section 2(1) of the Act;

the Act means the **Valuation of Land Act 1960**.

8.08 Application of Part 2

This Part applies to a proceeding in the Trial Division of the Court under Division 4 of Part III of the Act.

8.09 Section 23(1) referral

An appeal by way of a referral under section 23(1) of the Act is taken to have commenced when a copy of an order of the Victorian Civil and Administrative Tribunal referring the matter is received by the Prothonotary from the Tribunal.

8.10 Section 23(3) application

An application under section 23(3) of the Act shall be made by originating motion supported by affidavit.

8.11 Rating authority to file documents

Within seven days after notification to the rating authority by the Prothonotary of the commencement of an appeal under section 23(1) of the Act or with seven days after service of a copy of the originating motion filed under Rule 8.10, the rating authority shall file in the Court a copy of—

- (a) the assessment, order, decision or determination to which the objection was made;
- (b) the notice of objection;
- (c) the notice given to the objector of the decision or determination, if the objector is dissatisfied with a decision or determination of the Commissioner of State Revenue, valuer or valuer-general upon the objection;
- (d) any other documents in its possession or control which are necessary for the hearing and determination of the reference, application or appeal.

**PART 3—LAND ACQUISITION AND COMPENSATION
ACT 1986**

8.12 Definitions

In this Part—

the Act means the **Land Acquisition and Compensation Act 1986**;

the Authority has the meaning given in section 3(1) of the Act.

8.13 Application of Part 3

This Part applies to a proceeding in the Trial Division of the Court under Part 10 of the Act or to which the procedure under Part 10 applies.

8.14 Section 81(1)(c) application

An application under section 81(1)(c) of the Act shall be made by originating motion supported by affidavit.

8.15 Filing of notice of referral

- (1) A notice of referral to the Court of a disputed claim under section 80(b) of the Act shall be filed in the Court and served within seven days after filing.

Note

The form of this notice of referral is prescribed in regulations made under the **Land Acquisition and Compensation Act 1986**. See Form 16 in Schedule 2 to the Land Acquisition and Compensation Regulations 1998¹.

- (2) When the notice of referral is filed, the disputed claim is taken to have commenced.
- (3) Upon the commencement of the disputed claim, the Prothonotary shall notify the other party in writing that the disputed claim has commenced.

8.16 Directions

Within 14 days after serving a notice of referral the party serving the notice shall apply on summons for directions.

ORDER 9

COMMERCIAL ARBITRATION RULES

9.01 Definition

In this Order, *the Act* means the **Commercial Arbitration Act 1984**.

9.02 Application of Order

This Order applies—

- (a) to any arbitration in respect of which the Court has jurisdiction under the Act; and
- (b) to any proceeding in the Court under the Act.

9.03 Jurisdiction

- (1) A proceeding in the Court under the Act shall be commenced by originating motion.
- (2) An Associate Judge shall have jurisdiction under the Act except under sections 38 to 45 of the Act.

Rule 9.03(2)
amended by
S.R. No.
100/2008
rule 16(1)(t).

9.04 Enforcement of award

- (1) Unless the Court otherwise orders, an application for leave under section 33 of the Act to enforce an award as a judgment or order of the Court—
 - (a) shall be supported by affidavit; and
 - (b) may be made without notice to any person.
- (2) An affidavit referred to in paragraph (1) shall—
 - (a) exhibit the arbitration agreement and the award or, in either case, a copy;
 - (b) state the extent to which the award has not been complied with at the date the application is made;

(c) state the usual or last known place of residence or business of the person against whom it is sought to enforce the award or, when that person is a corporation, its last known registered office.

(3) If leave is given, any party to the award may enter judgment in terms of the award.

9.05 Indorsement and service of order

An order of the Court giving leave to enforce an award shall—

(a) be indorsed with a statement that—

(i) the person on whom the order is served may apply within 14 days after service of the order (or, if the order is to be served out of Victoria, within such time as the Court orders) to set aside the order; and

(ii) until the expiration of that period or the determination of the application to set the order aside, the award cannot be enforced;

(b) be served on the person against whom it is sought to enforce the award.

9.06 Appeal under section 38—judicial review of awards

(1) An appeal under section 38 of the Act shall be brought in accordance with Order 4.

(2) An application for leave to appeal under section 38 of the Act shall be made to a Judge of the Court.

Rule 9.06(2)
amended by
S.R. No.
100/2008
rule 16(1)(u).

9.07 Application under section 39(1)

In respect of an application under section 39(1) of the Act to determine a question of law arising in the course of an arbitration, the originating motion shall be filed and served within 14 days after the arbitrator or umpire has consented to the making of the application or the parties have so consented.

9.08 Application under section 42 or 43

- (1) In respect of an application to set aside an award under section 42 of the Act, the originating motion shall be filed and served within 42 days after the award is made.
- (2) In respect of an application to remit an award under section 43 of the Act, the originating motion shall be filed and served within 42 days after the award is made.

9.09 Offer of compromise

A party to an arbitration may serve on any other party an offer of compromise of a claim the subject of the arbitration on the terms specified in the offer.

9.10 Form of offer

An offer of compromise shall—

- (a) be in writing; and
- (b) contain a statement to the effect that is served for the purpose of section 34 of the Act.

9.11 Time for making, accepting, payment under etc. offer

- (1) An offer of compromise may be served at any time before the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates.

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

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- (8) An offer of compromise providing for payment of a sum of money to a plaintiff shall, unless it otherwise provides, be taken to be an offer providing for payment of that sum within 14 days after acceptance of the offer.
 - (9) An application to the Court under paragraph (6) for leave to withdraw an offer shall be made by originating motion in Form 5C of Chapter I.

9.12 Effect of offer

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

9.13 Disclosure of offer

- (1) No statement of the fact that an offer of compromise has been made shall be contained in any pleading, affidavit or other document in the arbitration.
- (2) If an offer of compromise has not been accepted, no communication with respect to the offer shall be made to the arbitrator or umpire until after the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates.
- (3) Paragraphs (1) and (2) shall not apply if an offer of compromise provides that the offer is not made without prejudice.

9.14 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, then, unless for special cause the Court shall otherwise order, the other party shall be entitled, as that party may elect, to—
 - (a) judgment in the terms of the accepted offer;
 - or

- (b) if the party in default is claimant, an order that the arbitration be forever stayed, and if the party in default is respondent to the claim, an order declaring the compromise constituted by the acceptance of the offer to be of no effect and that the claimant be at liberty to proceed with the arbitration.
- (2) An application for judgment or an order under paragraph (1) shall be made to the Court by originating motion.

9.15 Costs where offer not accepted

In any exercise of discretion as to costs the arbitrator or umpire shall consider whether the party serving an offer of compromise was at all material times willing and able to carry out that party's part of what was proposed in the offer.

9.16 Hearing on costs

In arbitration proceedings the arbitrator shall not make a final award with respect to costs until the parties have had an opportunity to be heard on the question of the costs of the arbitration.

ORDER 10

SERVICE AND EXECUTION OF PROCESS RULES

10.01 Definitions

In this Order—

appropriate court has the meaning given in section 105(6) of the Act;

court of rendition has the meaning given in Part 6 of the Act;

place of rendition has the meaning given in Part 6 of the Act;

the Act means the Service and Execution of Process Act 1992 of the Commonwealth as amended and in force for the time being.

10.02 How application is made

An application under section 71, 72 or 86 of the Act shall be made by originating motion in Form 5C of Chapter I.

10.03 Enforcement of judgment

A person who seeks to enforce a judgment registered under the Act shall, before taking any step under the Act or Chapter I for such enforcement, file an affidavit stating that the judgment is capable of being enforced in or by the court of rendition or a court in the place of rendition and the extent to which it is so capable.

10.04 Fees

- (1) The fees to be allowed in relation to the service under the Act of the process of a court in Victoria shall be calculated on the same basis as fees allowable in the appropriate court for service of process at the place where the process was served.

- (2) The same fees shall be paid in relation to the enforcement under the Act by a court in Victoria of the process or judgment of a court of another part of Australia as are charged for the like enforcement of the process or judgment of the Victorian court, together with the fees set out in the Schedule to Rule 10.05.

10.05 Costs

The same costs shall be allowed in relation to the enforcement of a judgment registered under the Act in a court in Victoria as are allowed upon the enforcement of a like judgment of the Victorian Court.

SCHEDULE

Lodgement of sealed copy judgment for registration	\$60.00
If registered in the County Court	\$60.00
If registered in any other court	\$60.00

ORDER 11

**REGISTRATION OF JUDGMENTS UNDER FOREIGN
JUDGMENTS ACT 1991 OF THE COMMONWEALTH**

11.01 Definition

In this Order, *the Act* means the Foreign Judgments Act 1991 of the Commonwealth.

11.02 Application of Order

This Order applies to any proceeding in the Court under the Act.

11.03 Application under section 6 by originating motion

- (1) An application under section 6 of the Act for the registration of a judgment to which Part 2 of the Act applies may be made without notice to any person.
- (2) The application—
 - (a) shall be by originating motion; and
 - (b) shall be supported by affidavit.

11.04 Affidavit

- (1) An affidavit under Rule 11.03 shall state to the best of the information and belief of the deponent—
 - (a) that the plaintiff is entitled to enforce the judgment;
 - (b) that the judgment is final and conclusive between the parties;
 - (c) facts demonstrating that the Court is the appropriate court under section 6(1) of the Act;

- (d) that at the date of the application the judgment has not been satisfied or, if the judgment has been satisfied in part, the amount in respect of which it remains unsatisfied;
 - (e) that at the date of the application the judgment can be enforced by execution in the country of the original court;
 - (f) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 7 of the Act;
 - (g) the amount of interest, if any, which under the law of the country of the original court has become 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 has not stated that the judgment creditor wishes the judgment to be registered in that other currency, the amount which that sum represents in Australian currency calculated in accordance with section 6(11) to (11B) of the Act;
 - (i) if the judgment is in respect of different matters and only some of the provisions of the judgment could, if contained in separate judgments, have been registered, the provisions in respect of which it is sought to register the judgment;
 - (j) the full name, title, occupation and the usual or last known place of residence or of business of the judgment creditor and of the judgment debtor.
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- (2) The affidavit shall exhibit—
- (a) a copy of the judgment of the original court certified as such by the proper officer of the court and authenticated by its seal; and
 - (b) if the judgment is not in the English language, a translation of the judgment certified by a notary public or authenticated by affidavit.
- (3) The affidavit shall be accompanied by such other evidence in respect of the matters referred to in paragraph (1)(e) and (g) as may be required having regard to the provisions of any regulations made under the Act extending the Act to the country of the original court.

11.05 Security for costs may be ordered

The Court may order that a person applying for registration of a judgment give security for costs.

11.06 Order on application

- (1) An order for registration of a judgment—
- (a) shall state the period within which an application to set aside the registration may be made;
 - (b) shall state that the judgment will not be enforced until after the expiration of the period described in paragraph (a) or any extension of that period under paragraph (2);
 - (c) need not be served on the judgment debtor.
- (2) The period within which an application may be made to set aside the registration may be extended by the Court on the application of a party made before or after the expiration of the period or any extended period.

11.07 Notice of registration

- (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor whether within the jurisdiction or out of the jurisdiction.
- (2) Unless the Court otherwise orders, service shall be personal service.
- (3) The notice shall state—
 - (a) full particulars of the judgment registered and the order for registration;
 - (b) the name and address of the judgment creditor or the judgment creditor's solicitor or agent on whom and at which any process issued by the judgment debtor may be served;
 - (c) that the judgment debtor may apply on the grounds set out in the Act to have the judgment set aside;
 - (d) within what time from the date of service of the notice, an application to set aside may be made;
 - (e) that the judgment debtor may apply to have that time extended.

11.08 Application to set aside

- (1) An application to set aside the registration of a judgment shall be made by summons in the proceeding in which the judgment was registered.
 - (2) The summons—
 - (a) shall set out the grounds of the application; and
 - (b) shall be supported by affidavit.
 - (3) The summons and any affidavit in support shall be served on the person who procured registration of the judgment.
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11.09 Enforcement of judgment

A registered judgment may not be enforced until—

- (a) the period prescribed under Rule 11.06(1)(a), or any extended period, has expired;
- (b) the determination by the Court of any application to set aside the registration of the judgment;
- (c) there has been filed in the Court—
 - (i) an affidavit of service of the notice of registration;
 - (ii) a copy of the notice of registration; and
- (d) any order of the Court in relation to the judgment has been authenticated and filed.

11.10 Certified copy of Victorian judgment

- (1) An application under section 15 of the Act may be made without notice to any person.
- (2) An application shall be made in the proceeding in which the judgment of the Court was obtained.
- (3) An application shall be made by filing a draft of the certificate provided for by Rule 11.11(c) with an affidavit deposing to such information as will enable the certificate to be granted.

11.11 Certificates

If an application for a certified copy of a judgment is granted, the copy of the judgment issued shall—

- (a) be sealed with the seal of the Court;
- (b) bear a certificate by the Prothonotary that—
 - (i) the copy is a true copy;
 - (ii) the copy is issued in accordance with section 15 of the Act;

- (c) be accompanied by a certificate by the Prothonotary stating—
- (i) that the proceeding is at an end except for enforcement of the judgment;
 - (ii) the claim or claims in respect of which the judgment was given;
 - (iii) the grounds upon which the judgment was based;
 - (iv) the rate at which the judgment carries interest;
 - (v) such other matters as the Prothonotary considers necessary or desirable.

Rule 11.12
(Heading)
substituted by
S.R. No.
100/2008
rule 16(1)(v).
Rule 11.12
amended by
S.R. No.
100/2008
rule 16(1)(w).

11.12 Associate Judge

An application, other than an application under section 15 of the Act, shall be made to an Associate Judge.

ORDER 12

JURY SERVICE

PART 1—APPEALS

12.01 Definitions

In this Part—

appellant means any person who is aggrieved by a decision of the Juries Commissioner under section 7, 8 or 9 of the Act;

the Act means the **Juries Act 2000**.

12.02 Application

This Part applies to any proceeding in the Court under section 10 of the Act.

12.03 Lodgment of appeal under section 10

- (1) An appellant shall deliver or send by post to the Juries Commissioner a notice of appeal stating—
 - (a) the reasons why the appellant is aggrieved by the Juries Commissioner's decision; and
 - (b) whether the appellant wishes to have the appeal determined by the Judge of the Court without any attendance by or on behalf of the appellant.
- (2) If in the notice delivered under paragraph (1) the appellant fails to state reasons, the Juries Commissioner shall send to the appellant a notice—
 - (a) directing that the appellant within 14 days of the date of service of the notice deliver or send by post reasons in writing to the Juries Commissioner; and

Rule 12.03
(1)(b)
amended by
S.R. No.
100/2008
rule 16(1)(x).

(b) stating that if the appellant fails to do so the appeal will be taken to be abandoned.

(3) If the appellant fails to deliver or send by post written reasons in accordance with the notice referred to in paragraph (2), the appeal is abandoned.

Rule 12.04
(Heading)
amended by
S.R. No.
100/2008
rule 16(1)(y).
Rule 12.04
amended by
S.R. No.
100/2008
rule 16(1)(z).

12.04 Papers for Judge of the Court

After receiving a notice of appeal and reasons the Juries Commissioner shall without delay deliver all papers relating to the appeal to a Judge of the Court nominated by the Chief Justice.

Rule 12.05
(Heading)
amended by
S.R. No.
100/2008
rule 16(2)(a).

12.05 Judge of the Court to consider papers

Rule 12.05(1)
amended by
S.R. No.
100/2008
rule 16(2)(b).

(1) If the appellant has expressed the wish to have the appeal determined without any attendance by or on behalf of the appellant, the Judge of the Court after examining the papers may—

(a) determine the appeal on the papers; or

(b) set a date, time and place for hearing the appeal.

Rule 12.05(2)
amended by
S.R. No.
100/2008
rule 16(2)(b).

(2) In any other case, the Judge of the Court after examining the papers may—

(a) allow the appeal on the papers; or

(b) set a date, time and place for hearing the appeal.

(3) The Juries Commissioner shall without delay notify the appellant of the Judge's determination under this Rule.

12.06 Hearing of appeal

Subject to Rule 12.07, at the hearing of an appeal the Judge of the Court—

- (a) shall hear the appellant;
- (b) may permit the Juries Commissioner to take part in the appeal; and
- (c) shall conduct the appeal in such manner as the interests of justice require.

Rule 12.06
amended by
S.R. No.
100/2008
rule 16(2)(c).

12.07 If appellant does not appear

- (1) If at the hearing of the appeal there is no attendance by or on behalf of the appellant, the Judge of the Court may determine the appeal on the papers.
- (2) The Juries Commissioner shall without delay notify the appellant of the Judge's determination under this Rule.

Rule 12.07(1)
amended by
S.R. No.
100/2008
rule 16(2)(c).

PART 2—ABSENT JURORS

12.08 Application of Part

This Part applies to an application to have a person dealt with in a summary way under section 81 of the Act for not attending when summoned under section 27 of the Act.

12.09 Juries Commissioner

An application under this Part shall be made by the Juries Commissioner.

12.10 Procedure

- (1) The application shall—
 - (a) be made by originating motion in Form 2–12A; and
 - (b) be supported by an affidavit in Form 2–12B.

- (2) The originating motion and the affidavit in support shall be served personally on the respondent, unless the Court otherwise orders.
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ORDER 13

CROSS-VESTING OF JURISDICTION RULES

13.01 Application

This Order applies to a proceeding in the Court to which a cross-vesting law applies.

13.02 Definitions

In this Order—

cross-vesting law means any law of the Commonwealth or of a State or Territory (including the Act) relating to the cross-vesting of jurisdiction;

special federal matter has the same meaning as in the Jurisdiction of Courts (Cross-vesting) Act 1987 of the Commonwealth;

the Act means the **Jurisdiction of Courts (Cross-vesting) Act 1987**.

13.03 Heading of documents

The heading of an originating motion or summons by which application is made under a cross-vesting law, in addition to complying with Order 27 of Chapter I, shall state "In the matter of the **Jurisdiction of Courts (Cross-vesting) Act 1987**".

13.04 Application by Attorney-General

If an application for the transfer of a proceeding is made by the Attorney-General of the Commonwealth or of a State or Territory, the Attorney-General does not, by reason of the application, become a party to the proceeding in respect of which the application is made.

13.05 Removal of proceeding

If an order is made for the removal of a proceeding from a court or tribunal to the Court under section 8 of the Act, the Court may give any directions that could have been given by the court or tribunal in which the proceeding was pending.

13.06 Notice

- (1) A party to a proceeding proposing to invoke a jurisdiction arising under a provision of a cross-vesting law, or otherwise to rely on a provision of a cross-vesting law, shall—
 - (a) file and serve a notice—
 - (i) identifying the provision;
 - (ii) identifying the claim in relation to which reliance is placed on the provision;
 - (iii) stating the grounds on which reliance is placed on the provision;
 - (b) seek directions as soon as practicable whether the proceeding should be transferred.
- (2) When a matter for determination in a proceeding is a special federal matter the notice shall—
 - (a) identify the special federal matter;
 - (b) state the grounds on which it is a special federal matter.

13.07 Procedure after transfer

- (1) When a proceeding is transferred by the Court under a cross-vesting law, the Prothonotary shall send to the proper officer of the court to which the proceeding is transferred all documents filed and all orders made in the proceeding.
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- (2) When a proceeding is transferred to the Court under a cross-vesting law, the Prothonotary shall give it a number and title.
- (3) As soon as practicable after a proceeding is transferred to the Court under a cross-vesting law, the party by whom the proceeding was commenced shall apply for directions.

13.08 Conduct of proceeding

- (1) If a party seeks to have a written law for another State or Territory applied under section 11(1)(b) of the Act in determining a right of action arising under that written law, that party shall file and serve a notice identifying the right of action and the written law.
- (2) If a party seeks to have rules of evidence and procedure, other than those of the Court, applied under section 11(1)(c) of the Act in dealing with a matter for determination in the proceeding, that party shall file and serve a notice stating the relevant rules that the party seeks to have applied.
- (3) A party required by paragraph (1) or (2) to file and serve a notice shall seek directions on the subject matter of the notice before the proceeding is set down for trial.

13.09 Directions

The Court may—

- (a) give directions in relation to a proceeding to which a cross-vesting law applies; and
- (b) set aside or vary any direction given.

13.10 Exercise of powers of the Court

Rule 13.10(1)
amended by
S.R. No.
100/2008
rule 16(2)(d).

- (1) Subject to paragraph (2), the power of the Court under a cross-vesting law and this Order shall be exercised by a Judge of the Court.

Rule 13.10(2)
amended by
S.R. No.
100/2008
rule 16(2)(e).

- (2) An Associate Judge shall have the same power and authority as under Chapter I.
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ORDER 14

**ADMISSION TO PRACTISE, SENIOR COUNSEL AND
PROFESSIONAL PRACTICE**

PART 1—ADMISSION TO PRACTISE

14.01 Definition

In this Part—

mutual recognition legislation means—

- (a) the Mutual Recognition Act 1992 of the Commonwealth as adopted under section 4 of the **Mutual Recognition (Victoria) Act 1998**;
- (b) the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth as adopted under section 4 of the **Trans-Tasman Mutual Recognition (Victoria) Act 1998**;

the Act means the **Legal Profession Act 2004**.

14.02 Reference under section 2.3.10(2)

- (1) A reference by the Board of Examiners of a question to the Court under section 2.3.10(2) of the Act shall be by originating motion.
- (2) The originating motion shall name the Board as plaintiff and the applicant for admission as defendant.
- (3) The originating motion shall state the question for determination and the affidavit in support shall set out the acts, facts, matters and circumstances by reference to which the plaintiff seeks to have the question determined.

Rule 14.02(5)
amended by
S.R. No.
100/2008
rule 16(2)(f).

- (4) The plaintiff shall serve the originating motion and a copy of the affidavit on the defendant as soon as practicable.
- (5) Within seven days after filing the originating motion, the plaintiff shall apply on summons to an Associate Judge for directions.

14.03 Appeal under section 2.3.11

An appeal to the Court under section 2.3.11(1) of the Act shall be brought in accordance with Order 4, which, so far as applicable to a proceeding in the Trial Division, shall apply subject to section 2.3.11 and with any necessary modification.

14.04 Oath or affirmation of office—Form 2–14

- (1) A person applying for admission to the legal profession in Victoria shall take an oath, or make an affirmation, of office.
- (2) The oath or affirmation may be in Form 2–14.

14.05 Application for admission

- (1) An application for admission under section 2.3.4(1) of the Act shall be heard and determined by a Judge or such Judges of the Court, sitting in banc, as the Chief Justice may direct.
- (2) Unless these Rules otherwise provide or the Chief Justice otherwise directs, a motion for admission may be made only on the days appointed in each year by the Court for motions for admission.
- (3) Any application to the Court under the mutual recognition legislation may be heard by a Judge of the Court and paragraph (2) does not apply.

Rule 14.05(3)
amended by
S.R. No.
100/2008
rule 16(2)(g).

14.06 Applicants to appear in person

- (1) An applicant for admission (other than an applicant under the mutual recognition legislation) shall appear in person in Court.
- (2) An applicant shall produce to the Court the certificate and recommendation of the Board of Examiners, or the order of the Court, on which he or she relies.

14.07 Objections

Any person desiring to show cause to the Court why an applicant should not be admitted may show cause before a Judge not less than 14 days before the day appointed for the hearing of the applicant's motion for admission.

PART 2—SENIOR COUNSEL

14.08 Qualification

- (1) A person who is admitted to the legal profession in Victoria and who is, and for many years has been, regularly practising exclusively or mainly as counsel, whether in Victoria or elsewhere within Australia, may be appointed Senior Counsel in and for the State of Victoria.
- (2) A person who is so appointed shall have full authority within Victoria to do all things that Queen's Counsel or other Senior Counsel within Victoria may do and in the same manner and form.

14.09 Application

- (1) A person who is qualified to be so appointed may apply in writing to the Chief Justice for appointment as Senior Counsel.

- (2) Such applications shall be made at such time each year and in such manner as the Chief Justice from time to time directs.
- (3) An applicant shall provide with the application such information as the Chief Justice requires.
- (4) An application under this Rule and all information provided to the Chief Justice relating to the application are confidential and are not open to inspection by any other person except at the direction of the Chief Justice.

14.10 Appointment

- (1) Appointment as Senior Counsel shall—
 - (a) be in writing, signed by the Chief Justice and sealed with the seal of the Court; and
 - (b) be announced in such manner and form as the Chief Justice determines.
- (2) A person so appointed shall have and may exercise in Court such precedence as the Chief Justice directs at the time of the appointment.
- (3) The appointment shall be entered on the Roll kept by the Prothonotary for the purpose.

PART 3—PROFESSIONAL PRACTICE

14.11 Definition

In this Part, *the Act* means the **Legal Profession Act 2004**.

14.12 Appeal on a question of law

An appeal on a question of law to the Court of Appeal under the Act shall be brought in accordance with Order 4, which, so far as applicable to a proceeding in the Court of Appeal, shall apply to the appeal subject to the Act and with any necessary modification.

14.13 Removal from local roll

- (1) If the Tribunal makes an order under section 4.4.17(a) of the Act, the party who commenced the proceeding in which that order was made shall forthwith apply to the Court by originating motion for the Court to determine whether the name of the practitioner should be removed from the local roll.
- (2) The originating motion shall name the applicant as plaintiff and the practitioner as defendant.
- (3) The plaintiff shall file an affidavit in support setting out the acts, facts, matters and circumstances which led to the making of the order and exhibiting—
 - (a) a copy of the order certified as correct by the registrar of the Tribunal; and
 - (b) any reasons given by the Tribunal for the making of the order.
- (4) The plaintiff shall serve the originating motion and a copy of the affidavit on the defendant as soon as is practicable.
- (5) Within seven days after filing the originating motion, the plaintiff shall apply on summons to an Associate Judge for directions.
- (6) The Associate Judge shall refer the application under paragraph (1) to a Judge of the Court for hearing and determination.

Rule 14.13(5)
amended by
S.R. No.
100/2008
rule 16(2)(h)(i).

Rule 14.13(6)
amended by
S.R. No.
100/2008 rule
16(2)(h)(ii)(iii).

ORDER 15

PUBLIC NOTARIES

15.01 Definitions

In this Order—

the Act means the **Public Notaries Act 2001**;

the Secretary means the Secretary to the Board of Examiners as defined in the **Legal Profession Act 2004**.

15.02 Application for certificate of eligibility

- (1) An application under section 5(1) of the Act shall be in Form 2–15A.
- (2) The application shall be lodged with the Secretary, together with a cash register receipt or other evidence in proof that the applicant has paid the fee payable under section 5(3) of the Act.
- (3) An applicant shall provide to the Secretary such further or other information as the Board of Examiners requires.

15.03 Certificate of eligibility

A certificate of eligibility under section 5(8) of the Act shall be in Form 2–15B.

15.04 Application for appointment as public notary

- (1) An application under section 6(1) of the Act shall be made by filing an originating motion in Form 5D of Chapter I of the Rules, together with—
 - (a) an affidavit in Form 2–15C; and
 - (b) the certificate of eligibility from the Board of Examiners.

-
- (2) The application shall be heard by the Chief Justice in open court.

15.05 Notice of application for appointment

Not less than 14 days before the day named in the originating motion for the hearing of the application under section 6(1), the applicant shall—

- (a) lodge with the Secretary notice of intention to apply in Form 2–15D; and
- (b) post a copy of the notice in the Supreme Court in the manner directed by the Secretary.

15.06 Oath of office

The applicant for appointment shall take an oath of office in Form 2–15E.

15.07 Notification after appointment

- (1) Within one month after appointment, a public notary shall—
 - (a) file notification of particulars and specimen seal in Form 2–15F; and
 - (b) deliver that notification of particulars and specimen seal to the Legal Services Board.
- (2) Within one month after any change in the particulars or the specimen seal, the public notary shall—
 - (a) file notification of the change; and
 - (b) deliver notification of the change to the Legal Services Board.

15.08 Appeal from Board of Examiners

An appeal under section 7(1) of the Act shall be brought in accordance with Order 4 which, so far as applicable to an appeal to the Trial Division, shall apply subject to section 7 of the Act and with any necessary modification.

15.09 Roll of public notaries

- (1) A request by a public notary under section 8(5) of the Act shall be made in writing to the Prothonotary.
 - (2) Upon a request being made in accordance with paragraph (1), the Prothonotary may—
 - (a) remove the name of the public notary from the roll of public notaries forthwith; or
 - (b) refer the request to a Judge who may make an order that the name be removed from the roll forthwith or as circumstances require.
 - (3) Upon the name of a person being removed from the roll of public notaries—
 - (a) the person ceases to be a public notary under the Act;
 - (b) the Prothonotary shall inform the Legal Services Board in writing that the person's name has been so removed.
-

ORDER 16

FAMILY PROVISION

16.01 Definitions

In this Order—

Part IV means Part IV of the **Administration and Probate Act 1958**;

personal representative does not include an executor who has not proved;

Registrar means the Registrar of Probates.

16.02 Application of Order

This Order applies to any proceeding in the Court under Part IV.

16.03 Mode of application

- (1) An application under Part IV—
 - (a) shall be made by originating motion; and
 - (b) in addition to complying with Rule 27.02(2) of Chapter I, shall be entitled "In the matter of the estate of [*name of deceased*], deceased".
- (2) If the application is in respect of the estate of a person who died after the commencement of Part 7 of the **Wills Act 1997**, the affidavit in support of the application shall, amongst other things, state the acts, facts, matters and circumstances upon which the plaintiff relies to establish that the person on whose behalf the application is made is a person for whom the deceased had responsibility to make provision.

16.04 Parties to application

- (1) Each personal representative shall be a defendant unless the personal representative is a plaintiff.
- (2) If a plaintiff is the sole personal representative, the defendant shall be a person having a substantial interest in opposing the application.
- (3) No other person shall be a defendant to the application in the first instance.

16.05 Directions to be given

No step shall be taken in the proceeding after appearance until directions have been given in accordance with Rule 16.06.

16.06 Summons for directions

- (1) Within seven days after the time limited for appearance the plaintiff shall apply to the Court for directions.
- (2) If the plaintiff fails to apply, the defendant may apply for directions within 14 days after the time limited for appearance.

16.07 Directions

On the application for directions the Court shall—

- (a) ascertain—
 - (i) the nature of the relief which the plaintiff seeks; and
 - (ii) the persons or classes of persons who would be affected by the grant of that relief—

and for this purpose may require the plaintiff and defendant to supply such information as the Court thinks necessary;

- (b) direct that notice of the application be served on any person;
- (c) direct what persons shall be added as defendants;
- (d) direct what persons are to represent classes of defendants;
- (e) order that any defendant be authorised to defend on behalf of or for the benefit of all persons having the same or similar interest and that all persons so interested shall be bound by any order in the proceeding;
- (f) give such other directions as the Court thinks fit.

16.08 Failure to comply with directions

If the plaintiff does not apply for directions or comply with any direction given, the Court may dismiss the application.

16.09 Production of probate

On the trial of the proceeding, the personal representative shall produce to the Court the probate of the will of the deceased or the letters of administration of the deceased's estate.

16.10 Procedure after order for plaintiff

- (1) If an order is made in favour of a plaintiff, the Associate of the Judge of the Court or Associate of the Associate Judge shall deliver the probate or letters of administration to the Prothonotary.
- (2) The Prothonotary shall deliver the probate or letters of administration to the Registrar together with four copies of the order authenticated in accordance with Order 60 of Chapter I.

Rule 16.10(1)
amended by
S.R. No.
100/2008
rule 16(2)(i).

- (3) The Registrar shall attach to the probate or letters of administration a copy of the order and shall—
- (a) deliver the probate or letters of administration to the personal representative or the personal representative's solicitor; and
 - (b) deliver a copy of the order to the plaintiff or the plaintiff's solicitor.
-

ORDER 17

COURT AUTHORISED WILLS

17.01 Definition

In this Order, *the Act* means the **Wills Act 1997**.

17.02 Application of Order

- (1) This Order applies to applications under sections 20 and 21 of the Act.
- (2) This Order applies to a codicil in the same manner as it applies to a will.

17.03 Minors

- (1) An application under section 20 of the Act shall be made by originating motion supported by an affidavit.
- (2) The affidavit shall exhibit a draft of the will for which authorisation is sought and, if the affidavit is being made by a person other than the minor, shall account for the absence of an affidavit from the minor.
- (3) The affidavit shall state whether the application is made upon notice and, if so, to whom notice has been given or is proposed to be given.
- (4) The affidavit shall also state the acts, facts, matters and circumstances relied upon to satisfy the Court under section 20(5) of the Act.

17.04 Jurisdiction of Associate Judge under section 20

If there are funds in Court for the minor, the application under section 20 of the Act may be heard and determined by an Associate Judge.

Rule 17.04
(Heading)
amended by
S.R. No.
100/2008
rule 16(2)(j).
Rule 17.04
amended by
S.R. No.
100/2008
rule 16(2)(k).

17.05 Want of testamentary capacity

- (1) An application under section 21(2) of the Act for leave to make application for an order under section 21(1) shall be made by originating motion supported by an affidavit.
- (2) The affidavit shall state the acts, facts, matters and circumstances relied upon to satisfy the Court that—
 - (a) the person on whose behalf the will is to be made or revoked does not have testamentary capacity;
 - (b) the proposed will or revocation reflects what the intentions of the person would be likely to be, or what the intentions of the person might reasonably be expected to be, if he or she had testamentary capacity;
 - (c) it is reasonable in all the circumstances for the Court, by order, to authorise the making of the will, or the revocation of the will, for the person.
- (3) Without limiting paragraph (2), the affidavit shall—
 - (a) describe the general nature of the application to be made for an order under section 21(1) of the Act and give the reasons for making that application;
 - (b) give a reasonable estimate, formed from any evidence available to the plaintiff (the nature of which shall be stated), of the size and character of the estate of the person on whose behalf the will is to be made or revoked;

- (c) exhibit the proposed will for which the plaintiff is seeking the Court's approval or a copy of the will which the plaintiff is seeking to have revoked, as the case may be;
 - (d) set out any evidence available to the plaintiff of each of the matters referred to in paragraphs (d), (e), (f), (g), (h), (i) and (j) of section 28 of the Act if such matter is relevant to the application for an order under section 21(1) of the Act or, if not relevant, state why such matter is not relevant; and
 - (e) set out any other evidence relevant to the application.
- (4) The affidavit shall state whether the application for leave is made upon notice and, if so, to whom notice has been given or is proposed to be given.
- (5) On the hearing of the application for leave, where revocation is sought, the original will shall be produced to the Court or its absence shall be explained by affidavit.

17.06 If leave granted

If the Court grants leave under section 21(2) of the Act to make an application for an order under section 21(1) of the Act, the Court may—

- (a) proceed forthwith to hear and determine the application; or
- (b) give directions in relation to the application.

r. 17.07

S.R. No. 94/2008

Rule 17.07
(Heading)
amended by
S.R. No.
100/2008
rule 16(2)(l).
Rule 17.07
amended by
S.R. No.
100/2008
rule 16(2)(m).

17.07 Jurisdiction of Associate Judge under section 21

If there are funds in Court for the person who does not have testamentary capacity, an application under section 21 of the Act, including an application for leave, may be heard and determined by an Associate Judge.

ORDER 18

WORKERS COMPENSATION

18.01 Definitions

In this Order—

employer has the same meaning as in section 3 of the Act;

the Act means the **Workers Compensation Act 1958**;

worker has the same meaning as in section 3 of the Act.

18.02 Application of Order

This Order is made for the purposes of section 66(1) of the Act.

18.03 Employer may join in proceeding

- (1) An employer who seeks a judgment under section 66(1)(a) of the Act shall file in the proceeding a notice in Form 2–18A.
- (2) Upon the filing of the notice the employer shall be taken to have joined in the proceeding and to be a party.
- (3) Unless the Court otherwise orders, the notice shall be filed and served on the other parties before the commencement of the trial of the proceeding.

18.04 When further payments made

If further payments of compensation are made after a notice under Rule 18.03 has been filed, any party to the proceeding may, before judgment is given in favour of the worker, file and serve on each other party a notice or notices in Form 2–18B.

18.05 If payments are disputed

- (1) A worker who disputes the making of any of the payments alleged in a notice under Rule 18.03 or 18.04 shall file a notice in Form 2–18C.
- (2) The notice shall be served on the other parties without delay.
- (3) If a notice under paragraph (1) has been filed, the Court shall determine what amount of compensation has been paid.

18.06 If payments are not disputed

If a notice under Rule 18.05 has not been filed, the employer need not attend the trial of the proceeding and the amount of the payments alleged by the employer shall be taken to be the amount of the compensation that has been paid.

18.07 Other party may seek reduction

- (1) A party to a proceeding who seeks to have the amount of any judgment in favour of a worker reduced under section 66(1)(b) of the Act by the amount of payments of compensation made by the employer shall file a notice in Form 2–18D.
- (2) Unless the Court otherwise orders, the notice shall be filed and served on the other parties before the commencement of the trial of the proceeding.

18.08 When further payments made

If further payments of compensation are made after a notice under Rule 18.07 has been filed, any party to the proceeding may, before judgment is given in favour of the worker, file and serve on each other party a notice or notices in Form 2–18E.

18.09 If payments are disputed

- (1) A worker who disputes the making of any of the payments alleged in a notice under Rule 18.07 or 18.08 shall file a notice in Form 2–18F.
- (2) The notice shall be served on the other parties without delay.
- (3) If a notice under paragraph (1) has been filed, the Court shall determine what amount of compensation has been paid.

18.10 If payments are not disputed

If a notice under Rule 18.09 has not been filed—

- (a) it shall not be necessary to prove the making of the payments of compensation; and
 - (b) the amount of payments alleged shall be taken to be the amount of the compensation that has been paid.
-

ORDER 19

WARDS OF COURT

19.01 Application of Order

This Order applies to any application for an order that a minor be made a ward of Court.

19.02 Application

- (1) An application shall be by originating motion in Form 2–19A.
- (2) The application shall be taken to be made on the filing of the originating motion.

19.03 Notice by defendant

A defendant who desires to defend an application need not file an appearance but shall file and serve a notice of address for service in Form 2–1A.

19.04 Evidence by affidavit

Evidence shall be by affidavit, unless the Court otherwise orders.

19.05 Minor ceases to be ward of Court

- (1) If the application has not been determined or adjourned within 21 days of filing, the minor shall cease to be a ward of Court at the expiration of that period.
 - (2) If the application has been adjourned within 21 days of filing, the minor shall continue to be a ward of Court until the application is determined.
-

ORDER 20

COURT OF DISPUTED RETURNS

PART 1—INTERPRETATION

20.01 Definitions

In this Order—

Court means the Court of Disputed Returns;

the Act means the **Electoral Act 2002**.

20.02 Application of Order

This Order applies to any proceeding in the Court under the Act.

PART 2—PETITIONS

20.03 Notice of petition

Unless the petitioner is the Victorian Electoral Commission, the petitioner shall give notice to the Commission of the filing of a petition under section 133 of the Act.

20.04 Summons for directions

- (1) Within 10 days after filing the petition, the petitioner shall apply to the Court for directions.
- (2) The Court may give such directions as the Court thinks conducive to the effective, complete, prompt and economical determination of the proceeding.

20.05 Procedure on hearing

Subject to any order of the Court, the hearing of a petition shall be conducted as far as practicable as if the proceeding were commenced by writ.

PART 3—REFERENCES OF QUESTIONS

20.06 Summons for directions

- (1) When a statement of a question is received under section 143 of the Act, the Prothonotary shall, subject to any order of the Court, give notice of a time and place where the Court will give directions for the conduct of the proceeding to—
 - (a) the President or the Speaker (as the case requires);
 - (b) the Attorney-General;
 - (c) the Victorian Electoral Commission; and
 - (d) to any member referred to in the question.
- (2) The Court may give such directions as the Court thinks conducive to the effective, complete, prompt and economical determination of the proceeding.

20.07 Parliamentary papers to be evidence

Subject to any order of the Court, the proceedings, papers, reports or documents given to the Court under section 144 of the Act shall—

- (a) be received in evidence at the hearing without further proof; and
- (b) be evidence of the facts, matters and things therein referred to.

20.08 Procedure on hearing

Subject to any order of the Court, the hearing of a question shall be conducted as far as practicable as if the proceeding were commenced by originating motion.

ORDER 21

ALCOHOLICS AND DRUG-DEPENDENT PERSONS

21.01 Definition

In this Order, *the Act* means the **Alcoholics and Drug-dependent Persons Act 1968**.

21.02 Application of Order

This Order applies to any proceeding in the Court under section 11 or 12 of the Act.

21.03 Form of complaint

A complaint under section 11(1) of the Act shall be in Form 2–21A.

21.04 Form of order

An order under section 11(1) of the Act shall be in Form 2–21B.

21.05 Application for warrant

An application for a warrant under section 11(3) of the Act shall be in writing.

21.06 Application for retention of person in assessment centre

An application for an order under section 11(5) of the Act shall be in writing and may be made by—

- (a) the medical officer in charge of the assessment centre; or
- (b) the person who made the complaint under section 11(1) of the Act.

21.07 Evidence and procedure

- (1) The evidence in support of an application under section 11 of the Act shall be given by affidavit unless a Judge of the Court otherwise directs.

Rule 21.07(1)
amended by
S.R. No.
100/2008
rule 16(2)(n).

Rule 21.07(2)
amended by
S.R. No.
100/2008
rule 16(2)(n).

- (2) Any application under section 11 of the Act may be made without notice to any person but a Judge of the Court may adjourn an application and direct that notice of the application be given to any person.

21.08 Appeal against order to attend assessment centre

- (1) An appeal to the Court of Appeal against an order made on an application under section 11(1), (3) or (5) of the Act shall be brought in accordance with this Rule.
- (2) It shall not be necessary to prepare and file an appeal book.
- (3) The appellant shall serve a notice of appeal on—
- (a) the medical officer in charge of the assessment centre to which the order relates; and
 - (b) the person who made the complaint.
- (4) If the appellant is not the person alleged to be an alcoholic or drug-dependent person, the appellant shall serve a notice of appeal on the person alleged to be the alcoholic or drug-dependent person.
- (5) The appellant shall, within four days after service of a notice of appeal, file with the Registrar of the Court of Appeal, for the use of the members of the Court of Appeal, four copies of—
- (a) the complaint or application;
 - (b) the affidavits or other papers in support of the complaint or application; and
 - (c) the notice of appeal.

-
- (6) The appellant shall, at the time of filing the documents referred to in paragraph (5), file an affidavit with copies for the use of the members of the Court of Appeal setting out the acts, facts, matters and circumstances relating to—
 - (a) the making of the order from which the appeal is brought; and
 - (b) the ground or grounds set out in the notice of appeal.
 - (7) A copy of an affidavit filed under paragraph (6) shall be served on any other party without delay.
 - (8) Any person on whom a notice of appeal is served may file an affidavit in reply (with copies for the use of the members of the Court of Appeal), which shall be served on any other party without delay.

21.09 Stay of proceedings

Unless otherwise ordered, an appeal shall operate as a stay of execution of the order appealed from when Rule 21.08(5) is complied with.

21.10 Appeal against committal to treatment centre

- (1) Subject to paragraph (2), an appeal against an order for commitment under section 12(3) of the Act, if the order to attend an assessment centre was made by the Court, shall be brought so far as practicable in accordance with Rule 21.08.
- (2) The notice of appeal shall be served on—
 - (a) the medical officer who made the order for commitment; or
 - (b) the officer in charge of the treatment centre to which the appellant is committed.

21.11 Appeal under County Court Act

An appeal to the Supreme Court under section 74 of the **County Court Act 1958** against an order made on an application under section 11 of the Act or an appeal under section 12(3) of the Act against an order for commitment if the order to attend an assessment centre was made by a Judge of the County Court shall be brought so far as practicable in accordance with Rule 21.08.

Order 22
(Heading and
rules 22.01,
22.02)
revoked by
S.R. No.
109/2009
rule 6.

* * * * *

**ORDER 23—CHARTER OF HUMAN RIGHTS AND
RESPONSIBILITIES ACT 2006**

23.01 Application

This Order applies to a referral under section 33 of the **Charter of Human Rights and Responsibilities Act 2006** to the Trial Division of the Supreme Court.

23.02 Definitions

In this Order—

applicant means the party who made the application for referral in a proceeding before a court or tribunal;

Charter means the **Charter of Human Rights and Responsibilities Act 2006**;

plaintiff means the applicant or, if Rule 23.03(4) applies, the party implementing the referral;

referral means referral under section 33 of the Charter from a proceeding in a court or tribunal of—

- (a) a question of law that relates to the application of the Charter; or
- (b) a question with respect to the interpretation of a statutory provision in accordance with the Charter.

23.03 Originating motion

- (1) When a court or tribunal makes a referral to the Trial Division of the Supreme Court, the applicant shall implement that referral by filing an originating motion in Form 2–23A.
- (2) The originating motion shall name as defendant each other party to the proceeding from which the referral is made.

- (3) Any party named as a defendant pursuant to paragraph (2) may notify the Court and the plaintiff in writing that the party does not wish to be heard and will abide the decision of the Court on the referral.
- (4) If the applicant does not implement the referral within seven days, any other party to the proceeding from which the referral was made may implement the referral by filing an originating motion in Form 2–23A.
- (5) The implementation of a referral under paragraph (4) does not—
 - (a) constitute acceptance by the party who implements the referral that the subject matter of the referral is a matter to which section 33 of the Charter applies; or
 - (b) prevent that party opposing, whether in whole or in part, any matter to which the referral relates.
- (6) An originating motion shall have attached a copy of the order, direction or other document recording the referral from the court or tribunal from which the referral is made.

Rule 23.04
amended by
S.R. No.
100/2008
rule 16(2)(o).

23.04 Summons for directions

At the time of filing the originating motion under Rule 23.03, the plaintiff shall also file a summons for directions in Form 2–23B returnable before an Associate Judge.

23.05 Service

- (1) The plaintiff shall serve the originating motion and the summons for directions on each defendant—
 - (a) within seven days of filing the originating motion; or

- (b) within such further time as the Court by order allows.
- (2) An address for service in the proceeding from which the referral was made is sufficient for service of an originating motion under this Order.

23.06 Directions

At the directions hearing the Court may—

- (a) ascertain whether notice has been given to the Attorney-General and the Victorian Equal Opportunity and Human Rights Commission as required under the Charter;
- (b) require any party to provide such information, and in such form, as the Court thinks necessary to enable the Court to give proper consideration to the question referred to it;
- (c) give directions with respect to the filing and serving of affidavits or any other material verifying the facts relating to the question referred to the Court;
- (d) give any other directions for the conduct of the proceeding which the Court thinks conducive to its effective, prompt and economical determination.

23.07 Dismissal for non-attendance or non-compliance

The Court, whether constituted by a Judge of the Court or an Associate Judge, may dismiss the proceeding if the applicant does not—

- (a) attend at the directions hearing; or
- (b) comply with any order made or direction given in the proceeding.

Rule 23.07
amended by
S.R. No.
100/2008
rule 16(2)(p).

FORMS

Rules 1.10(b) and 19.03

FORM 2-1A

NOTICE OF ADDRESS FOR SERVICE

[Heading as in originating process]

The address in Victoria for service of *[full name of person or party]* is:

[If the person or party is legally represented] The name or firm and the business address within Victoria of the solicitor for *[full name of person or party]* is:

Dated:

[signed]

FORM 2-12A

Rule 12.10(1)(a)

ORIGINATING MOTION

IN THE SUPREME COURT
OF VICTORIA

20 No.

AT

BETWEEN

The Juries Commissioner

Applicant

and

[*Name of person summoned*]

Respondent

TAKE NOTICE that you [*name of respondent*] are required to attend before the Judge in the Practice Court, Supreme Court, 210 William Street, Melbourne on [*date*] at a.m. [or p.m.] or so soon afterwards as the business of the Court allows when the applicant will apply under section 81 of the **Juries Act 2000** to have you dealt with in a summary way for not attending for jury service when summoned under section 27 of that Act.

FILED:

Prothonotary

The address for service of the applicant is—

TO THE RESPONDENT [*name and address*]

FORM 2-12B

Rule 12.10(1)(b)

**AFFIDAVIT IN SUPPORT OF ORIGINATING MOTION TO DEAL
WITH ABSENT JUROR**

[heading as in originating motion]

I *[name of the Juries Commissioner]*, of *[address]* make oath and say:

1. I am the Juries Commissioner under the **Juries Act 2000** ("the Act").
2. The name and occupation of the respondent, so far as known to me, are: *[name and occupation, or if unemployed state "unemployed"]*.
3. A summons issued to the respondent under section 27 of the Act. The date of the summons was *[insert date]*.
4. The respondent was served by post with the summons. It was posted to the respondent at *[address]* on *[date]*.
5. By the summons, the respondent was required to attend at *[place]* on *[date]*. That date was *not postponed/*postponed to: *[date]*.
6. The respondent failed to attend in response to the summons. The date on which the respondent failed to attend was: *[insert date]*.
- *7. The respondent has not given me or my officers any reason for failing to attend in response to the summons.

OR

- *7. The respondent has given me or my officers a reason for failing to attend in response to the summons. That reason is: *[set out reason given]*.

Sworn, etc.

*Delete if inapplicable.

FORM 2-14

Rule 14.04(2)

OATH OF OFFICE

I swear by almighty God that I will well and honestly conduct myself in the practice of my profession as a member of the legal profession and as an officer of this honourable Court to the best of my knowledge and ability.

AFFIRMATION OF OFFICE

I solemnly sincerely and truly declare and affirm that I will well and honestly conduct myself in the practice of my profession as a member of the legal profession and as an officer of this honourable Court to the best of my knowledge and ability.

FORM 2-15A

Rule 15.02

APPLICATION FOR CERTIFICATE OF ELIGIBILITY

IN THE SUPREME COURT OF VICTORIA

IN THE MATTER of the **Public Notaries Act 2001**

and

IN THE MATTER of an application by [*full name*]

TO: The Secretary
Board of Examiners
Supreme Court of Victoria
210 William Street
Melbourne Vic 3000

I, [*full name, address and occupation*], hereby apply to the Board for a certificate that I am eligible to be appointed as a public notary under the **Public Notaries Act 2001** of the State of Victoria.

(Date:)

(Signed:)

[*State clearly: Mr, Ms, Mrs, Miss*]

MY DATE OF BIRTH is:

MY BUSINESS TELEPHONE NUMBER is:

AS REQUIRED, I SUPPLY THE FOLLOWING INFORMATION:

1. I am an Australian lawyer as defined in the **Legal Profession Act 2004** and am on an Australian roll as defined in that Act.
2. I am **a/**the principal of the law practice (as defined in the **Legal Profession Act 2004**) of [*insert name*] and I carry on practice at the office of that law practice at [*address where applicant most often works*] [**The law practice also has offices in [identify location of other offices, if any] .*].
3. I have held for a period of [*number*] years an Australian practising certificate authorising me to engage in legal practice as a principal within the meaning of the **Legal Profession Act 2004** and a certificate of standing issued by the Law Institute of Victoria is annexed.

4. I have completed a course of study related to notarial practice approved by the Council of Legal Education, namely the course [*identify the course of study undertaken and completed*], and a certificate from the [*name of institution*] that I have completed that course is annexed hereto.
5. If a certificate of eligibility is granted to me and I apply to be appointed as a public notary under the **Public Notaries Act 2001**, I wish to comply with [Rule 15.06] of Chapter II of the Rules of the Supreme Court by *taking an oath/*making an affirmation.
6. [*Subject to paragraph 7,] I have never been suspended from practice or found guilty of professional misconduct or unsatisfactory professional conduct in this or any other jurisdiction and to the best of my knowledge and belief no complaint against me to the Legal Services Commissioner or a corresponding authority as defined in the **Legal Profession Act 2004** is pending either in Victoria or elsewhere.
- *7. I bring to the notice of the Board the facts set out in the document which is exhibited to my affidavit and I ask the Board to consider whether those facts adversely affect my application.

*Delete if inapplicable

AFFIDAVIT OF VERIFICATION

I, [*full name, address and occupation*], make oath and say as follows:

1. I am the abovenamed applicant.
2. All of the information set out in this application is to the best of my knowledge and belief true and correct in every particular and the annexures are what they purport to be.
- *3. Now produced and shown to me and marked with the letter "A" is the document setting out the further facts that I seek to draw to the Board's attention, all of which further facts are to the best of my knowledge and belief true and correct in every particular.

Sworn, *etc.*

*Delete if inapplicable

FORM 2-15B

Rule 15.03

CERTIFICATE OF ELIGIBILITY

[heading as in Form 2-15A]

IT APPEARING TO the Board of Examiners that the person named below has completed to the satisfaction of the Board a course of study related to notarial practice approved by the Council of Legal Education and—

*otherwise meets all of the requirements of section 4 of the **Public Notaries Act 2001**

[or]

*otherwise meets all of the requirements of section 4 of the **Public Notaries Act 2001** except the requirement of paragraph (c) which the Board—

*dispensed with *[or]*

*varied as follows, that is to say, by requiring instead *[insert details]*.

THE BOARD OF EXAMINERS CERTIFIES THAT

[full name, address and occupation]

is eligible for appointment as a public notary under that Act.

Dated:

Signed, for the Board of Examiners,
Members:

*Delete if inapplicable

FORM 2-15C

Rule 15.04

AFFIDAVIT IN SUPPORT OF APPLICATION FOR APPOINTMENT

[heading as in Form 2-15A]

I, *[full name, address and occupation]*, make oath and say as follows—

1. I am the abovenamed applicant and I make this affidavit in support of my application for appointment as a public notary under the **Public Notaries Act 2001** ("the Act").
2. I was born on *[date]*.
3. I am **a/**the principal of the law practice (as defined in the **Legal Professional Act 2004**) *[name]* and I carry on practice at *[address]*.
4. The Board of Examiners has issued to me a certificate of eligibility dated *[date]* under section 5 of the Act, certifying that I am eligible for appointment as a public notary, and I have filed that certificate with the originating motion in this proceeding.
- *5. Now produced and shown to me and marked with the letter "A" is a cash register receipt *[or other evidence, as the case may be]* in proof that I have paid the fee referred to in section 6(3) of the Act.

Sworn, *etc.*

*Delete if inapplicable

FORM 2-15D

Rule 15.05

**NOTICE OF INTENTION TO APPLY FOR APPOINTMENT AS A
PUBLIC NOTARY**

[heading as in Form 2-15A]

TAKE NOTICE that I, *[full name, address and occupation]*, intend to apply on *[date]* at *[time]* to the Court constituted by the Chief Justice for appointment as a public notary under section 6 of the **Public Notaries Act 2001**.

I am **a/**the principal of the law practice (as defined in the **Legal Professional Act 2004**) *[name]* of *[address]*.

Dated:

[Signed]

*Delete if inapplicable

FORM 2-15E

Rule 15.06

Oath of Office

I, *[full name]* of *[address]*, do swear that, if I am appointed a public notary by the Court, I will truly and honestly conduct myself in the practice of a public notary in the State of Victoria according to the best of my knowledge, skill and ability.

FORM 2-15F

Rule 15.07

NOTIFICATION OF PARTICULARS AND SPECIMEN SEAL

[heading as in Form 2-15A]

TO the Prothonotary

AND TO the Legal Services Board

TAKE NOTICE that pursuant to the provisions of the **Public Notaries Act 2001** I was appointed and enrolled as a public notary on *[date]*.

My particulars are as follows:

Name:

Address:

Date of birth:

Firm Name:

Telephone No:

Facsimile No:

DX No:

Dated:

Signed:

SPECIMEN
IMPRINT OF SEAL:

FORM 2-18A

Rule 18.03(1)

NOTICE BY EMPLOYER SEEKING JUDGMENT

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B. Plaintiff
and
C.D. Defendant

TO THE PLAINTIFF AND

TO THE DEFENDANT

TAKE NOTICE that under the **Workers Compensation Act 1958**, [*name of employer*] has made payments of compensation set out in the Schedule to this application in respect of an injury suffered on [*insert date*] in respect of which injury the Plaintiff seeks damages from the Defendant in this proceeding.

AND TAKE NOTICE that under section 66(1)(a) of the **Workers Compensation Act 1958**, [*name of employer*] seeks judgment for the amount of the payments of compensation and says that any judgment for damages obtained by the Plaintiff against the Defendant should be reduced by the corresponding amount.

Dated:

[*Signed by employer or employer's solicitor*]

FILED:

[*Schedule of payments to be attached*]

FORM 2-18B

Rule 18.04

NOTICE OF FURTHER PAYMENTS

IN THE SUPREME COURT
OF VICTORIA
AT
BETWEEN

20 No.

A.B.	Plaintiff
and	
C.D.	Defendant
and	
E.F.	Employer

TO THE PLAINTIFF AND
TO THE DEFENDANT

TAKE NOTICE that in addition to the payments of compensation set out in the Schedule to the Application of the Employer filed on *[insert date]*, the employer has made further payments of compensation set out in the Schedule.

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of further payments to be attached]

FORM 2-18C

Rule 18.05(1)

NOTICE OF DISPUTE

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.	Plaintiff
and	
C.D.	Defendant
and	
E.F.	Employer

TO THE DEFENDANT AND

TO THE EMPLOYER

TAKE NOTICE that the Plaintiff disputes that the following payments of compensation have been made as alleged in this proceeding [*give particulars of disputed payments*] and requires that this dispute be settled by the Court at the trial of the proceeding.

Dated:

[*Signed by Plaintiff or Plaintiff's solicitor*]

FILED:

FORM 2-18D

Rule 18.07(1)

NOTICE TO REDUCE PAYMENTS

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B. Plaintiff

and

C.D. Defendant

To *[party(ies) to be served]*

TAKE NOTICE that under the **Workers Compensation Act 1958**, *[name of employer]* has made payments of compensation set out in the Schedule to this Notice in respect of any injury suffered on *[insert date]* in respect of which injury the Plaintiff seeks damages from the Defendant in this proceeding.

AND TAKE NOTICE that under section 66(1)(b) of the **Workers Compensation Act 1958** the *[party giving notice]* says that any judgment for damages obtained by the Plaintiff against the Defendant should be reduced by the corresponding amount.

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of payments to be attached]

FORM 2-18E

Rule 18.08

NOTICE OF FURTHER PAYMENTS

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

To *[party(ies) to be served]*

TAKE NOTICE that in addition to the payments of compensation set out in the Schedule to the Notice of the *[party]* filed on *[insert date]*, the employer has made the further payments of compensation set out in the Schedule.

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of further payments to be attached]

FORM 2-18F

Rule 18.09(1)

NOTICE TO DISPUTE

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

To *[party(ies) to be served]*

TAKE NOTICE that the Plaintiff disputes that the following payments of compensation have been made by the employer as alleged in this proceeding *[give particulars of disputed payments]* and requires that this dispute be settled by the Court at the trial of the proceeding.

Dated:

[Signed by Plaintiff or Plaintiff's solicitor]

FILED:

FORM 2-19A

Rule 19.02(1)

ORIGINATING MOTION

(WARDSHIP APPLICATION)

[heading as in Form 5A of Chapter I]

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been brought against you by the plaintiff for an order that *M.N.* a minor be made a ward of the Court *[and if other relief is claimed, state the relief]*.

ALSO TAKE NOTICE that the proceeding will be heard before the Judge in the Practice Court, Supreme Court, 210 William Street, Melbourne, on *[insert date]* at a.m. *[or p.m.]* or so soon afterwards as the business of the Court allows.

IF YOU INTEND TO DEFEND the proceeding—

- (a) you must file a notice which gives an address in Victoria at which documents in the proceeding may be served on you; and
- (b) you must attend before the Court at the time and place set out above.

FILED:

Prothonotary

Page 2

1. This originating motion was filed—

- (a) by the plaintiff in person;
- (b) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]*;
- (c) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]* as agent for *[name or firm of principal solicitor]*, solicitor, of *[business address of principal]*.

2. The address of the plaintiff is—

3. The address for the service of the plaintiff is—

[If the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, if the solicitor acts by an agent, the business address of the agent. If the plaintiff sues without a solicitor, the address for service is stated in 2, but, if that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

4. The address of the defendant is—

FORM 2-21A

Rule 21.03

COMPLAINT

IN THE SUPREME COURT
OF VICTORIA
AT

20 No.

IN THE MATTER of a complaint
under section 11 of the
**Alcoholics and Drug-dependent
Persons Act 1968**

I [*full name*] of [*address*], being [*state relationship to person complained against or other status for making complaint*] MAKE COMPLAINT that [*full name of person complained against*] of [*address*] is *an alcoholic/*a drug-dependent person within the meaning of the **Alcoholics and Drug-dependent Persons Act 1968**.

A medical certificate in the form of Schedule 1 to the Regulations under the Act is attached.

Dated:

[signed]

FILED:

* Delete if inapplicable

FORM 2-21B

Rule 21.04

ORDER

IN THE SUPREME COURT
OF VICTORIA
AT

20 No.

IN THE MATTER of a complaint
under section 11 of the
**Alcoholics and Drug-dependent
Persons Act 1968**

JUDGE:

DATE MADE:

NAME OF COMPLAINANT:

DATE COMPLAINT FILED:

DATE OF MEDICAL CERTIFICATE:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. [*name of person*] attend and be admitted to the assessment centre within
days after the making of this order and remain there for a period
of 7 days and if the medical officer in charge of the assessment centre so
directs for a further period of 7 days.
2. [*any other orders*]
- 3.

DATE AUTHENTICATED:

Prothonotary

FORM 2-23A

Rule 23.03(1) and (4)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

COMMON LAW DIVISION

IN THE MATTER of the **Charter of Human Rights and Responsibilities Act 2006**

IN THE MATTER of a referral to the Supreme Court under section 33 of the **Charter of Human Rights and Responsibilities Act 2006**

A.B. Plaintiff(s)

and

C.D. Defendant(s)

ORIGINATING MOTION

TO: the Defendant(s)

TAKE NOTICE that this proceeding by originating motion has been brought by the plaintiff(s) pursuant to *Rule 23.03(1)/*Rule 23.03(4) of Chapter II of the Rules of the Supreme Court to implement a referral under section 33 of the Charter of Human Rights and Responsibilities for the determination of a question of law relating to the application of the Charter of Human Rights and Responsibilities, or a question with respect to the interpretation of a statutory provision in accordance with the Charter of Human Rights and Responsibilities.

The referral was made by [*identify the court or tribunal*] on [*state date*] on the application of [*identify the party who made the application for referral*].

A copy of the order or direction or other document recording the referral is attached to this originating motion.

ALSO TAKE NOTICE that this originating motion is served with a summons for a hearing at which the Court may give directions for the conduct of the proceeding.

FILED: [*date*]

PROTHONOTARY

THIS ORIGINATING MOTION is to be served within seven days from the date it is filed or within such further time as the Court orders.

1. This originating motion was filed—
 - *(a) by the plaintiff in person;
 - *(b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*];
 - *(c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].
 2. The address of the plaintiff is:
 3. The address for service of the plaintiff is:
[If the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, if the solicitor acts by an agent, the business address of the agent. If the plaintiff sues without a solicitor, the address for service is stated in 2, but, if that address is outside Victoria, the plaintiff must state an address for service within Victoria.]
 4. The address of each defendant is:
[An address for service in the proceeding from which the referral was made may be stated as that defendant's address.]
- *delete if inapplicable
-

Form 2-23B
amended by
S.R. No.
100/2008
rule 16(2)(q).

FORM 2-23B

Rule 23.04

SUMMONS FOR DIRECTIONS

[heading as in Form 2-23A]

To: *[identify each party to whom summons is addressed]*.

You are summoned to attend before the Court for a hearing at which the Court may give directions for the conduct of the proceeding.

The hearing will be before the Associate Judge in Court No. _____, Supreme Court, 436 Lonsdale Street, Melbourne, on *[insert date]* at *[insert time]* or so soon afterwards as the business of the Court allows.

NOTE: Under Rule 23.03 of Chapter II of the Rules of the Supreme Court, a party named as a defendant and served with a copy of an originating motion may notify the Court and the plaintiff in writing that the party does not wish to be heard in this proceeding and will abide the decision of the Court on the referral under section 33 of the **Charter of Human Rights and Responsibilities Act 2006**.

FILED: *[date]*.

This summons was filed by *[identify party]*.

SCHEDULE

Rule 1.05

REVOKED STATUTORY RULES

<i>S.R. No.</i>	<i>Title</i>
110/1998	Chapter II of the Rules of the Supreme Court, the Supreme Court (Miscellaneous Civil Proceedings) Rules 1998
132/1999	Supreme Court (Chapter II Amendment No. 1) Rules 1999
97/2000	Supreme Court (Chapter II Amendment No. 2) Rules 2000
73/2001	Supreme Court (Chapter II Amendment No. 3) Rules 2001
37/2002	Supreme Court (Chapter II Amendment No. 4) Rules 2002
96/2003	Supreme Court (Chapter II Amendment No. 5) Rules 2003
133/2004	Supreme Court (Chapter II Amendment No. 6) Rules 2004
147/2005	Supreme Court (Legal Profession References Amendment) Rules 2005
92/2007	Supreme Court (Chapter II Amendment No. 7) Rules 2007
121/2007	Supreme Court (Chapter II Amendment No. 8) Rules 2007

Dated: 30 July 2008

M. L. WARREN, *C.J.*
PETER BUCHANAN, *J.A.*
F. H. R. VINCENT, *J.A.*
DAVID ASHLEY, *J.A.*
MARCIA NEAVE, *J.A.*
MARK WEINBERG, *J.A.*
P. D. CUMMINS, *J.*
T. H. SMITH, *J.*
DAVID BYRNE, *J.*
D. L. HARPER, *J.*
H. R. HANSEN, *J.*

PHILIP MANDIE, *J.*
BERNARD D. BONGIORNO, *J.*
D. J. HABERSBERGER, *J.*
STEPHEN KAYE, *J.*
SIMON P. WHELAN, *J.*
KIM HARGRAVE, *J.*
ANTHONY CAVANOUGH, *J.*
ELIZABETH CURTAIN, *J.*
TONY PAGONE, *J.*
PAUL COGHLAN, *J.*
ROSS ROBSON, *J.*
JACK FORREST, *J.*
LEX LASRY, *J.*
JAMES JUDD, *J.*
PETER VICKERY, *J.*
EMILIOS KYROU, *J.*

ENDNOTES

1. General Information

The Supreme Court (Miscellaneous Civil Proceedings) Rules 2008, S.R. No. 94/2008 were made on 30 July 2008 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986 and came into operation on 4 August 2008: rule 1.04.

The Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 will sunset 10 years after the day of making on 30 July 2018 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 by statutory rules, subordinate instruments and Acts.

Supreme Court (Associate Judges Amendment) Rules 2008, S.R. No. 100/2008

Date of Making: 28.8.08

Date of Commencement: 17.12.08: rule 3

Supreme Court (Chapter II Amendment No. 1) Rules 2009, S.R. No. 30/2009

Date of Making: 26.3.09

Date of Commencement: 19.6.09: rule 3

Supreme Court (Chapter II Amendment No. 2) Rules 2009, S.R. No. 42/2009

Date of Making: 30.4.09

Date of Commencement: 4.5.09: rule 3

Supreme Court (Associate Judges Amendment) Rules 2009, S.R. No. 44/2009

Date of Making: 30.4.09

Date of Commencement: 4.5.09: rule 3

Supreme Court (Chapter I Amendment No. 15) Rules 2009, S.R. No. 109/2009

Date of Making: 24.9.09

Date of Commencement: 1.11.09: rule 3

3. Explanatory Details

¹ Rule 8.15(1): S.R. No. 130/1998 as amended by S.R. No. 88/2004.