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Magistrates' Court General Civil Procedure
Rules 2010

S.R. No. 140/2010

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Authorised Version No. 002
Magistrates' Court General Civil Procedure
Rules 2010

S.R. No. 140/2010

Authorised Version incorporating amendments as at
15 June 2011

ORDER 1

PRELIMINARY

Introductory Note

These Rules are Rules of the Magistrates' Court as to civil proceedings.

Related Rules

These Rules are in many respects uniform with the Supreme Court (General Civil Procedure) Rules 2005 (the Supreme Court Rules). Many of the Orders and Rules are drafted in the same terms as the Supreme Court Rules, except so far as minor variations are required to accord with the Magistrates' Court jurisdiction. In some appropriate cases an Order is drafted in the same terms as the County Court Civil Procedure Rules 2008, for example Order 63 is drafted in similar terms to Order 63A of the County Court Civil Procedure Rules 2008, except so far as minor variations are required to accord with the Magistrates' Court jurisdiction.

If the Supreme Court Rules include an Order or a Rule that is not included in these Rules there is a gap in the numbering of these Rules in order to maintain consistent numbering for the other Orders and Rules.

**PART 1—OBJECT, AUTHORISING PROVISIONS,
COMMENCEMENT AND REVOCATION**

1.01 Title and object

- (1) These Rules constitute Chapter I of the Rules of the Magistrates' Court of Victoria and are entitled the Magistrates' Court General Civil Procedure Rules 2010.
- (2) The object of these Rules is to remake with amendments the rules of procedure in civil proceedings in the Magistrates' Court of Victoria.

1.02 Authorising provisions

These Rules are made under section 16 of the **Magistrates' Court Act 1989** and all other enabling powers.

1.03 Commencement

These Rules come into operation on 1 January 2011.

1.04 Revocation

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

PART 2—APPLICATION OF RULES

1.05 Definitions

In this Part—

commencement date means 1 January 2011;

former Rules means the Magistrates' Court Civil Procedure Rules 2009;

pending proceeding means a civil proceeding in the Court to which, immediately before the commencement date, the former Rules applied.

1.06 Application

- (1) Subject to this Part, these Rules apply to every civil proceeding commenced in the Court, whether before, on or after the commencement date.
- (2) The revocation of the former Rules does not affect anything done or omitted to be done in a pending proceeding and, except as provided in these Rules, anything so done or omitted to be done is taken to have been done or omitted to be done under these Rules.

1.07 Jurisdiction not affected

Nothing in these Rules limits the jurisdiction, power or authority which the Court had immediately before the commencement of these Rules.

1.08–1.12 * * * * *

PART 3—INTERPRETATION

1.13 Definitions

In these Rules—

Australia has the meaning ascribed by the Service and Execution of Process Act 1992 of the Commonwealth;

Australian lawyer means an Australian lawyer as defined in the **Legal Profession Act 2004**, other than a barrister as defined in that Act, and includes an incorporated legal practice as defined in that Act;

authorised user means a person or body authorised by the Chief Magistrate under Rule 28.05(2) to file documents by lodging electronic messages with the Court;

bank means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

bodily injury includes any impairment of mental condition or disease;

Convention means a Convention with a foreign country, made with or made and extended to the Commonwealth of Australia or the State of Victoria, with respect to legal proceedings in civil or criminal matters;

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

corporation means any body corporate, whether formed within or out of Victoria;

discovery includes discovery and inspection of documents and discovery by written interrogatories or oral examination and **make discovery of documents** means an affidavit of documents complying with the requirements of these Rules, file the affidavit and serve a copy on the party or person entitled to the discovery;

electronic communication means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system;

electronic message means data transmitted electronically by an authorised user to the Court;

judgment creditor means a person entitled to enforce an order for the payment of money other than an order for the payment of money into court;

judgment debtor means a person required by an order to pay money otherwise than into court;

order made means an order made by the Court at the hearing of a proceeding or on the hearing of an application in a proceeding;

person named means a person to whom a subpoena or a sealed copy is addressed;

plaintiff includes a claimant under section 44(1) of the **Workers Compensation Act 1958**;

proceeding means any matter in the Court commenced by complaint or as otherwise provided by or under any Act or these Rules;

registrar means the principal registrar or the registrar or deputy registrar of the Court at the proper venue of the Court in relation to a proceeding;

the Act means the **Magistrates' Court Act 1989**.

1.13.1 References to Australian lawyer

In these Rules, a reference to an Australian lawyer includes a reference to a firm of Australian lawyers.

Rule 1.13.1
inserted by
S.R. No.
36/2011
rule 18.

PART 4—MISCELLANEOUS

1.14 * * * *

1.15 Procedure wanting or in doubt

(1) If the manner or form of the procedure—

- (a) for commencing, or for taking any step, in a proceeding; or
- (b) by which the jurisdiction, power or authority of the Court is exercisable—

is not prescribed by these Rules or by or under any Act, or for any other reason there is doubt as to the manner or form of that procedure, the Court must determine what procedure is to be adopted and may give directions.

(2) An act done in accordance with a determination or direction under paragraph (1) is regular and sufficient.

- (3) An application for directions with respect to the commencement of a proceeding must be made by complaint in which no person is named as defendant and an application for directions with respect to a proceeding already commenced must be made by application in the proceeding.

1.16 Act by corporation

If the Court makes an order that a corporation do any act, it may order that the act be done by the corporation by its appropriate officer.

1.17 Corporation a party

- (1) Except where otherwise provided by or under any Act or these Rules, a corporation, whether or not a party, must not take any step in a proceeding save by an Australian lawyer.
- (2) Paragraph (1) does not apply to—
- (a) the filing of a complaint;
 - (b) the giving of a notice of defence;
 - (c) in a case to which Part 1 of Order 21 applies, obtaining an order by a corporation which is a party or by an employee, authorised in writing, of a corporation which is a party;
 - (d) a request to issue a warrant to seize property.
- (3) If a corporation that is a party to a proceeding in the Court changes its name it must—
- (a) file written notice of the change of name in the office of the Court at the proper venue of the Court; and
 - (b) serve a copy of that notice on all other parties to the proceeding.

-
- (4) The notice must—
- (a) bear the title of the proceeding showing the name of the corporation before the change; and
 - (b) specify the new name of the corporation and the date on which the name was changed.
- (5) After a corporation has filed a notice of change of name, the corporation must be given its new name in all documents filed in the proceeding followed by the phrase "(formerly [*old name*])".

1.18 Power to act by Australian lawyer

Unless the context or subject matter otherwise requires, any act, matter or thing which under the Act or these Rules or otherwise by law is required or permitted to be done by a party may be done by the party's Australian lawyer.

1.19 Continuation of address for service

Subject to these Rules, if in relation to a proceeding a party has an address for service under these Rules, that is the address for service of the party until the conclusion of the proceeding, whether at first instance or on appeal.

1.20 Proceedings other than in open court

Unless the Court otherwise orders, the following proceedings need not be conducted in open court—

- (a) an application to extend the validity of a complaint, summons or subpoena under Rule 5.12(2);
- (b) an application for substituted service under Rule 6.10;
- (c) an application for an order in default of defence or compliance under Part 1 or Part 2 of Order 21;

-
- (d) an application for an order upon default of compliance of the provisions of the compromise of a proceeding;
 - (e) a pre-hearing conference conducted by a magistrate, judicial registrar or registrar;
 - (f) a mediation conducted by an acceptable mediator;
 - (g) an application for an order (subsequent to a party failing to attend a mediation) under Rule 50.07;
 - (h) an application to extend the validity of a warrant under Rule 68.05(2);
 - (i) an examination of a judgment debtor conducted by a registrar under Rule 72.04;
 - (j) an attachment of earnings order under Rule 72.03 or an examination of the judgment debtor or another person under Rule 72.04;
 - (k) an application for a garnishee order under Rule 71.02;
 - (l) an application to approve a compromise and for any other orders under Rule 15.08;
 - (m) a case transfer application and an application to review a case transfer decision under the **Courts (Case Transfer) Act 1991**;
 - (n) an application for leave to defend under section 5 of the **Instruments Act 1958**;
 - (o) an application under section 6 of the **Judgment Debt Recovery Act 1984**;
 - (p) an application for the issue of a warrant to arrest under section 134(6) of the Act;

- (q) an application for the issue of an entry permit under section 83 of the **Occupational Health and Safety Act 2004**;
- (r) any application, notice of which is not required to be given by or under any Act or these Rules to another person, whether or not a party.

PART 5—OVERRIDING OBJECTIVE AND CASE MANAGEMENT

1.21 Overriding objective

- (1) The overriding objective of these Rules is to enable the Court to deal with a case justly.
- (2) Dealing with a case justly includes, so far as is practicable—
 - (a) effectively, completely, promptly and economically determining all the issues in the case;
 - (b) avoiding unnecessary expense;
 - (c) dealing with the case in ways which are proportionate to—
 - (i) the amount of money involved;
 - (ii) the complexity of the issues;
 - (d) allocating to the case an appropriate share of the Court's resources, while taking into account the need to allocate resources to other cases.

1.22 Duty of parties

The parties are required to help the Court to further the overriding objective.

1.23 Exercise of power

- (1) In exercising any power under these Rules or in interpreting any Rule, the Court must seek to give effect to the overriding objective.
- (2) In exercising any power under these Rules, the Court may give any direction or impose any term or condition it thinks fit.
- (3) The Court may exercise any power under these Rules of its own motion or on the application of a party or of any person having a sufficient interest.

1.24 Case management

- (1) The Court must further the overriding objective by actively managing cases.
- (2) Active case management includes—
 - (a) encouraging the parties to cooperate with each other in the conduct of proceedings;
 - (b) identifying the issues at an early stage;
 - (c) deciding promptly which issues need full investigation and a hearing and accordingly disposing summarily of the others;
 - (d) deciding the order in which the issues are to be resolved;
 - (e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate and facilitating the use of such procedure;
 - (f) helping the parties to settle the whole or part of the case;
 - (g) fixing timetables or otherwise controlling the progress of the case;
 - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010
Order 1

r. 1.24

-
- (i) dealing with as many aspects of the case as it can on the same occasion.
-

ORDER 2

NONCOMPLIANCE WITH THE RULES

2.01 Effect of noncompliance

- (1) A failure to comply with these Rules is an irregularity and does not render a proceeding or a step taken, or any document or order therein a nullity.
- (2) Subject to Rules 2.02 and 2.03, if there has been a failure to comply with these Rules, the Court may—
 - (a) set aside the proceeding, either wholly or in part;
 - (b) set aside any step taken in the proceeding, or any document or order therein;
 - (c) exercise its powers under these Rules to allow amendments and to make orders dealing with the proceeding generally.

2.02 Commencement of proceeding or complaint

The Court must not wholly set aside any proceeding or the complaint by which the proceeding was commenced on the ground that the proceeding was commenced by the wrong process.

2.03 Application to set aside for irregularity

The Court must not set aside any proceeding or any step in any proceeding or any document or order therein on the ground of a failure to comply with these Rules on the application of any party unless the application is made—

- (a) within a reasonable time after the applicant becomes aware of the failure; and

(b) before the applicant has taken any fresh step
(save for filing a notice of defence) after
becoming aware of the failure.

2.04 Dispensing with compliance

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

ORDER 3

TIME, SITTINGS, COURT OFFICE AND DOCUMENTS

3.01 Calculating time

- (1) Any period of time fixed by these Rules or by any order or by any document in any proceeding must be calculated in accordance with this Rule.
- (2) If a time of one day or longer is to begin on, or to be calculated from, a day or event, the day or the day of the event must be excluded.
- (3) If a time of one day or longer is to end on, or to be calculated to, a day or event, the day or the day of the event must be included.
- (4) If a period of 5 days or less would include a day on which an office of the Court is closed, that day must be excluded.
- (5) If the last day for doing any act at an office of the Court is a day on which the office is closed, the act may be done on the next day the office is open.

3.02 Extension and abridgement

- (1) The Court may extend or abridge any time fixed by these Rules or by any order fixing, extending or abridging time.
- (2) The Court may extend time under paragraph (1) before or after the time expires whether or not an application for the extension is made before the time expires.
- (3) Unless the Court otherwise orders, any time fixed by these Rules or by any order fixing, extending or abridging time may be extended by consent without an order of the Court.

3.03 Fixing time

If no time is fixed by these Rules or by order for doing any act in a proceeding, the Court may fix a time.

3.04 Process in vacation

- (1) In calculating the time fixed by these Rules or by any order fixing, extending or abridging time, the period from 24 December to 9 January next following must be excluded, unless the Court otherwise orders.
- (2) If the Court makes an order under paragraph (1), it may give any direction as to service as it thinks fit.

3.05 Time for service

- (1) In this Rule *document* does not include a complaint.
- (2) In calculating the time fixed by these Rules or by any order fixing, extending or abridging time any document which is served after 4.00 p.m. or on any day an office of the Court is closed must be taken to have been served on the next day the office is open.

3.06 Proceedings after a year

If a year or more has elapsed since any party has taken any step in a proceeding, any party desiring the proceeding to continue must give to every other party not less than one month's notice in writing of that party's desire.

3.07	*	*	*	*	*
3.08	*	*	*	*	*
3.09	*	*	*	*	*

ORDER 4

PROCESS IN THE COURT

PART 1—GENERAL

Order 4 Pt 1
(Heading)
inserted by
S.R. No.
152/2010
rule 5.

4.01 Claim not to be divided

- (1) A plaintiff must not divide a claim or cause of action for the purpose of making 2 or more complaints.
- (2) A plaintiff who has a claim for more than the amount for which a claim may be made in the Court may abandon the excess by so stating in the statement of claim.

4.02 * * * *

4.03 Names, addresses and representation of parties

- (1) A complaint must—
 - (a) state the full name and address of the plaintiff and an address for service of documents on the plaintiff; and
 - (b) if the plaintiff sues in person, state an address for service of documents on the plaintiff within Victoria in accordance with Rule 6.06; and
 - (c) if the plaintiff sues or the defendant is sued in a representative capacity, state the capacity in which the plaintiff sues or the defendant is sued in a representative capacity; and

- (d) state the name and address of the defendant;
and
 - (e) if the plaintiff sues by an Australian lawyer,
state the name or firm and business address
within Victoria of the Australian lawyer and
also, if the Australian lawyer is the agent of
another, the name or firm and business
address of the principal.
- (2) Where a complaint is indorsed with the name of
an Australian lawyer—
- (a) the Australian lawyer must, on request in
writing by a defendant, declare in writing
whether the complaint was filed by the
Australian lawyer; and
 - (b) if the Australian lawyer declares in writing
that the complaint was not filed by the
Australian lawyer, the Court may stay the
proceeding.

4.04 Commencement of proceedings

- (1) A civil proceeding must be commenced by the
filing of a complaint at the proper venue of the
Court.
- (2) Filing may be effected by—
- (a) filing at the office of the Court at that venue;
or
 - (b) an authorised user lodging an electronic
message with the Court.

4.05–4.07 * * * *

4.08 Urgent cases

In an urgent case, the Court may, on the
application of a person who intends to commence
a proceeding and upon the person's undertaking to
commence the proceeding within such time as the
Court directs, make any order which the Court

r. 4.08.1

might make if the applicant had commenced the proceeding and the application were made in the proceeding.

Rule 4.08.1
inserted by
S.R. No.
36/2011 rule 4.

4.08.1 Requirements for filing a complaint by an electronic message

Despite anything to the contrary in these Rules, if a complaint (including a complaint upon a bill of exchange) is filed by lodging an electronic message, the electronic message must specify—

- (a) whether or not the complaint is under the **Instruments Act 1958**; and
- (b) the full name of the plaintiff and an address for service of notices and documents upon the plaintiff; and
- (c) the name and address of the defendant; and
- (d) if the plaintiff sues by an Australian lawyer, the name or firm and business address within Victoria of the Australian lawyer; and
- (e) the nature of the claim; and
- (f) the place where and the date when the claim arose; and
- (g) the amount (if any) claimed and costs claimed; and
- (h) the proper venue of the Court.

Rule 4.08.2
inserted by
S.R. No.
36/2011 rule 4.

4.08.2 Complaints by electronic message to comply with Rules when served

If a complaint which was filed by the lodgement of an electronic message is to be served on a party, the complaint is served on the party by serving a document that complies with Rule 5.02.

4.08.3 Copy of complaint commenced by electronic message to be provided on request

Rule 4.08.3
inserted by
S.R. No.
36/2011 rule 4.

A copy of a complaint which was filed by lodging an electronic message must be retained by or on behalf of the plaintiff and the copy must be provided to the Court at the request of the registrar.

4.08.4 Other miscellaneous matters

Rule 4.08.4
inserted by
S.R. No.
36/2011 rule 4.

- (1) A complaint is valid for all purposes if it bears the allocated Court number and the date of filing.
- (2) Data contained in electronic messages must be stored by the Court in a computer database or other device so as to be capable of being reproduced from that database or device.
- (3) The date of filing of a complaint lodged by an electronic message which complies with the Act and the Rules is the date the electronic message is received at the Court.

PART 2—CERTIFICATION REQUIREMENTS ON COMMENCEMENT OF PROCEEDINGS

Order 4 Pt 2
(Heading and
rules 4.09–
4.11)
inserted by
S.R. No.
152/2010
rule 6.

4.09 Overarching obligations certification

Rule 4.09
inserted by
S.R. No.
152/2010
rule 6.

For the purposes of section 41(2) of the **Civil Procedure Act 2010** the overarching obligations certification must be in Form 4A.

4.10 Proper basis certification

Rule 4.10
inserted by
S.R. No.
152/2010
rule 6.

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

r. 4.10.1

Rule 4.10.1
inserted by
S.R. No.
36/2011 rule 5.

4.10.1 Filing of certificates

- (1) The Court may require that a certificate under Rule 4.09 or 4.10 be filed.
- (2) Filing of a certificate may be effected by—
 - (a) filing at the office of the Court at the proper venue of the Court; or
 - (b) an authorised user lodging an electronic message with the Court.

Rule 4.10.2
inserted by
S.R. No.
36/2011 rule 5.

4.10.2 Copy of certificate filed by electronic message to be provided on request

A copy of a certificate which was filed by lodging an electronic message must be retained by or on behalf of the party on whose behalf the certificate was filed and the copy must be provided to the Court at the request of the registrar.

* * * * *

Rule 4.11
inserted by
S.R. No.
152/2010
rule 6,
revoked by
S.R. No.
36/2011 rule 6.

ORDER 5

FORM OF COMPLAINT

5.01 * * * *

5.02 Form of complaint

- (1) Unless paragraph (2) applies, a complaint must be in Form 5A.
- (2) If a complaint is to be served out of Australia, the complaint must be in the form required by Rule 7.02(1).
- (3) A complaint must contain a statement of claim in accordance with Rule 13.01.

5.03–5.04 * * * *

5.05 Motor vehicle collision

- (1) This Rule applies if the plaintiff's claim arises out of a motor vehicle collision and the claim includes a claim for the cost of repairs to the vehicle or for the total loss of the vehicle.
- (2) If the claim includes a claim for the cost of repairs, an itemised quotation of the cost of repairs must be attached to the complaint.
- (3) If the claim includes a claim for the total loss of the vehicle, an assessment of the loss must be attached to the complaint.

5.06–5.08 * * * *

5.09 Costs to be specified

- (1) If the plaintiff claims a sum of money only, the complaint must be indorsed with a statement as follows—

"If you pay the amount of \$ and costs of \$ to the plaintiff or the plaintiff's Australian lawyer without giving notice of defence you may avoid further costs."

- (2) The amount of costs in the indorsement must be—
- (a) in the case of a claim for debt, liquidated demand or claim arising from a motor vehicle collision for cost of repairs only or for total loss of vehicle only, the amount of scale costs in item 1 in Appendix A applicable to the amount claimed; or
 - (b) in any other case, the amount of scale costs in item 3 in Table 1 to Appendix A applicable to the amount claimed—
- plus the fees (if any) for the filing and service of the complaint.
- (3) A registrar, upon application made before service of any complaint, may fix an amount in respect of additional disbursements reasonably and necessarily incurred which amount must be included in the indorsement on the complaint.
- (4) If a complaint is indorsed in accordance with paragraph (1), and the defendant pays the amounts claimed within the time limited for giving notice of defence, then the proceeding must come to an end.

5.10–5.11 * * * * *

5.12 Duration

- (1) A complaint, summons or subpoena is valid for service for one year after the day it is filed.
- (2) If a complaint or summons has not been served on a defendant or if a subpoena has not been served on a witness, the Court may from time to time extend the validity of the complaint, summons or subpoena for such period from the day of the

order as the Court directs, not being more than one year from that day.

- (3) An order may be made under paragraph (2) before or after expiry.
 - (4) The plaintiff may apply under paragraph (2) without notice to the defendant, but if the Court considers that the defendant ought to be heard, the Court must adjourn the further hearing and direct the plaintiff to give notice to the defendant by summons or otherwise.
 - (5) Where an order is made under paragraph (2), the registrar must stamp any complaint, summons or subpoena for service with the date of the order and the extended date of validity.
-

ORDER 6

SERVICE

6.01 When personal service necessary

Any document required or permitted to be served in a proceeding may be served personally, but unless personal service is required by these Rules or by order, need not be served personally.

6.02 Complaint to be served personally

Except where otherwise provided by these Rules, a complaint must be served personally on each defendant, together with 2 notices of defence.

6.03 How personal service effected

(1) Personal service of a document is effected—

- (a) by leaving a copy of the document with the person to be served or, if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document; or
- (b) by delivering a copy of the document to the place of residence of the person to be served to a person apparently above the age of 16 years who resides at that place but when the place of residence is a hotel, boarding house or similar establishment, to some person apparently above that age who is apparently in charge of the establishment or engaged in the office of the establishment; or
- (c) if the person to be served conducts a business, by delivering a copy of the document to the place of business of the person to be served to a person apparently above the age of 16 years who is apparently in charge of that business or is employed in the office of that business.

- (2) To effect personal service it is not necessary to produce the original document at the time of service.

6.04 Service on particular defendants

Personal service of a document may be effected by serving the document in accordance with Rule 6.03, in the case of—

(a) a corporation—

- (i) on the mayor, chairman, president or other head officer of the corporation; or
- (ii) on the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation; or

Rule 6.04(a)(ii)
amended by
S.R. No.
36/2011
rule 7(1).

- (iii) if provision is made by or under any Act for service of a document on a corporation, by serving the document in accordance with that provision;

Rule 6.04
(a)(iii)
inserted by
S.R. No.
36/2011
rule 7(1).

- (b) a minor, on a parent or guardian of the minor, and, if there is none, on the person with whom the minor resides or in whose care the minor is;

- (c) a handicapped person as defined in Rule 15.01, on—

- (i) the person who, in accordance with Rule 15.03(2), would be entitled to be litigation guardian in any proceeding to which the handicapped person was party; or

- (ii) if there is no such person, the person with whom the handicapped person resides or in whose care the handicapped person is;
- (d) the Crown in right of the Commonwealth or the Commonwealth—
 - (i) on the Secretary to the Attorney-General's Department; or
 - (ii) any person authorised under section 55E of the Judiciary Act 1903 of the Commonwealth to act as an Attorney-General's lawyer;
- (e) the Crown in right of Victoria or the State of Victoria, on the Victorian Government Solicitor.

6.05 Claims for personal injury

- (1) In any proceeding in which the plaintiff claims damages in respect of personal injury caused by or arising out of the use of a motor car, a complaint must not be taken to have been served on the defendant unless a copy of the complaint is served on the defendant in accordance with these Rules and also on the Transport Accident Commission.
- (2) If in a proceeding to which paragraph (1) applies a copy of the complaint has been duly served on the defendant but not on the Transport Accident Commission the Court may, notwithstanding paragraph (1), order that the complaint be taken to have been served on the defendant.
- (3) Service on the Transport Accident Commission for the purposes of this Rule may be by ordinary service in accordance with Rule 6.07.

6.06 Address for service

- (1) The address for service of a plaintiff is—
 - (a) if the plaintiff sues by an Australian lawyer, the business address of that Australian lawyer indorsed on the complaint or, if the Australian lawyer acts by an agent, the business address of the agent;
 - (b) if the plaintiff sues in person, the plaintiff's address in Victoria indorsed on the complaint.
- (2) The address for service of a defendant is as provided in Rule 8.03.

6.06.1 Australian lawyer changing address

- (1) If the business address of an Australian lawyer or of the agent of an Australian lawyer given in accordance with Rule 6.06 or 8.03 is changed, the Australian lawyer must immediately file notice of the change and serve a copy of the notice on every party.
- (2) Upon the filing and service of notice in accordance with paragraph (1), the address for service of the party for whom the Australian lawyer acts is the new business address of the Australian lawyer or, if the business address of the agent of the Australian lawyer is changed, the new business address of the agent, stated in the notice.
- (3) If an Australian lawyer required under paragraph (1) to file and serve notice does not do so, a document not required to be served personally on the party for whom the Australian lawyer acts may, until notice is filed and served, be served on the party either at—

- (a) the address given in accordance with Rule 6.06; or
- (b) the new business address of the Australian lawyer or of the agent, as the case may be.

6.07 How ordinary service effected

- (1) If personal service of a document is not required, the document may be served—
 - (a) by leaving the document at the address for service of the person to be served; or
 - (b) by posting the document to the person to be served at that person's address for service; or
 - (c) if provision is made by or under any Act for service of a document on a corporation, by serving the document in accordance with that provision; or
 - (d) if the Australian lawyer for a party has facilities for the reception of documents in a document exchange, by delivering the document into those facilities; or
 - (e) if the Australian lawyer for a party has a facility for the reception of documents by facsimile transmission, by transmitting the document to that facility.
- (2) For the purpose of paragraph (1), the proper address of a person is the address for service of that person in the proceeding, but if at the time service is to be effected that person has no address for service, the proper address is—
 - (a) in the case of an individual, his or her usual or last known place of residence or of business;
 - (b) in the case of individuals suing or being sued in the name of a firm, the principal or last known place of business of the firm;

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- (c) in the case of a corporation, the registered or principal office of the corporation.
- (3) If no person can be found at the address for service of a plaintiff who sues or a defendant who has appeared in person, any document in the proceeding may be served on that plaintiff or defendant by filing it.
- (3.1) A party who serves a document by filing in accordance with paragraph (3) must indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.
- (4) Service in accordance with paragraph (1)(a) or (1)(e) which is effected after 4.00 p.m. is, for the purpose of calculating any period of time after that service, to be taken to have been effected on the next day the registrar's office is open.
- (5) The day of service of a document must, if the document—
- (a) is sent by post in accordance with paragraph (1)(b)—be taken to be the day it would be delivered in the normal course of post;
 - (b) is delivered into the facilities of a document exchange in accordance with paragraph (1)(d)—be taken to be the day following the day upon which it is so delivered or, where a document is delivered on a Friday, be taken to be the following Monday—
- or on such other day as may be proved.
- (6) In this Rule, ***document exchange*** means any document exchange for the time being approved by the Chief Justice on the recommendation of the Council of the Law Institute of Victoria.

6.08 Identity of person served

For the purposes of proof of service, evidence of a statement by a person of that person's identity or that the person holds some office is evidence of that person's identity or that the person holds that office.

6.09 Acceptance of service by Australian lawyer

- (1) This Rule applies to service of a document whether or not required to be served personally.
- (2) If an Australian lawyer makes a note on a copy of a document that service of the document is accepted on behalf of a person, the document must, unless the Australian lawyer is shown not to have had authority to accept service, be taken to have been served on the person on the day the Australian lawyer made the note.
- (3) Paragraph (2) does not limit other service of the document on the person or proof of such service.

6.10 Substituted service

- (1) If for any reason it is impracticable to serve a document in the manner required by these Rules, the Court may order that, instead of service, such steps be taken as the Court specifies for the purpose of bringing the document to the notice of the person to be served.
- (2) If the Court makes an order under paragraph (1), the Court may order that the document be taken to have been served—
 - (a) on the happening of any specified event; or
 - (b) on the expiry of any specified time.
- (3) The Court may make an order under paragraph (1) even though the person to be served is out of Victoria or was out of Victoria when the proceeding commenced.

6.11 Confirmation of informal service

If for any reason a document has not been served in the manner required by these Rules, but the document has come to the notice of the person to be served, the document must be taken to have been served on the day it came to the person's notice.

6.12 Service by filing

- (1) If the service of a document on a party to a proceeding is required or permitted, but personal service is not required, and that party has no address for service in the proceeding, the filing of the document must, unless the Court otherwise orders, have effect as service of the document on that person.
- (2) A party who serves a document by filing in accordance with paragraph (1) must indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.

6.13 Service on agent

- (1) If a contract has been entered into within Victoria by or through an agent residing or carrying on business within Victoria on behalf of a principal residing or carrying on business out of Victoria, a complaint in a proceeding relating to or arising out of such contract may, by leave of the Court given before the determination of the agent's authority or of the agent's business relations with the principal, be served on the agent.
- (2) If an order giving leave is made under paragraph (1)—
 - (a) the order must limit the time within which the defendant must file a defence; and

- (b) a copy of the order and of the complaint must immediately be sent by post to the defendant at the defendant's address out of Victoria.

6.14 Service under contract

If the parties to any proceeding have, before or after the commencement of the proceeding, agreed that the complaint or any other document in the proceeding may be served on a party or on a person on behalf of a party in a manner or at a place (whether within or outside Victoria) specified in the agreement, service in accordance with the agreement is sufficient service.

6.15 * * * *

6.16 Service of notice by the Court

Unless the Rules otherwise provide or the Court otherwise orders, if under these Rules or under an order of the Court any notice or other document is to be given to or served on any person by the Court, the notice or document must be sufficiently given or served in any manner in which a document not requiring personal service may be served under this Order.

6.17 Affidavit or declaration of service

- (1) An affidavit or declaration of service of any document must state by whom the document was served, the hour of the day, day of the week and date on which it was served and the place and mode of service and must be in Form 6A.
- (2) A document purporting to be an affidavit or declaration of service must be taken to be evidence of the proper service of a document unless the contrary is proved.

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- (3) An affidavit of service must be filed as soon as practicable after service of an application or summons.
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ORDER 7

SERVICE OUT OF AUSTRALIA

7.01 For what claims

- (1) A complaint may be served out of Australia without leave of the Court if—
 - (a) the proceeding is one brought to enforce, rescind, dissolve, rectify, annul or otherwise affect a contract, or to recover damages or other relief in respect of the breach of a contract, and the contract—
 - (i) was made within Victoria;
 - (ii) was made by or through an agent carrying on business or residing within Victoria on behalf of a principal carrying on business or residing out of Victoria; or
 - (iii) is governed by the law of Victoria;
 - (b) the proceeding is brought in respect of a breach committed within Victoria of a contract wherever made, even though that breach was preceded or accompanied by a breach out of Victoria that rendered impossible the performance of that part of the contract which ought to have been performed within Victoria;
 - (c) the proceeding is founded on a contract the parties to which have agreed that the Court has jurisdiction to entertain a proceeding in respect of the contract;
 - (d) the proceeding is founded on a tort committed within Victoria;

- (e) the proceeding is brought in respect of damage suffered wholly or partly in Victoria and caused by a tortious act or omission wherever occurring;
 - (f) an injunction is sought ordering the defendant to do or refrain from doing anything within Victoria, whether or not damages are also claimed in respect of a failure to do or the doing of that thing;
 - (g) the proceeding is properly brought against a person duly served within or out of Victoria and another person out of Australia is a necessary or proper party to the proceeding.
- (2) A complaint may be served out of Australia under paragraph (1) notwithstanding that part of the cause of action arose outside Victoria provided that a material part of it arose in Victoria.

7.02 Form of complaint and indorsement

- (1) A complaint served on any defendant out of Australia in accordance with this Order must be in Form 7A and, at the time of service on that defendant, contain an indorsement stating the facts and the particular paragraph of Rule 7.01(1) relied upon in support of such service.
- (1.1) The indorsement under paragraph (1) must be distinct from the indorsement of claim in the complaint, but any fact in support of service out of Australia which is a fact alleged by the indorsement of claim may be incorporated by specific reference in the indorsement under paragraph (1).
- (2) If the complaint is not in Form 7A or does not contain the indorsement referred to in paragraph (1) at the time it is filed, the plaintiff may, in accordance with paragraph (3), amend the

complaint to conform with Form 7A and to include the indorsement.

- (3) The complaint must be taken to be amended upon the filing by the plaintiff of a copy of the complaint to conform with Form 7A with the indorsement included.
- (4) Upon the filing of an amended copy of the complaint under paragraph (3) or at any later time, the registrar on the request of the plaintiff must seal a sufficient number of copies of the complaint as amended for service and proof of service.

7.03 Mode of service out of Australia

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

7.04 Leave to apply for an order

- (1) If no notice of defence is given in accordance with Rule 8.01 for a party being served with a complaint out of Australia, the Court, if satisfied so far as it concerns that party—
 - (a) that the subject matter of the complaint is within Rule 7.01;
 - (b) that the complaint complies with the requirements of Rule 7.02; and
 - (c) that the complaint was duly served on that party—may order that the plaintiff be at liberty to apply for an order.
- (2) An application for an order under paragraph (1) must be supported by affidavit or other evidence showing the grounds on which the application is made.

7.05 Stay, setting aside service etc.

- (1) The Court may make an order on application by a party served with a complaint outside Australia to—
 - (a) set aside the complaint or its service;
 - (b) set aside or vary an order made under Rule 7.04 where the application for an order—
 - (i) was made on notice to the party, but the party did not attend the hearing of the application; or
 - (ii) was not made on notice to that party;
 - (c) stay the complaint.
- (2) Without limiting paragraph (1), the Court may make an order under this Rule on the ground—
 - (a) that service out of Australia is not authorised by these Rules; or
 - (b) that Victoria is not a convenient forum for the hearing of the proceeding.
- (3) The Court may make an order under this Rule before an application is made under Rule 7.04 or before an order of the Court is made on such an application.

7.06 Service of other process by leave

The Court, by order, may allow service out of Australia of any summons, order or notice in any proceeding.

7.07 Service of counterclaim or third party notice

- (1) This Rule applies to—
 - (a) a counterclaim against the plaintiff and another person joined as defendant under Rule 10.03 if the person joined is not already a party to the proceeding; and
 - (b) a third party notice filed in accordance with Order 11.
- (2) A counterclaim or third party notice may be served out of Australia without leave where the claim made by the defendant in the counterclaim or third party notice is of such a kind that, if the claim were made by complaint, the complaint could be served out of Australia without order of the Court under Rule 7.01.
- (3) If paragraph (2) does not apply, the Court may, by order, allow service out of Australia of a counterclaim or third party notice.

7.08 Application for leave

- (1) An application for leave under Rule 7.06 or 7.07(3) must be supported by affidavit or other evidence showing the grounds upon which the application is made.
- (2) The Court may grant such leave if the case is a proper one for service out of Australia.
- (3) Upon making an order under Rule 7.06 or 7.07(3), the Court may give directions with respect to service and the time for filing a defence or for attendance before the Court or otherwise.
- (4) If any document is served out of Australia by order of the Court made under Rule 7.06 or 7.07(3)—

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- (a) a copy of the order, a copy of any affidavit made in support of the application for the order; and
 - (b) unless the Court otherwise orders, a copy of any exhibit referred to in the affidavit—
- must be served with the document.
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ORDER 8

NOTICE OF DEFENCE

8.01 Time for giving notice of defence

Unless the Court otherwise orders, the time stated in the complaint for the defendant to give a notice of defence must be—

- (a) where the complaint is to be served in Victoria, not less than 21 days after service;
- (b) where the complaint is to be served out of Victoria and in another part of Australia, not less than 21 days after service;
- (c) where the complaint is to be served in New Zealand or in Papua New Guinea, not less than 28 days after service;
- (d) in any other case, not less than 42 days after service.

8.02 Late giving of notice of defence

A defendant may give notice of defence at any time after the service of a complaint, but, except by leave of the Court, notice of defence must not be given if—

- (a) the plaintiff has obtained an order under Part 1 of Order 21; or
- (b) by order of the Court, the defendant's notice of defence has been struck out.

8.03 Contents and form of notice of defence

- (1) Notice of defence is given by serving a notice of defence in Form 8A on the plaintiff at the address for service stated in the complaint and by filing a copy with the registrar.

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- (2) A notice of defence must—
- (a) contain a statement that the defendant intends to defend the complaint; and
 - (b) contain a defence as provided by Rule 13.02; and
 - (c) state the name and address of the defendant, and the address for service of the defendant; and
 - (d) if the defendant defends by an Australian lawyer, state the name or firm and business address within Victoria of the Australian lawyer and also, if the Australian lawyer is an agent of another, the name or firm and business address of the principal.
- (3) Despite paragraph (2), if the complaint was served on the defendant under the Service and Execution of Process Act 1992 of the Commonwealth, the address for service of the defendant duly stated in a notice of defence in accordance with that Act is the address for service of the defendant.
- (4) If the complaint was served on the defendant out of Australia, the notice of defence must state an address for service within Victoria.

8.04 Method of filing of notice of defence

A copy of a notice of defence may be filed with the registrar by facsimile transmission.

ORDER 9

JOINDER OF CLAIMS AND PARTIES

9.01 Joinder of claims

A plaintiff may join any number of claims against a defendant whether the plaintiff makes the claims in the same or in different capacities and whether the claims are made against the defendant in the same or in different capacities.

9.02 Joinder of parties permitted

Two or more persons may be joined as plaintiffs or defendants in any proceeding—

(a) where—

- (i) if separate proceedings were brought by or against each of them, some common question of law or fact would arise in all the proceedings; and
- (ii) all rights to relief claimed in the proceeding (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or

(b) if the Court, before or after the joinder, gives leave to do so.

9.03 Joinder of necessary parties

(1) Except by order of the Court or as provided by or under any Act, if the plaintiff claims any relief to which any other person is entitled jointly with the plaintiff—

- (a) all persons so entitled must be parties to the proceeding; and
- (b) any person who does not consent to being joined as a plaintiff must be made a defendant.

- (2) If the plaintiff claims relief against a defendant who is liable jointly with some other person and also liable severally, that other person need not be made a defendant to the proceeding.
- (3) If persons are liable jointly, but not severally, under a contract, and the plaintiff in respect of that contract claims against some but not all of those persons, the Court may stay the proceeding until the other persons so liable are added as defendants.
- (4) The Court may make an order under paragraph (1) before or after the non-joinder.

9.04 Joinder inconvenient

Despite Rules 9.01 and 9.02, if any joinder of claims or of parties may embarrass or delay the hearing of the proceeding or cause prejudice to any party or is otherwise inconvenient, the Court may order that—

- (a) there be separate hearings;
- (b) any claim be excluded;
- (c) any party be compensated by an award of costs or otherwise for being required to attend, or be relieved from attending, any part of a hearing in which that party has no interest;
- (d) any person made a party cease to be a party on condition that that party be bound by the determination of the questions in the proceeding or without any such condition.

9.05 Effect of misjoinder or non-joinder of party

A proceeding must not be defeated by reason of the misjoinder or non-joinder of any party or person, and the Court may determine all questions in the proceeding so far as they affect the rights and interests of the parties.

9.06 Addition, removal, substitution of party

At any stage of a proceeding the Court may order that—

- (a) any person who is not a proper or necessary party, whether or not that person was one originally, cease to be a party;
- (b) any of the following persons be added as a party, namely—
 - (i) a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated upon; or
 - (ii) a person between whom and any party to the proceeding there may exist a question arising out of, or relating to, or connected with, any claim in the proceeding which it is just and convenient to determine as between that person and that party as well as between the parties to the proceeding;
- (c) a person to whom subparagraph (b) applies be substituted for one to whom subparagraph (a) applies.

9.07 Procedure for addition of party

- (1) A person must not be added as a plaintiff without that person's consent signified in writing or in such other manner as the Court orders.
- (2) Unless the Court otherwise orders, an application by a person for an order adding the person as a party must be supported by an affidavit showing the person's interest in the questions in the proceeding or the question to be determined as

between that person and any party to the proceeding.

9.08 Defendant dead at commencement of proceeding

- (1) If a cause of action survives against the estate of a deceased person, a person wishing to obtain an order in respect of that cause of action may, if no grant of representation has been made, bring a proceeding against the estate of the deceased.
- (2) Without limiting paragraph (1), a proceeding brought against "the estate of A.B. deceased" must be taken to have been brought against the deceased's estate in accordance with that paragraph.
- (3) A proceeding commenced naming as defendant a person who was dead when the proceeding commenced must, if the cause of action survives and no grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the estate of the deceased in accordance with paragraph (1).
- (4) A proceeding naming as defendant a person who was dead when the proceeding commenced must, if the cause of action survives and a grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the personal representative of the deceased as representing the estate of the deceased.
- (5) In a proceeding within paragraph (1) or (3), the Court—
 - (a) may—
 - (i) appoint a person to represent the estate of the deceased for the purpose of the proceeding; or

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- (ii) if a grant of representation has been made since the commencement of the proceeding, order that the personal representative of the deceased be made a party to the proceeding; and
- (b) may order that the proceeding be carried on against the person so appointed or against the personal representative, as if that person or representative had been substituted for the estate.
- (6) In any proceeding within paragraph (4), the Court may order that the personal representative of the deceased be made a party, and that the proceeding be carried on against the personal representative as representing the estate of the deceased.
- (7) An application for an order under paragraph (5) or (6) must be made during the period of validity for service of the complaint, unless the Court otherwise orders.
- (8) Before making an order under paragraph (5) the Court may require notice to be given to—
- (a) any insurer of the deceased who has an interest in the proceeding; and
- (b) any person having an interest in the estate.
- (9) If no grant of representation has been made any order made in the proceeding is to bind the estate of the deceased to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceeding.
- (10) In this Rule ***grant of representation*** means a grant of probate or administration in Victoria or the resealing of a foreign grant in Victoria.

9.09 Change of party on death, bankruptcy

- (1) If a party to a proceeding dies, but the cause of action survives, or if a party becomes bankrupt, the proceeding must not abate by reason of the death or bankruptcy, but may be carried on in accordance with paragraph (2).
- (2) If at any stage of a proceeding the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may order that the other person be added as a party to the proceeding or be made a party in substitution for the original party and that the proceeding be carried on as so constituted.
- (3) Unless the Court otherwise directs, the person on whose application an order is made under paragraph (2) must serve the order on every party to the proceeding and on every person who ceases to be a party or becomes a party as plaintiff by virtue of the order, and in the case of a person who becomes a defendant, must serve that person personally with the order and with the complaint.
- (4) A person upon whom a complaint is served in accordance with paragraph (3) must file a defence in the proceeding within such time as the Court directs.
- (5) If an order is made without notice to a person on whom the order is served, an application by that person to set aside or vary the order must be made within 10 days after service.

9.10 Failure to proceed after death of party

- (1) If a party dies, and a cause of action in the proceeding survives, but no order is made under Rule 9.09(2) substituting a personal representative of the deceased party as party, the Court, on application by a party or by a person to whom liability on the cause of action survives on the

death, may order that unless an order for substitution is made within a specified time the proceeding be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon survives on the death.

- (2) On making an order under paragraph (1), the Court may, whether or not a grant of representation within the meaning of Rule 9.08(10) has been made, direct that if the proceeding is dismissed by virtue of the order, costs of the proceeding be awarded as follows—
 - (i) if the plaintiff dies, to the defendant against the personal representative of the deceased out of the estate of the deceased;
 - (ii) if the defendant dies, to the personal representative of the deceased against the plaintiff.
- (3) If the plaintiff dies, the Court must not make an order under paragraph (1) unless due notice of the application for it has been given to—
 - (a) the personal representative, if any, of the deceased; and
 - (b) any other person having an interest in the estate of the deceased who, in the opinion of the Court, should be notified.
- (4) If a defendant serves a counterclaim, this Rule applies, with any necessary modification, as if the plaintiff were the defendant and the defendant were the plaintiff.

9.11 Amendment of proceedings after change of party

- (1) If an order is made under Rule 9.06 or 9.08, the complaint filed in the Court must, subject to Rule 27.02(5), be amended accordingly within the time specified in the order, and otherwise within

10 days after the making of the order, and a reference to the order, the date of the order and the date on which the amendment is made must be indorsed upon the complaint or the other originating process.

- (2) The filing of a copy of the complaint or originating process amended and indorsed as required by paragraph (1) is sufficient compliance with that paragraph.
- (3) If an order is made under Rule 9.06 or 9.08 adding or substituting a person as defendant—
 - (a) the proceeding against the new defendant commences upon the amendment of the filed complaint in accordance with paragraph (1) or (2);
 - (b) the plaintiff must serve the amended complaint on that defendant within such time as the Court directs, and, unless the Court otherwise orders, it must be served personally;
 - (c) unless otherwise ordered, if the new defendant is an added defendant, the proceeding is to be continued as if the new defendant were an original defendant, and if the new defendant is a substituted defendant, all things done in the course of the proceeding before it was commenced against the new defendant are to have effect in relation to the new defendant as they had in relation to the old defendant, except that the filing of a defence by the old defendant does not dispense with the filing of a defence by the new.

9.12 Consolidation or hearing together

- (1) If 2 or more proceedings are pending in the Court, and—
- (a) some common question of law or fact arises in both or all of them;
 - (b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
 - (c) for any other reason it is desirable to make an order under this Rule—

the Court may order the proceedings to be consolidated, or to be heard at the same time or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them.

- (2) Any order for the hearing together of 2 or more proceedings or for the hearing of one immediately after the other, is subject to the discretion of the Court.

9.13 Conduct of proceeding

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

ORDER 10

COUNTERCLAIM

10.01 * * * *

10.02 When counterclaim allowed

- (1) A defendant who has a claim against a plaintiff may counterclaim in the proceedings.
- (2) These Rules apply to a counterclaim as if the plaintiff were the defendant and the defendant were the plaintiff.
- (3) A defendant who counterclaims must file and serve the counterclaim no later than 21 days after notice of defence is given unless the Court otherwise orders.
- (4) A counterclaim served on a defendant to the counterclaim must, unless paragraph (5) applies, be in Form 10A.
- (5) If a counterclaim is to be served out of Australia it must be in Form 10B.

10.03 Counterclaim against plaintiff and another person

A defendant may join with the plaintiff as defendant to the counterclaim any other person, whether a party to the proceeding or not, who, if the defendant were to bring a separate proceeding, could be properly joined with the plaintiff as a party in accordance with Rule 9.02.

10.04 Procedure after counterclaim against another person

- (1) If a defendant joins a person as defendant to the counterclaim under Rule 10.03, the defence and counterclaim must contain a second title of the proceeding showing who is plaintiff to the counterclaim and who are defendants to the counterclaim.

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- (2) The defendant must serve on the person joined as defendant to the counterclaim a copy of the defence and counterclaim as follows—
- (a) if the person so joined is already a party to the proceeding, the copy must be served within the time fixed by Rule 10.02(3) for serving a counterclaim;
 - (b) if the person joined is not already a party, the copy must be served personally and, unless the Court otherwise orders, must be served within 30 days after the expiration of the time fixed by Rule 10.02(3) for serving a counterclaim.
- (3) The person joined as a defendant to the counterclaim, upon service of a copy of the defence and counterclaim, if not already a party, becomes a party and is in the same position as if that person had been sued as defendant in the ordinary way by the defendant making the counterclaim.
- (4) Without limiting paragraph (3), if the person joined as defendant to the counterclaim is not already a party to the proceeding, Orders 8 and 11, and Part 1 of Order 21 apply as if—
- (a) the counterclaim were a complaint the statement of counterclaim on which constituted a statement of claim in accordance with Order 13;
 - (b) the defendant making the counterclaim were a plaintiff in the party; and
 - (c) the person joined were a defendant in the proceeding.
- (5) A counterclaim served on a defendant to the counterclaim who is not already a party must, unless paragraph (6) applies, be in Form 10A.

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- (6) If a counterclaim is to be served out of Australia it must be in Form 10B.
 - (7) Two notices of defence in Form 8A, with any necessary modification, must be served with a counterclaim.

10.05 Hearing of counterclaim

A counterclaim must be heard at the hearing of the claim of the plaintiff unless the Court otherwise orders.

10.06 Counterclaim inconvenient

Despite Rules 10.02 and 10.03, if a counterclaim may embarrass or delay the hearing of the claim of the plaintiff or cause prejudice to any party or otherwise cannot conveniently be heard with that claim, the Court may—

- (a) order separate hearings of the counterclaim and the claim of the plaintiff;
- (b) order that any claim included in the counterclaim be excluded;
- (c) strike out the counterclaim without prejudice to the right of the defendant to assert the claim in a separate proceeding;
- (d) order that any person joined as defendant to the counterclaim cease to be a party to the counterclaim.

10.07 Stay of claim

If the defendant by the defendant's defence admits the claim of the plaintiff and counterclaims, the Court may stay the original proceeding until the counterclaim is disposed of.

10.08 Counterclaim on stay etc. of original proceeding

If the original proceeding is stayed, dismissed, discontinued or struck out or if a decision is given for the plaintiff, a counterclaim nevertheless may be prosecuted.

10.09 Order for balance

If the plaintiff succeeds on the claim and the defendant succeeds on the counterclaim and a balance in favour of one of them results, the Court may make an order for the balance.

ORDER 11

THIRD PARTY PROCEDURE

11.01 Claim by third party notice

If a defendant claims as against a person not already a party to the proceeding (in this Order called *the third party*)—

- (a) any contribution or indemnity;
- (b) any relief or remedy relating to or connected with the original subject matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that any question relating to or connected with the original subject matter of the proceeding should be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party—

the defendant may join the third party as a party to the proceeding and make the claim against that third party by filing and serving a third party notice.

11.02 Statement of claim on third party notice

A third party notice must be in Form 11A, and must be indorsed with a statement of claim.

11.03 * * * *

11.04 Filing and service of third party notice

- (1) A claim by third party notice must be commenced by filing a third party notice in the Court whereupon the third party becomes a party to the proceeding.

- (2) A third party notice must be filed and served on the third party in the same manner as a complaint is filed and served on a defendant.

11.05 Time for third party notice

- (1) A defendant may not file a third party notice until having first given notice of defence.
- (2) A defendant may file a third party notice—
 - (a) within 30 days after giving a notice of defence; or
 - (b) at any time with the leave of the Court or the consent in writing of the plaintiff and any other party who has given notice of defence.

11.06 Leave to file third party notice

An application for leave to file a third party notice must be made on notice to the plaintiff but the Court may direct notice to be given to any other party who has given notice of defence.

11.07 Other requirements for service

- (1) A third party notice must be served on the third party within 30 days after it is filed.
- (2) Despite paragraph (1), the Court may fix another period for the service of a third party notice either—
 - (a) before the notice is filed; or
 - (b) at the time it grants leave under Rule 11.05(2) to file the notice.
- (3) If a third party notice has not been served on the third party, the Court from time to time by order may extend the period for service of the notice for such further period it thinks fit.
- (4) An order may be made under paragraph (3) before or after expiry of the period for service.

-
- (5) At the time of service of a third party notice on a third party there must also be served a copy of—
- (a) any order or consent under Rule 11.05(2); and
 - (b) any order under paragraph (2) made before the third party notice was filed fixing a period for service of the notice; and
 - (c) any order under paragraph (3); and
 - (d) the complaint; and
 - (e) any pleadings or affidavits filed and served in the proceeding; and
 - (f) any notice from the court; and
 - (g) 2 notices of defence in Form 8A, with any necessary modification.
- (6) Within the period for service of the third party notice on the third party a copy of the notice must be served on the plaintiff and on any other party who has given notice of defence.
- (7) If a copy of the third party notice is not served in accordance with paragraph (6), the Court may, on application by the plaintiff or the third party, order that the questions between the plaintiff and the defendant be determined before and separately from the questions between the defendant and the third party.

11.08 * * * * *

11.09 Defence of third party

- (1) A third party must give notice of defence to the statement of claim endorsed on the third notice within 21 days after being served with a third party notice.

-
- (2) The third party may give notice of defence to the statement of claim of the plaintiff by which the third party disputes the liability to the plaintiff of the defendant by whom the third party was joined on any ground not raised by that defendant in the defendant's defence.
 - (3) If a third party gives notice of defence, the defendant by whom the third party was joined must serve on the third party—
 - (a) a copy of any pleading that may from time to time thereafter be served between the plaintiff and that defendant; and
 - (b) a copy of any document the defendant has received from the Court and may thereafter be received from the Court from time to time.

Note

The provisions applying to pleadings under Order 13 also apply to claims by third party notice by reason of the operation of Rule 13.09.

11.10 Counterclaim by third party

- (1) A third party who has a claim against the defendant may assert the claim in the proceeding by way of counterclaim and Rule 10.02 applies as if the claim by third party notice were a proceeding commenced by a complaint.
- (2) A third party who counterclaims may join the plaintiff as defendant to the counterclaim along with the defendant if the plaintiff and defendant could be joined properly as defendants in accordance with Rule 9.02 in a separate proceeding brought against them by the third party.

11.11 Default by third party

- (1) If at the time any final order is made for the plaintiff against the defendant by whom the third party was joined the third party has not given notice of defence, and the time limited for filing a notice of defence has expired—
 - (a) the third party must be taken to admit any claim stated in the third party notice and must be bound by the final order between the plaintiff and the defendant in so far as it is relevant to any claim or question stated in the notice;
 - (b) the defendant may at any time after satisfaction of that final order or, with the leave of the Court, before satisfaction, enter a final order against the third party for any contribution or indemnity claimed in the notice, and with the leave of the Court, for any other relief or remedy claimed therein.
- (2) If a third party or the defendant by whom the third party was joined fails to serve any pleading within the time limited, the Court may make such final order for the party not in default or make such order it thinks fit.
- (3) The Court may set aside or vary any order under paragraph (1)(b) or (2).

11.12 Discovery and hearing

If the third party gives notice of defence—

- (a) the third party and the defendant by whom the third party was joined may have discovery of one another; and
- (b) unless the Court otherwise orders—
 - (i) the third party may attend and take part at the hearing of the proceeding;

- (ii) at the hearing questions between the defendant and the third party must be tried concurrently with the questions between the plaintiff and the defendant; and
- (iii) the third party will be bound by the result of the hearing.

11.13 Third party directions

- (1) If the third party gives notice of defence, the Court may make any order or give any direction as follows—
 - (a) if the liability of the third party to the defendant by whom the third party was joined as third party is established, make a final order for that defendant against the third party;
 - (b) order that any claim or question stated in the third party notice be heard in such manner as it directs;
 - (c) give the third party leave—
 - (i) to defend the proceeding, either alone or jointly with any defendant; or
 - (ii) to attend and take part at the hearing;
 - (d) generally make such orders and give such directions—
 - (i) as are necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated upon; and
 - (ii) as to the extent to which the third party is to be bound by any order or decision in the proceeding.

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- (2) The Court may make any order or give any direction under paragraph (1) either before or after any final order in the proceeding has been made for the plaintiff against the defendant, and may at any time vary or rescind any such order or direction.

11.14 Final order between defendant and third party

- (1) If a third party has been joined under this Order, the Court may at or after the hearing of the proceeding or on its determination otherwise than by hearing make a final order for the defendant by whom the third party was joined against the third party or for the third party against that defendant.
- (2) If a final order is made for the plaintiff against the defendant and a final order is made for that defendant against a third party, unless the Court otherwise orders, the final order against the third party must not be enforced until the order against the defendant has been satisfied.

11.15 Claim against another party

- (1) If a party claims as against another party to the proceeding any relief of the kind described in Rule 11.01, the party may make the claim against the other party by filing and serving a notice in accordance with this Rule—
- (a) within 30 days after the service on the party of the document in the proceeding by which the claim in respect of which the notice is served was made; or
- (b) if when the document was served the other party was not a party, then within 30 days after the party became a party.
- (2) Paragraph (1) does not apply if the claim could be made by counterclaim in the proceeding.

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- (3) No notice of defence to a notice under paragraph (1) is necessary if the party on whom it is served has given notice of defence in the proceeding or is a plaintiff, but otherwise this Order, with any necessary modification, applies as if—
- (a) the defendant had filed and served a third party notice under Rule 11.01; and
 - (b) the party on whom the notice is served were a third party joined under that Rule.
- (4) Except as provided by paragraph (5), a notice under paragraph (1) must, with any necessary modification—
- (a) be in accordance with Form 11A; and
 - (b) be indorsed with a statement of claim.
- (5) If a party claims against another party to the proceeding contribution pursuant to Part IV of the **Wrongs Act 1958**, a notice under paragraph (1) must be in accordance with Form 11B.

11.16 Fourth and subsequent parties

- (1) If a third party has given notice of defence, this Order applies, with any necessary modification, as if the third party were a defendant.
- (2) If a person joined as a party (in this Order called a ***fourth party***) by a third party under this Order has given notice of defence, this Order as applied by this Rule is to have effect as regards such further person and any other further person or persons so joined and so on successively.
- (3) A third or subsequent party may not make a claim against another person whether that person is a party to the proceeding or not by notice under this Order without the leave of the Court.

11.17 Counterclaim

If a defendant has served a counterclaim, this Order applies, with any necessary modification, as if the defendant were the plaintiff and the plaintiff were the defendant.

ORDER 12

INTERPLEADER

12.01 Definitions

In this Order—

claimant means a person making a claim to or in respect of property in dispute;

execution creditor means a person for whom a warrant is issued;

property in dispute means any debt or other property which is the subject of proceedings under this Part;

sheriff includes a person to whom a warrant of execution is directed;

stakeholder means an applicant under Rule 12.02(1);

warrant means warrant of execution under these Rules.

12.02 Stakeholder's interpleader

(1) If—

- (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and
- (b) the person is sued or expects to be sued in any court for or in respect of the debt or property by 2 or more persons making adverse claims to or in respect of the debt or property—

the Court may, on application by that person, grant relief by way of interpleader.

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- (2) If a stakeholder is sued in a proceeding in the Court for or in respect of the property in dispute, an application under paragraph (1) may be made by summons in the proceeding.
 - (3) A summons under paragraph (2)—
 - (a) must be served on each party to the proceeding who is a claimant; and
 - (b) must be served personally on each claimant who is not a party; and
 - (c) must be in the form of Form 12A.
 - (4) If paragraph (2) does not apply, an application under paragraph (1) must be commenced by complaint in which all claimants are joined as defendants.

12.03 Sheriff's interpleader

- (1) If a sheriff takes or intends to take any personal property under a warrant, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice in writing of that person's claim to the sheriff.
- (2) A notice of claim under paragraph (1) must—
 - (a) state the name and address of the claimant, which address is the address for service;
 - (b) identify each item of personal property the subject of the claim; and
 - (c) state the grounds of the claim.

12.04 Sheriff's summons to state claim

- (1) If a person who is entitled to give notice under Rule 12.03 does not, within a reasonable time after having knowledge of the facts, give notice under that Rule, the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by that person of

proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the warrant after the time when that person might reasonably have given notice under the Rule.

- (2) A sheriff may apply for an order under paragraph (1) by summons in the proceeding in which the warrant is issued and, if a sheriff so applies, the sheriff must serve the summons personally on the person against whom the order is sought.

12.05 Notice to execution creditor

- (1) On being given a notice of claim under Rule 12.03, a sheriff must serve forthwith—
- (a) a copy of the notice; and
 - (b) a notice in the form of Form 12B on the execution creditor.
- (2) The execution creditor may serve on the sheriff notice in writing that the execution creditor admits or disputes the claim.

12.06 Admission of claim

If an execution creditor admits a claim by notice under Rule 12.05(2)—

- (a) the execution creditor is not liable for any fees or expenses incurred by the sheriff under the warrant after the notice is given;
- (b) the sheriff must withdraw from possession of the property claimed;
- (c) the Court, on application by the sheriff, may restrain the commencement or stay or may restrain the continuance by the person whose claim is admitted of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the warrant.

12.07 Interpleader summons

- (1) If under Rule 12.05 a sheriff has served a notice of claim on the execution creditor, the sheriff, by summons in the proceeding in which the warrant is issued may apply to the Court for relief by way of interpleader if the execution creditor—
 - (a) does not within 5 days after the service of the notice under Rule 12.05 serve on the sheriff notice in writing that the execution creditor admits the claim; or
 - (b) within that period of 5 days serves on the sheriff notice in writing that the execution creditor disputes the claim—and the Court may, if the claim has not been withdrawn, grant relief by way of interpleader.
- (2) A summons under paragraph (1)—
 - (a) must be served on each party to the proceeding who claims an interest in the property in dispute; and
 - (b) must be served personally on each claimant who is not a party; and
 - (c) must be in the form of Form 12C.

12.08 Powers of Court

On application for relief by way of interpleader the Court may—

- (a) if a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute—
 - (i) order that any claimant be added as a defendant in that proceeding in addition to or in substitution for the applicant; or
 - (ii) order that the proceeding be stayed or dismissed;

- (b) order that a question between the claimants be stated and heard and direct which of the claimants is to be plaintiff and which defendant;
- (c) order the applicant—
 - (i) to pay or transfer any of the property in dispute into court; or
 - (ii) otherwise to dispose of any of the property;
- (d) if a claimant claims to be entitled by way of security for debt to any of the property in dispute, make orders for the sale of any of the property and for the application of the proceeds of sale;
- (e) summarily determine any question of fact or law arising on the application;
- (f) make such order as it thinks fit.

12.09 Default by claimant

- (1) If—
 - (a) a claimant has been given due notice of the hearing of an application for relief by way of interpleader and does not attend on the hearing; or
 - (b) a claimant does not comply with an order made on such an application—the Court may order that the claimant and all persons claiming under the claimant be barred from prosecuting the claimant's claim against the applicant and all persons claiming under the applicant.
- (2) An order under paragraph (1) must not affect the rights of the claimants as between themselves.

12.10 Neutrality of applicant

- (1) If a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or make an order against the applicant unless the Court is satisfied that the applicant—
 - (a) claims no interest in the property in dispute except for charges or costs; and
 - (b) does not collude with any claimant.
- (2) If a sheriff applies for relief by way of interpleader, the Court—
 - (a) may require the sheriff to satisfy the Court on the matters mentioned in paragraph (1); and
 - (b) may, if not satisfied on those matters, dismiss the application.
- (3) Nothing in this Rule must affect the power of the Court in other cases to dismiss the application or to make an order against the applicant.

12.11 Order in several proceedings

- (1) If an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any of the property in dispute, the Court may make an order in any 2 or more of those proceedings.
- (2) An order made under paragraph (1) must be entitled in all the proceedings in which it is made and must be binding on all the parties to them.

12.12 Hearing of interpleader question

- (1) Order 49 applies, with any necessary modification, to the hearing of an interpleader question.

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- (2) On the hearing of an interpleader question the Court may finally determine all questions arising on the application for relief by way of interpleader.
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ORDER 13

PLEADINGS

13.01 Statement of claim

- (1) A statement of claim must—
 - (a) contain, in a summary form, a statement of all material facts on which the plaintiff relies, but not evidence by which those facts are to be proved;
 - (b) contain the necessary particulars of every fact or matter;
 - (c) if the claim arises by or under any Act, identify the specific provision of the Act that is relied on;
 - (d) state specifically the amount or other relief or remedy sought;
 - (e) state the place where and the date when the claim arose.
- (2) A statement of claim may make inconsistent allegations of fact, if it makes clear that the allegations are made in the alternative.
- (3) A statement of claim must be divided into paragraphs numbered consecutively, and each fact or matter stated, so far as practicable, must be contained in a separate paragraph.

13.02 Defence

- (1) A defence must state which of the facts stated in the statement of claim are—
 - (a) admitted;
 - (b) denied;
 - (c) not admitted.

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- (2) A defendant who, in the defence, does not state whether a fact stated in the statement of claim is—
- (a) admitted;
 - (b) denied;
 - (c) not admitted—
- must be taken to admit the fact.
- (3) A defendant who states that a fact stated in the statement of claim is denied must—
- (a) give reasons for denying the fact; and
 - (b) if the defendant intends to prove a fact different from that stated in the statement of claim, state, with necessary particulars, the fact that the defendant intends to prove.
- (4) Save with the leave of the Court, a defendant who states that a fact stated in the statement of claim is not admitted must not, except in cross-examination, adduce any evidence with respect to that fact at the hearing of the proceedings.
- (5) The defendant must state specifically, with particulars, any fact or matter which—
- (a) makes the claim of the plaintiff not maintainable; or
 - (b) if not stated specifically, might take the plaintiff by surprise; or
 - (c) raises questions of fact not arising out of the statement of claim.
- (6) If the defence arises by or under any Act, the defence must identify the specific provision relied on.
- (7) A defence must be divided into paragraphs numbered consecutively, and each fact or matter stated, so far as is practicable, must be contained in a separate paragraph.
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- (8) The defendant cannot rely on the defence of tender unless, within 7 days after giving notice of defence, the defendant pays to the registrar the amount alleged to have been tendered.

13.03 Reply

- (1) If the defendant serves a notice of defence, and the plaintiff intends at the hearing to prove or establish any fact or matter which—
- (a) makes the defence stated in the notice of defence not maintainable; or
 - (b) if not stated specifically in the notice, might take the defendant by surprise; or
 - (c) raises questions of fact not arising out of the notice—

the plaintiff must serve and file a reply.

- (2) A reply must be divided into paragraphs numbered consecutively, and each fact or matter stated so far as practicable must be contained in a separate paragraph.
- (3) A reply must be served and filed within 21 days after service of the notice of defence.

13.04 Alternative allegations

The defendant in a defence and the plaintiff in a reply may make inconsistent allegations of fact if it is made clear that the allegations are made in the alternative.

13.05 Particulars from plaintiff

- (1) The defendant may give notice to the plaintiff that the defendant requires further particulars of the plaintiff's claim.

- (2) A notice seeking further particulars must be in writing and must specify the alleged facts or matters in respect of which further particulars are required.

13.06 Particulars from defendant

- (1) The plaintiff may give notice to the defendant that the plaintiff requires further particulars of the defendant's defence.
- (2) A notice seeking further particulars must be in writing and must specify the alleged facts or matters in respect of which further particulars are required.

13.07 Time for giving notice

Unless the Court otherwise orders, a notice under Rule 13.05 or 13.06 must not be given more than 14 days after the day on which notice of defence is given.

13.08 Particulars to be filed

Within 14 days of receiving a notice requiring particulars, a party must file and serve the further particulars.

13.09 Counterclaim and third party claim

This Order applies, with any necessary modification, to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.

13.10 Failure to give particulars

- (1) If a party fails to comply with a notice requiring further particulars, the Court may make an order—
 - (a) requiring the party to provide the further particulars within a time specified by the Court; or

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- (b) requiring the party to provide the further particulars within a time specified by the Court and on failure to do so—
 - (i) if the party is a plaintiff, that the complaint be dismissed; or
 - (ii) if the party is a defendant, that the party's notice of defence, if any, be struck out; or
 - (c) if the party is a plaintiff, that the complaint be dismissed; or
 - (d) if the party is a defendant, that the party's notice of defence, if any, be struck out.
- (2) A defendant whose notice of defence is struck out in accordance with paragraph (1)(b)(ii) or (1)(d) must, for the purpose of Rule 21.01, be taken to be a defendant who does not give notice of defence.
 - (3) An application for an order under paragraph (1) must be made before the day fixed for hearing of the complaint.
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ORDER 14

SERVICE OF PLEADINGS

* * * * *

ORDER 15

PERSON UNDER DISABILITY

15.01 Definition

In this Order—

handicapped person means a person who is incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the proceeding;

person under disability means a minor or handicapped person.

15.02 Litigation guardian of person under disability

- (1) Except if otherwise provided by or under any Act, a person under disability must commence or defend a proceeding by his or her litigation guardian.
- (2) Except if otherwise provided by these Rules, anything in a proceeding that is required or permitted by the Rules to be done by a party must or may, if the party is a person under disability, be done by his or her litigation guardian.
- (3) A litigation guardian of a person under disability must act by an Australian lawyer.

15.03 Appointment of litigation guardian

- (1) A person may be a litigation guardian of a person under disability if—
 - (a) that person is not himself or herself a person under disability; and
 - (b) he or she has no interest in the proceeding adverse to that of the person under disability.

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- (2) If a person is authorised by or under any Act to conduct legal proceedings in the name of or on behalf of a person under disability, that person must, unless the Court otherwise orders, be entitled to be litigation guardian of the person under disability in any proceeding to which that person's authority extends.
 - (3) If after a proceeding is commenced a party to the proceeding becomes a person under disability, the Court must appoint a litigation guardian of that party.
 - (4) If the interests of a party who is a person under disability so require, the Court may—
 - (a) appoint or remove a litigation guardian; or
 - (b) substitute another person as litigation guardian.
 - (5) If a party has a litigation guardian in a proceeding, no other person must act as litigation guardian, unless the Court otherwise orders.
 - (6) If a litigation guardian has been appointed by the Court, the name of a person must not be used in a proceeding as litigation guardian of a person under disability unless there is first filed in the Court—
 - (a) the written consent of the person to be the litigation guardian; and
 - (b) a certificate by the Australian lawyer for the person under disability certifying that the Australian lawyer knows or believes that—
 - (i) the person to whom the certificate relates is a person under disability, giving the grounds of the Australian lawyer's knowledge or belief; and

- (ii) the litigation guardian of the person under disability has signed the said written consent and has no interest in the proceeding adverse to that person.

15.04 No notice of defence given by person under disability

If a defendant who is a person under disability does not give notice of defence, the plaintiff must not continue the proceeding unless a person—

- (a) is made litigation guardian of the defendant in accordance with Rule 15.03(6); or
- (b) is appointed litigation guardian by order of the Court.

15.05 Application to discharge or vary certain orders

An application to the Court on behalf of a person under disability served with an order made without notice under Rule 9.09 for the discharge or variation of the order must be made—

- (a) if a litigation guardian is acting for that person in the proceeding in which the order is made, within 10 days after the service of the order on that person;
- (b) if no litigation guardian is acting for that person in that proceeding, within 10 days after the appointment of a litigation guardian to act for the person under disability.

15.06 Pleading admission by person under disability

A person under disability must not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party unless in his or her pleading the person under disability states that the allegation is admitted.

15.07 Discovery

- (1) Subject to paragraph (2), a party is entitled to have discovery of a person under disability as if that person were not under disability.
- (2) The discovery must be given by the person under disability or his or her litigation guardian, whichever is appropriate.

15.08 Compromise of claim by a person under disability

- (1) If in a proceeding a claim is made by or on behalf of or against a person under disability, no compromise, payment of money or acceptance of an offer of compromise under Order 26, whenever entered into or made, so far as it relates to that claim, is valid without the approval of the Court.
- (2) Application for approval must be by application filed not later than 30 days after the compromise, payment or acceptance.
- (3) A copy of an affidavit in support of the application need not be served.
- (4) The Court may dispense with the requirement of an application if application for approval is made at the hearing of the proceeding.
- (5) On the application, evidence must be given of the date of the compromise, payment or acceptance and the date of birth of the person under disability, and the dates must be stated in any order approving the compromise, payment or acceptance.
- (6) If the acceptance of an offer of compromise is approved, the person under disability must be taken to have made or accepted the offer at the time of approval.

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(7) Where an order is made approving a compromise by which money is to be paid to person under a disability, the form of order in Form 15A must, with appropriate modifications, be used.

15.09–15.10 * * * * *

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ORDER 16

EXECUTORS, ADMINISTRATORS AND TRUSTEES

* * * * *

ORDER 17

PARTNERS AND SOLE PROPRIETORS

17.01 Partners

- (1) If 2 or more persons carry on business as partners within Victoria, a proceeding may be commenced by or against them in the name of the firm (if any) of which they were partners when the cause of action accrued.
- (2) Paragraph (1) applies if partners sue or are sued by—
 - (a) any partner of the same firm;
 - (b) partners of another firm, and any partner of the one firm is a partner of the other.

17.02 Disclosure of partners

- (1) If a proceeding is commenced by or against partners in the firm name under Rule 17.01, any other party may by notice served at the address for service of the partners in the proceeding require the partners to disclose in writing within 14 days of service—
 - (a) the name and the address of the usual or last known place of residence or of business of each person constituting the firm at the time when the cause of action accrued; and
 - (b) whether since that time there has been any change and what change in the membership of the firm.
- (2) If partners fail to comply with a notice under paragraph (1), the Court may order—
 - (a) if the partners are plaintiffs, that the proceeding be dismissed;
 - (b) if the partners are defendants, that their notice of defence be struck out.

17.03 Service of complaint

- (1) A complaint in a proceeding commenced against partners in the firm name under Rule 17.01 may be served on—
 - (a) any one or more of the partners; or
 - (b) any person at the principal place of business of the partnership within Victoria who appears to have control or management of the partnership business there.
- (2) A complaint served under paragraph (1) must be taken to have been duly served on the partners whether or not any partner is out of Victoria.
- (3) If a partnership has, to the knowledge of the plaintiff, been dissolved before the proceeding against the partners has commenced, the complaint must be served on every person sought to be made liable in the proceeding.
- (4) Every person upon whom the complaint is served under paragraph (1) must be informed by notice in writing given at the time of service whether that person is served as a partner or as a person having the control or management of the partnership business or in both characters and, in default of such notice, the person served must be taken to be served as a partner.

17.04 Notice of defence of partners

Partners sued in the name of their firm may give a notice of defence individually in their own names, but the proceeding must, nevertheless, continue in the name of the firm.

17.05 No notice of defence except by partners

A person served with a complaint as a person having the control or management of the partnership business may not file a notice of defence unless that person is a partner.

17.06 Notice of defence under objection of person sued as partner

A person served with a complaint as a partner may file a notice of defence stating that—

- (a) he or she does so as a person served as a partner; and
- (b) that he or she denies that he or she was a partner at any material time or is liable as such.

17.07 Order against partners

- (1) An order made against a firm may be enforced against any or all of the persons who were members of the firm at the time the cause of action arose.
- (2) If a person is sued under this Order in a name or style other than the person's own name and an order is made against the person in that name or style, the order may be enforced against the person.
- (3) An enforcement proceeding must not be commenced under an order referred to in paragraph (1) or (2) against a person whose name is not mentioned in the order or complaint unless the person in whose favour the order was made files with the registrar an affidavit stating—
 - (a) the name and address of the person against whom it is proposed to commence the proceeding; and
 - (b) that, at the time the cause of action arose, that person was a member of the firm or was carrying on business in the name or style in which the order was made; and
 - (c) the proceeding it is desired to take under the order.

17.08 Enforcement between partners

An order made against partners suing or being sued in the name of their firm in a proceeding of a kind referred to in Rule 17.01(2)(a) or (b)—

- (a) must not be enforced without the leave of the Court; and
- (b) on application for leave, the Court may include an order that any necessary accounts and inquiries be taken and made.

17.09 Garnishee orders

A debt due or accruing due from partners may be attached under these Rules even though a partner is resident out of Victoria, so long as a partner or some person apparently having the control or management of the partnership business is within Victoria.

17.10 Person using the business name

Any person carrying on business within Victoria in a name or style other than that person's own may be sued in that name or style as if it were the name of a firm, and Rules 17.02 to 17.09 apply, with any necessary modification, as if that person were a partner and the name in which the person carries on business were the name of that person's firm.

17.11 * * * * *

ORDER 18

REPRESENTATIVE PROCEEDING

* * * * *

ORDER 18A

GROUP PROCEEDING

* * * * *

ORDER 19

NOTICE OF CONSTITUTIONAL MATTER

19.01 Definitions

In this Order—

State has the meaning given in section 78AA of the Act;

the Act means the Judiciary Act 1903 of the Commonwealth.

19.02 Notice

- (1) If a proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the Act, the party whose case raises the matter must, unless the Court directs another party to do so, immediately file a notice of a constitutional matter.
- (2) A notice under paragraph (1) must state—
 - (a) specifically the nature of the matter; and
 - (b) the facts showing that the matter is one to which paragraph (1) applies.
- (3) The notice must be in Form 19A.

19.03 Filing and service

- (1) Subject to paragraph (3), the party required or directed under Rule 19.02 to file the notice must serve a copy on—
 - (a) every other party; and
 - (b) the Attorney-General for the Commonwealth, if the Attorney-General or the Commonwealth is not a party; and
 - (c) the Attorney-General of each State, if the Attorney-General or that State is not a party.

-
- (2) Unless the Court otherwise orders, the copy must be served forthwith after the notice is filed.
 - (3) Service of a copy of the notice need not be effected on an Attorney-General if steps have been taken that could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General.
 - (4) The party serving a copy of the notice must forthwith file an affidavit of service.
-

ORDER 20

CHANGE OF AUSTRALIAN LAWYER

20.01 Notice of change

If an Australian lawyer acts for a party in a proceeding and the party changes that party's Australian lawyer, the party must immediately—

- (a) file notice of the change; and
- (b) serve a copy of the notice on the other parties and, if practicable, the party's former Australian lawyer.

20.02 Party appointing Australian lawyer

If a party who has no Australian lawyer in a proceeding appoints an Australian lawyer to act for that party in the proceeding, the Australian lawyer must immediately—

- (a) file notice of the appointment; and
- (b) serve a copy of the notice on the other parties.

20.03 Australian lawyer ceasing to act

- (1) If an Australian lawyer ceases to act for a party in a proceeding, unless a notice of change is filed and served under Rule 20.01, the Australian lawyer must immediately—

- (a) file notice that the Australian lawyer has ceased to act; and
 - (b) serve a copy on all parties.

- (2) A notice under paragraph (1) must state the address of the party last known to the Australian lawyer.

20.04 Removal of Australian lawyer from record

- (1) If—
- (a) an Australian lawyer who has acted for a party in a proceeding—
 - (i) has died or become bankrupt or cannot be found; or
 - (ii) has ceased to have the right of practising in the Court; or
 - (iii) for any other reason has ceased to practise; and
 - (b) the party has not given notice under Rule 20.01 or the Australian lawyer has not given notice under Rule 20.03—

the Court, on application made by any other party to the proceeding, may by order declare that the Australian lawyer has ceased to be the Australian lawyer acting for the first-mentioned party in the proceeding.

- (2) An application under paragraph (1) must be made by application supported by affidavit stating the facts on which the application is made and, unless the Court otherwise orders, the application and a copy of the affidavit must be served on the party to whose Australian lawyer the application relates.
- (3) If an order is made under paragraph (1), the party on whose application it was made must immediately—

- (a) serve a copy of the order on every other party to the proceeding; and
- (b) file an affidavit of service.

20.05 Address for service

- (1) The address for service of a party—
 - (a) who changes the party's Australian lawyer and files and serves notice under Rule 20.01, is the business address of the new Australian lawyer;
 - (b) who appoints an Australian lawyer in the circumstances referred to in Rule 20.02, is the business address of the Australian lawyer;
 - (c) for whom an Australian lawyer has ceased to act, if notice is filed and served by the Australian lawyer under Rule 20.03 without leave, is the address stated in the notice.
- (2) If the Court under Rule 20.04(1) by order declares that an Australian lawyer has ceased to act, the Court may by order direct an address to be the address for service of the party for whom the Australian lawyer has ceased to act.
- (3) If the Court makes no order under paragraph (2), any document in the proceeding which is not required to be served personally may be served on the party for whom the Australian lawyer has ceased to act by filing it.
- (4) A party who serves a document by filing in accordance with paragraph (3) must indorse on the back of the last sheet a statement that the document is filed as such service.

**20.06 Death, retirement etc. of Victorian or Australian
Government Solicitor**

If the person who occupies or acts in the office of Victorian Government Solicitor or the Australian Government Solicitor acts as an Australian lawyer for a party in a proceeding and the person so acting dies or retires or otherwise ceases to occupy or act in that office, it is not necessary to file and serve notice under Rule 20.01.

ORDER 21

ORDER IN DEFAULT OF DEFENCE OR COMPLIANCE

PART 1—ORDER IN DEFAULT OF DEFENCE

21.01 Plaintiff may apply for order

- (1) If a defendant does not give notice of defence within 21 days after the service of a complaint or any other time fixed by the Court for giving notice of defence, the plaintiff may apply for an order.
- (2) An application under paragraph (1) must be—
 - (a) in Form 21A; or
 - (b) subject to Rule 21.03, made by electronic message by an authorised user.

21.02 Affidavit required

An application under Rule 21.01 to which Rule 21.01(2)(a) applies must be filed with the registrar and must be accompanied by—

- (a) if the claim—
 - (i) is for a debt or liquidated demand; or
 - (ii) is a claim arising from a motor vehicle collision and the claim is—
 - (A) for the cost of repairs only; or
 - (B) for total loss of the vehicle only—an affidavit or declaration of service of the complaint; and
- (b) in any other case—
 - (i) an affidavit or declaration of service of the complaint;

- (ii) an affidavit or affidavits verifying the complaint and the nature and extent of the injury loss or damage suffered by the plaintiff.

21.03 Application by electronic message

- (1) An application under Rule 21.01 to which Rule 21.01(2)(b) applies may be filed by an authorised user by lodging an electronic message where the claim is for a debt or liquidated demand.
- (2) The authorised user lodging the electronic message must possess, at the time of lodging the electronic message, an affidavit or declaration of service of the complaint to which the electronic message relates.
- (3) The electronic message must contain a statement containing the following details obtained from the affidavit or declaration of service—
 - (a) name and address of person who effected service;
 - (b) mode of service;
 - (c) identity of person served;
 - (d) hour of the day, day of the week, date and place of service;
 - (e) distance travelled by person who effected service;
 - (f) date and place of swearing; and
 - (g) name and authorisation of person before whom affidavit was sworn or declaration was declared.
- (4) If requested to do so by the Court or the registrar, the authorised user must file the affidavit or declaration of service.

21.04 Registrar may make order or refer to Court

- (1) If an application has been made to which Rule 21.02(a) or Rule 21.03(1) applies and the registrar is satisfied that an order should be made, the registrar must make such an order.
- (2) In an application under paragraph (1) the registrar must fix the amount of costs and interest as is appropriate in the circumstances in accordance with Appendix A.
- (3) If an application has been made to which Rule 21.02(a) or Rule 21.03(1) applies and the registrar is not satisfied that an order should be made, the registrar may, or if the plaintiff so requests must, refer the matter to the Court for decision.
- (4) If an application has been made to which Rule 21.02(b) applies, the registrar must refer the matter to the Court for decision.
- (5) If the registrar refers an application to the Court, the Court may—
 - (a) make the order sought in the application;
 - (b) direct that a further affidavit or affidavits be filed;
 - (c) give directions as to the application;
 - (d) refuse to make the order sought in the application;
 - (e) make any other order it considers appropriate.
- (6) If the Court, under paragraph (5)(b), directs a further affidavit or affidavits to be filed, upon the filing of such affidavit or affidavits, the registrar may make an order.

- (7) The registrar must notify the plaintiff of any order made by him or her or (if the application has been referred to the Court) any decision or order of the Court.

21.05 Proceeding continued against other defendants

A plaintiff who obtains an order against a defendant in accordance with this Order may enforce the order and continue the proceeding against any other defendant.

21.06 Default of defence to counterclaim

If a defendant serves a counterclaim, Rule 21.01 applies as if—

- (a) the defendant were the plaintiff;
- (b) a reference to the notice of defence in that Rule were a reference to the notice of defence to the counterclaim; and
- (c) the plaintiff were the defendant.

21.07 Setting aside order

Subject to Rule 46.08, the Court may set aside or vary any order made in accordance with this Order.

PART 2—ORDER IN DEFAULT OF COMPLIANCE

21.08 Defendant may apply for costs order

- (1) If a complaint is dismissed under—
- (a) Rule 13.10(1)(b)(i) or Rule 13.10(1)(c);
 - (b) Rule 24.02(1)(a);
 - (c) Rule 29.12.1(3)(a) or Rule 29.12.1(4);
 - (d) Rule 30.09.1(3)(a) or Rule 30.09.1(4);
 - (e) Rule 50.02(6)(a); or

(f) Rule 50.07(1)(a)—

the defendant may apply for an order for costs.

- (2) An application under paragraph (1) must be in Form 21B.

21.09 Applications under Rule 21.08

- (1) An application under Rule 21.08 must be filed with the registrar.
- (2) Where the complaint is dismissed under Rule 13.10(1)(b)(i), Rule 29.12.1(3)(a) or Rule 30.09.1(3)(a) the application under paragraph (1) must be accompanied by an affidavit in support of the order(s) sought in the application.

21.10 Registrar may make order or refer to Court

- (1) If an application has been made under Rule 21.08 and the registrar is satisfied that an order should be made, the registrar must make such an order and must fix the amount of costs as is appropriate in the circumstances in accordance with Appendix A.
- (2) If an application has been made under Rule 21.08 and the registrar is not satisfied that an order should be made, the registrar may, or if the defendant so requests must, refer the matter to the Court for decision.
- (3) If the registrar refers an application to the Court, the Court may—
- (a) make the order sought in the application;
 - (b) direct that a further affidavit or affidavits be filed;
 - (c) give directions as to the application;
 - (d) refuse to make the order sought in the application;

- (e) make any other order it considers appropriate.
- (4) If the Court, under paragraph (3)(b), directs a further affidavit or affidavits to be filed, upon the filing of the affidavit or affidavits, the registrar may make an order.
- (5) The registrar must notify the defendant of any order made by him or her or (if the application has been referred to the Court) any decision or order of the Court.

PART 3—DISMISSAL OF CERTAIN PROCEEDINGS

21.11 Dismissal of complaints

- (1) A complaint stands dismissed as against any defendant at the expiration of 3 months after the period of the validity for service of the complaint, or, if that period has been extended, after the expiration of any extension of the period, if, at the time of expiration, that defendant has not filed a notice of defence and an order in default of defence has not been made against that defendant.
- (2) The Court may from time to time, by order, extend the period of 3 months referred to in paragraph (1) for a period of not more than 6 months after the day of the order.
- (3) If an order is made under paragraph (2), the period of 3 months in paragraph (1) is to be taken to be substituted by the extended period ordered by the Court.

21.12 Dismissal of certain adjourned proceedings

A complaint, counterclaim or third party procedure that is adjourned to a day to be fixed (however expressed) stands dismissed at the expiration of 6 years after the adjournment of the complaint, counterclaim or third party procedure.

21.13 Reinstatement

- (1) The Court may reinstate any complaint that stands dismissed by operation of Rule 21.11.
 - (2) The Court may reinstate any—
 - (a) complaint; or
 - (b) counterclaim; or
 - (c) third party procedure—that stands dismissed by operation of Rule 21.12.
-

ORDER 22

SUMMARY ORDER

22.01 Application

This Order applies only to a claim or counterclaim for a debt or liquidated demand.

22.02 Application for an order

- (1) If the defendant has given a notice of defence, the plaintiff may at any time apply to the Court for an order against the defendant on the ground that the defendant has no defence to the whole or part of the claim, or no defence except as to the amount of the claim.
- (2) An application under paragraph (1) must be in Form 22A.
- (3) The application must be filed and, on filing, the application must be taken to have been made.
- (4) An affidavit or affidavits in support of the application must be filed before the hearing of the application.
- (5) Except by order of the Court, the plaintiff may make only one application for an order under paragraph (1).

22.03 Affidavit in support

- (1) An application for an order must be supported by an affidavit verifying the facts on which the claim or part of the claim to which the application relates is based and stating that in the belief of the deponent there is no defence to that claim or part, or no defence except as to the amount claimed.

- (2) If a statement in a document tends to establish a fact within paragraph (1) and at the hearing of the proceeding the document would be admissible by or under the **Evidence (Miscellaneous Provisions) Act 1958** or any other Act to verify the fact, the affidavit under paragraph (1) may set forth the statement.
- (3) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out and having regard to all the circumstances the Court considers that the statement ought to be permitted.
- (4) The plaintiff must serve the application and a copy of the affidavit or affidavits in support and of any exhibit referred to therein on the defendant not less than 14 days before the day for hearing named in the application.

22.04 Defendant to show cause

- (1) The defendant may show cause against the orders sought in the application by affidavit or otherwise to the satisfaction of the Court.
- (2) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out.
- (3) Unless the Court otherwise orders, the defendant must serve a copy of any affidavit and of any exhibit referred to therein on the plaintiff not less than 3 days before the day for hearing named in the application.

22.05 Affidavit in reply

If the defendant serves an affidavit under Rule 22.04, the Court may by order allow the plaintiff to rely upon an affidavit in reply.

22.06 Hearing of application

- (1) On the hearing of the application the Court may—
 - (a) dismiss the application;
 - (b) make an order in favour of the plaintiff against the defendant on the claim or part of the claim unless the defendant satisfies the Court that in respect of that claim or part a question ought to be heard and determined at a hearing or that there ought for some other reason be a hearing of that claim or part;
 - (c) give the defendant leave to defend with respect to the claim or part of the claim either unconditionally or on terms as to giving security, paying money into court, time, the mode of hearing or otherwise.
- (2) The Court may stay execution of any order made under paragraph (1)(b) until after the hearing of any counterclaim made by the defendant in the proceeding.

22.07 Cross-examination on affidavit

- (1) The Court may order any party or the maker of any affidavit to attend and be examined and cross-examined, or to produce any papers, books or documents, or copies of or extracts therefrom.
- (2) If a party is a corporation, the Court may make an order under paragraph (1) in respect of any director, manager, secretary or other similar officer thereof or any person purporting to act in any such capacity.

22.08 Order on counterclaim

- (1) If a plaintiff has given a notice of defence to a counterclaim, the defendant may at any time apply to the Court for an order against the plaintiff on the ground that the plaintiff has no defence to the

whole or part of the counterclaim or no defence except as to the amount of the counterclaim.

- (2) This Part applies, with any necessary modification, to an application under paragraph (1) as if the plaintiff were the defendant and the defendant the plaintiff.

22.09 * * * *

22.10 Order where debt amount unascertained

If on an application under this Order for determination of a claim for a debt the amount of the debt is not established to the satisfaction of the Court, and where if the amount were established the Court would make an order, the Court may—

- (a) make a declaration as to liability for the debt and order that its amount be ascertained in such manner as the Court directs; and
- (b) give leave to apply for an order for the debt once the amount is ascertained.

22.11 Directions

If leave is given to defend, or if an order is made on a claim or part of a claim but execution of the order is stayed pending the hearing of a counterclaim or of the proceeding, as the case may be, the Court may give directions as to the further conduct of the proceeding.

22.12 Continuing for other claim or against other defendant

If a plaintiff obtains an order on a claim or part of a claim against any defendant, the plaintiff may continue with the proceeding for the remainder of the claim or any other claim against that defendant or any other defendant.

22.13–22.14 * * * *

22.15 Setting aside order

The Court may set aside or vary any order given against a party who does not attend on the hearing of an application under Rule 22.02 or 22.08 and may give directions as to the future conduct of the proceeding.

ORDER 23

**SUMMARY STAY OR DISMISSAL OF CLAIM AND
STRIKING OUT STATEMENT OF CLAIM OR DEFENCE**

23.01 Stay or order in proceeding

- (1) If a proceeding generally or any claim in a proceeding—
 - (a) does not disclose a cause of action; or
 - (b) is scandalous, frivolous or vexatious; or
 - (c) is an abuse of the process of the Court—the Court may upon the application of a defendant who has filed a defence stay the proceeding generally or in relation to any claim or make an order for the defendant in the proceeding generally or in relation to any claim.
- (2) If the defence to any claim in a proceeding—
 - (a) does not disclose an answer; or
 - (b) is scandalous, frivolous or vexatious—the Court may make an order for the plaintiff in the proceeding generally or in relation to any claim.
- (3) In this Rule a claim in a proceeding includes a claim by counterclaim and a claim by third party notice, and a defence includes a defence to a counterclaim and a defence to a claim by third party notice.

23.02 Striking out pleading

- (1) If a statement of claim, defence or reply or any part of a statement of claim, defence or reply—
 - (a) does not disclose a cause of action or defence;
 - (b) is scandalous, frivolous or vexatious;

(c) may prejudice, embarrass or delay the fair hearing of the proceeding; or

(d) is otherwise an abuse of the process of the Court—

the Court may order that the whole or part of the statement of claim, defence or reply be struck out or amended.

- (2) This Rule, with any necessary modification, applies where the defendant counterclaims or claims against a third party.

23.03 Summary order

On application by a defendant who has filed a notice of defence, the Court at any time may make an order for that defendant against the plaintiff if the defendant has a good defence on the merits.

23.04 Affidavit evidence

- (1) On an application under Rule 23.01 or 23.03 evidence is admissible for any party by affidavit or, if the Court thinks fit, orally.
- (2) On an application under Rule 23.02 no evidence is admissible on the question whether a claim or pleading offends against that Rule.
- (3) Rule 22.07 applies to an affidavit under paragraph (1).

23.05 * * * *

ORDER 24

**ORDER ON FAILURE TO PROSECUTE OR OBEY ORDER
FOR PARTICULARS OR DISCOVERY**

24.01 Order on dismissal

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

24.02 Failure to obey order

- (1) Where a party fails to comply with an order to give particulars of any pleading or with an order for the discovery or inspection of documents or for answers to interrogatories, the Court may order—
 - (a) if the party is the plaintiff, that the proceeding be dismissed;
 - (b) if the party is a defendant, that the defendant's defence, if any, be struck out.
- (2) A defendant whose defence is struck out in accordance with paragraph (1)(b) must, for the purpose of Rule 21.01(1), be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.

24.03 Stay on non-payment of costs

Where—

- (a) a proceeding is dismissed for want of prosecution and the plaintiff is liable to pay the costs of the defendant of the proceeding; and

- (b) the plaintiff, before paying those costs commences another proceeding for the same, or substantially the same, cause of action—

the Court may by order stay the proceeding until those costs are paid.

24.04 Counterclaim and third party claim

This Order applies, with any necessary modification, to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.

24.05 * * * * *

24.06 Setting aside order

The Court may set aside or vary—

- (a) an order under this Order;
- (b) a final order made or given upon the failure of a party to do any act or take any step which under these Rules the party is required to do or take or to comply with an order that the party do any such act or take any such step.

ORDER 25

DISCONTINUANCE AND WITHDRAWAL

Rule 25.01
amended by
S.R. No.
36/2011 rule 9
(ILA s. 39B(2)).

Rule 25.01(2)
inserted by
S.R. No.
36/2011 rule 9.

25.01 Withdrawal of notice of defence

- (1) A party who has filed a notice of defence in a proceeding may withdraw the notice of defence at any time with the leave of the Court.
- (2) Despite paragraph (1), a party who has filed a notice of defence in a proceeding in which the monetary amount sought is less than the amount set out in section 102(1) of the Act may withdraw the notice of defence at any time without the leave of the Court.

25.02 Discontinuance or withdrawal of proceeding or claim

- (1) A plaintiff may discontinue a proceeding or withdraw any part of it at any time, by leave of the Court or with the consent of all other parties.
- (2) A defendant may discontinue a counterclaim or withdraw any part of it at any time, by leave of the Court or with the consent of all other parties to the counterclaim.
- (3) At any time the plaintiff may withdraw a notice of defence to counterclaim or any part of it and a defendant may withdraw the defendant's notice of defence or any part of it.
- (4) Paragraph (3) does not enable a party to withdraw an admission or any other matter operating for the benefit of another party without the consent of that party or the leave of the Court.
- (5) A defendant who has joined a third party may discontinue the claim made against the third party by the third party notice or withdraw any part of the claim at any time by leave of the Court or with the consent of the third party.

25.02.1 Small claims—discontinuance or withdrawal of proceeding or claim

Rule 25.02.1
inserted by
S.R. No.
36/2011
rule 10.

- (1) Despite Rule 25.02(1), a plaintiff may discontinue a proceeding in which the monetary relief sought is less than the amount set out in section 102(1) of the Act or withdraw any part of the proceeding at any time without the leave of the Court or the consent of all other parties.
- (2) Despite Rule 25.02(2), a defendant may discontinue a counterclaim in which the monetary relief sought is less than the amount set out in section 102(1) of the Act or withdraw any part of the counterclaim at any time without the leave of the Court or the consent of all other parties to the counterclaim.
- (3) Despite Rule 25.02(5), a defendant who has joined a third party in relation to a claim in which the monetary relief sought is less than the amount set out in section 102(1) of the Act may discontinue the claim made against the third party by the third party notice or withdraw any part of the claim at any time without the leave of the Court or the consent of the third party.

25.03 * * * *

25.04 Notice of discontinuance or withdrawal

- (1) A discontinuance or withdrawal without the leave of the Court shall be made by filing a notice stating the extent of the discontinuance or withdrawal.
- (2) When the discontinuance or withdrawal is with the consent of other parties the notice under paragraph (1) must be indorsed with the consent of each party who consents.
- (3) On the day the notice is filed a copy must be served on each other party.

25.05 Costs

Where a proceeding, counterclaim or claim by third party notice is discontinued, or where part of a proceeding, counterclaim or third party notice is withdrawn, liability for costs must be determined in accordance with Rule 63.15.

25.06 Discontinuance or withdrawal no defence

The discontinuance of a proceeding, counterclaim or claim by third party notice or the withdrawal of any part of a proceeding, counterclaim or claim by third party notice is not to be a defence to a subsequent proceeding for the same, or substantially the same, cause of action, unless the Court otherwise provides by any order granting leave to discontinue or withdraw.

25.07 Stay on non-payment of costs

Where by reason of a discontinuance or a withdrawal under this Order a party is liable to pay the costs of any other party, and the party, before paying those costs, commences another proceeding for the same, or substantially the same, cause of action, the Court may by order stay the proceeding until those costs are paid.

ORDER 26

OFFER OF COMPROMISE

PART 1—INTERPRETATION

26.01 Definitions

In this Order—

claim includes a counterclaim and any claim made in accordance with Order 11;

defendant includes a defendant by counterclaim and a party against whom a claim is made in accordance with Order 11;

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

PART 2—OFFER OF COMPROMISE

26.02 Application

- (1) The plaintiff and the defendant may in respect of any claim in a proceeding serve on one another an offer of compromise on the terms specified in the offer.
- (2) An offer of compromise in respect of a claim may be on terms that take into account any other claim between the plaintiff and the defendant made in the proceeding.
- (3) An offer of compromise must—
 - (a) be in writing and be prepared in accordance with Rules 27.02 to 27.04; and
 - (b) contain a statement to the effect that it is served in accordance with this Order.
- (4) For the avoidance of any doubt, the making of or acceptance of an offer of compromise under this Order does not affect the operation of—

- (a) section 105 of the Act; and
- (b) any regulations made under section 105—
concerning the awarding of costs.

26.03 Time for making, accepting etc. offer

- (1) An offer of compromise may be served at any time before an order in respect of the claim to which it relates.
- (2) A party may serve more than one offer of compromise.
- (3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed must not be less than 7 days after such service.
- (4) A party on whom an offer of compromise is served must within 3 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—
 - (a) the expiration of the time specified in accordance with paragraph (3) or, if no time is specified, the expiration of 7 days after service of the offer; or
 - (b) an order in respect of the claim to which the offer relates—
whichever event is the sooner.
- (6) An offer of compromise must not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.

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- (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 Part.
 - (8) Upon the acceptance of an offer of compromise in accordance with paragraph (5), unless the Court otherwise orders, the defendant must pay the costs of the plaintiff in respect of the claim up to and including the day the offer was served.
 - (9) If an offer of compromise contains a term which purports to negative or limit the operation of paragraph (8), that term has no effect for any purpose under this Part.

26.03.1 Time for payment

An offer of compromise providing for payment of a sum of money to a plaintiff must, unless it otherwise provides, be taken to be an offer providing for payment of that sum within 30 days after acceptance of the offer.

26.04 Effect of offer

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

26.05 Disclosure of offer to Court

- (1) No statement of the fact that an offer of compromise has been made must be contained in any document filed in the proceeding.
- (2) Where an offer of compromise has not been accepted, then, except as provided by Rule 26.08(6), communication with respect to the offer must not be made to the Court on the hearing

of the proceeding until after all questions of liability and the relief to be granted have been determined.

- (3) Paragraphs (1) and (2) do not apply where an offer of compromise provides that the offer is not made without prejudice.

26.06 Party under disability

A person under disability may make or accept an offer of compromise, but an acceptance of an offer made by him or her and an acceptance by that person of an offer is not binding until the Court has approved the compromise.

26.07 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 otherwise orders, the other party is entitled, as that other party may elect, to—
- (a) an order in the proceeding in the terms of the accepted offer; or
 - (b) if the party in default is the plaintiff, an order that the proceeding be dismissed, and if the party in default is the defendant, an order that the plaintiff be permitted to proceed as if a notice of defence had not been filed, and in either case to an order accordingly.
- (2) If a party to an accepted offer of compromise fails to comply with the terms of the offer, and a defendant in the proceeding has made a claim by counterclaim or third party notice which is not the subject of the accepted offer, the Court may make such order in the proceeding under paragraph (1) and make an order that the proceeding, counterclaim or claim by third party notice be continued as it thinks fit.

26.08 Costs consequences of failure to accept

- (1) This Rule applies to an offer of compromise which has not been accepted at the time of an order on the claim to which the offer relates.
- (2) If an offer of compromise is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains an order on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff is entitled—

- (a) if the claim of the plaintiff is for damages for or arising out of death or bodily injury, to an order against the defendant for costs in respect of the claim to be fixed on a party and party basis in accordance with paragraph (2A);

Rule 26.08
(2)(a)
amended by
S.R. No.
36/2011
rule 19(1)(a).

- (b) in the case of any other claim of the plaintiff, to an order against the defendant for costs in respect of the claim up to and including the day the offer was served to be fixed on a party and party basis and for costs thereafter to be fixed on a party and party basis in accordance with paragraph (2A).

Rule 26.08
(2)(b)
amended by
S.R. No.
36/2011
rule 19(1)(b).

* * * * *

Rule 26.08
(2)(c)
revoked by
S.R. No.
36/2011
rule 19(1)(c).

(2A) For the purposes of paragraph (2)—

- (a) in the case of a claim to which any scale in Table 1 of Appendix A other than scale G applies, the party and party costs are to be fixed on the next highest scale in that Table to the scale that, if not for this Rule, would apply;

Rule 26.08(2A)
inserted by
S.R. No.
36/2011
rule 19(2).

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- (b) in the case of a claim to which scale G in Table 1 of Appendix A applies, the party and party costs are to be fixed on that scale as if the costs prescribed by that scale were increased by 20 per cent.
- (3) If an offer of compromise is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains an order on the claim to which the offer relates not more favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff is entitled to an order against the defendant for costs in respect of the claim up to and including the day the offer was served fixed on a party and party basis and the defendant is entitled to an order against the plaintiff for costs in respect of the claim thereafter fixed on a party and party basis.
- (4) For the purpose of paragraph (3), if the offer of compromise was served on the first or a later day of the hearing of the proceeding, then, unless the Court otherwise orders, the plaintiff is entitled to costs in respect of the claim to the opening of the Court next after the day on which the offer was served fixed on a party and party basis, and the defendant is entitled to costs in respect of the claim thereafter fixed on a party and party basis.
- (5) If a plaintiff obtains an order of the Court for the recovery of a debt or damages and—
- (a) the order includes an amount for interest or damages in the nature of interest; or
 - (b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest—

for the purpose of determining the consequences as to costs referred to in paragraphs (2) and (3) the Court must disregard so much of the amount

recovered by or awarded to the plaintiff for interest or damages in the nature of interest as relates to the period after the day the offer of compromise was served.

- (6) For the purpose only of paragraph (5), the Court may be informed of the fact that the offer of compromise was served, and of the date of service, but must not be informed of its terms.
- (7) Paragraphs (2) and (3) do not apply unless the Court is satisfied by the party serving the offer of compromise that that party was at all material times willing and able to carry out that party's part of what was proposed in the offer.
- (8) If the plaintiff obtains an order for the recovery of a debt or damages, and the amount of the debt or the damages was not in dispute, but only the question of liability, paragraph (2) does not apply unless the Court is satisfied that the plaintiff's offer was of a genuine compromise.

26.09 Multiple defendants

If 2 or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, the consequences as to costs referred to in Rule 26.08 do not apply to an offer of compromise unless—

- (a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer of compromise of the claim against all of them;
- (b) in the case of an offer made to the plaintiff—
 - (i) the offer is to compromise the claim against all defendants; and

- (ii) where the offer is made by 2 or more defendants, by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

26.10 Offer to contribute

- (1) If in any proceeding a defendant makes a claim (in this Rule called *a contribution claim*) to recover contribution or indemnity against any person, whether a defendant to the proceeding or not, in respect of any claim for a debt or damages made by the plaintiff in the proceeding, any party to the contribution claim may serve on any other party to the contribution claim an offer to contribute toward a compromise of the claim made by the plaintiff on the terms specified in the offer.
- (2) The Court may take an offer to contribute into account in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of—
 - (a) the costs of the party who made the offer;
 - (b) any costs which that party is liable to pay to the plaintiff.
- (3) Rules 26.04 and 26.05 apply, with any necessary modification, to an offer to contribute as if it were an offer of compromise.

26.11–26.12 * * * *

ORDER 27

CONTENT AND FORM OF COURT DOCUMENTS

27.01 Conformity with Rules

Except to the extent that the nature of the document renders compliance impracticable, a document prepared by a party for use in the Court must be prepared in accordance with these Rules.

27.02 Heading and title of document

- (1) A document must be headed "In the Magistrates' Court of Victoria at", or, if the document is in a proceeding in the Industrial Division of the Court or a proceeding to be commenced in the Industrial Division of the Court "In the Magistrates' Court of Victoria (Industrial Division) at" stating the proper venue of the Court in which the proceeding is or is to be commenced and must show any identifying number assigned by the Court to the proceeding.
- (2) Subject to paragraphs (4) and (5), the heading of a document must include the title to the proceeding and the title to the proceeding must name all the parties.
- (3) Except where otherwise provided by these Rules, a document in a proceeding in which there is no defendant must be entitled "The application of", naming the plaintiff.
- (4) If there are more than 5 plaintiffs, the heading of a document must state the full name of the first plaintiff followed by the words "and others" and similarly with respect to defendants and other parties.

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- (5) In the case of a document which is a complaint or an order or process of execution, if the heading of the document is in accordance with paragraph (4)—
- (a) immediately after the words "and others" in the title to the document there must follow the words "according to the schedule"; and
 - (b) a schedule stating the full names of all the parties to the proceeding, and dated, must be part of the document.

27.03 Form of document

- (1) A document must—
 - (a) be of durable white paper 297 millimetres by 210 millimetres, the size known as International Paper Size A4; and
 - (b) be capable of receiving writing in ink.
- (2) Both sides of the paper may be used, with double spacing between the lines and a left-hand margin of at least 40 millimetres.
- (3) The text of a document must be clear, sharp, legible and permanent.
- (4) A document must not bear any erasure or alteration that causes material disfigurement.
- (5) Subject to Rule 27.02(4) and (5), the heading of the document must be indorsed on the first sheet of the document and must be followed immediately by a short description of the document.
- (6) The heading must occupy a space at the top of the first sheet of the document not exceeding 100 millimetres in depth.
- (7) The description of the document must, in the case of an affidavit, include the name of the deponent.

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- (8) A document must also be indorsed on the first sheet with—
- (a) the date of the document;
 - (b) the party or other person on whose behalf it is filed;
 - (c) if an Australian lawyer prepares the document, particulars in accordance with paragraph (11); and
 - (d) if the party or person on whose behalf the document is filed is acting without an Australian lawyer, particulars in accordance with paragraph (12).
- (9) The indorsements referred to in paragraph (8) must occupy a space immediately following the description of the document and not exceeding 50 millimetres in depth.
- (10) Paragraph (8)(a) is satisfied by indorsement with—
- (a) in the case of a complaint, the date of filing;
 - (b) in the case of a pleading, the date the document was made;
 - (c) in the case of an affidavit, the date of swearing.
- (11) The particulars referred to in paragraph (8)(c) are—
- (a) the name, address, telephone number, document exchange number and code reference of the Australian lawyer's firm; and
 - (b) the name and email address (if any) of an individual in the firm to whom reference can be made in respect of the proceeding.

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- (12) The particulars referred to in paragraph (8)(d) are the name, address and telephone number of the party or other person on whose behalf the document is filed.
 - (13) A document or copy document that is to be filed must not be folded and, if comprising more than one sheet, must be fastened only at the top left-hand corner.
 - (14) The Court may require any document to be prepared in any manner it thinks fit.

27.04 Numbers

Dates, amounts and other numbers must be expressed in figures and not in words.

27.05 Copies on request

- (1) A party who prepares a document for use in the Court must, on the request of any other party entitled to a copy of the document and on payment of a charge at the rate set out in Appendix A for photocopying a document, supply that party with a photocopy of the document.
- (2) A person against whom an order is made without notice is entitled to a copy of any document used in support of the application for the order, and paragraph (1) applies accordingly.

27.06 Registrar refusing to accept documents

- (1) A registrar may refuse to accept a document where the registrar considers that the form of contents of the document show that were the document to be accepted the proceeding to be commenced would be an abuse of the process of the Court.
- (2) Where a document for use in the Court is not prepared in accordance with these Rules or any order of the Court—

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- (a) the registrar may refuse to accept it for filing without the direction of the Court;
 - (b) the Court may order that the party responsible is not entitled to rely on it in any manner in the proceeding until a document which is properly prepared is filed.
- (3) The Court may direct the registrar to accept a document for filing.

27.07 Scandalous matter

If a document for use in the Court contains scandalous, irrelevant or otherwise oppressive matter, the Court may order—

- (a) that the matter be struck out; or
 - (b) if the document has been filed, that it be taken off the file.
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ORDER 28

FILING

28.01 Filing of documents

Except where otherwise provided by these Rules or unless the Court otherwise orders, a document is filed by the document being lodged with the registrar in the office of the Court at the proper venue of the Court.

28.02 * * * *

28.03 Validity of complaint

A complaint is valid for all purposes if it bears the allocated Court number and the date of filing.

28.04 Seal of Court

- (1) The principal registrar and every registrar must each have in his or her custody a stamp the design of which must as near as practicable be the same as the design of the seal of the Court with the addition of, in the case of—
 - (a) the principal registrar, the words "Principal Registrar";
 - (b) a registrar, the word "Registrar".
- (2) Marking a document or a copy of a document with a stamp referred to in paragraph (1) is sufficient compliance with any requirements of these Rules or an order of the Court that the document or copy be sealed with the seal of the Court.

28.05 Filing by electronic message

- (1) In order to file a document by electronic message, a person or body must be an authorised user.
- (2) The Chief Magistrate may authorise a person or body to file documents in the Court by lodging electronic messages with the Court.

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(3) An authorisation under paragraph (2) must be in Form 28A.

28.06 * * * *

ORDER 29

DISCOVERY AND INSPECTION OF DOCUMENTS

29.01 Definition

In this Order *possession* means possession, custody or power.

29.01.1 Scope of discovery

- (1) Unless the Court otherwise orders, discovery of documents pursuant to this Order is limited to the documents referred to in paragraph (3).
- (2) Paragraph (1) applies despite any other rule of law to the contrary.
- (3) Without limiting Rule 29.05, for the purposes of this Order, the documents required to be discovered are any of the following documents of which the party giving discovery is, after a reasonable search, aware at the time discovery is given—
 - (a) documents on which the party relies;
 - (b) documents that adversely affect the party's own case;
 - (c) documents that adversely affect another party's case;
 - (d) documents that support another party's case.
- (4) Notwithstanding paragraph (3)—
 - (a) if a party giving discovery reasonably believes that a document is already in the possession of the party to which discovery is given, the party giving discovery is not required to discover that document;

- (b) a party required to give discovery who has, or has had in his, her or its possession more than one copy, however made, of a particular document is not required to give discovery of additional copies by reason only of the fact that the original or any other copy is discoverable.
- (5) For the purposes of paragraph (3), in making a reasonable search a party may take into account—
 - (a) the nature and complexity of the proceeding;
 - (b) the number of documents involved;
 - (c) the ease and cost of retrieving a document;
 - (d) the significance of any document to be found; and
 - (e) any other relevant matter.

29.02 Notice for discovery

- (1) Except where these Rules otherwise provide, any party to a proceeding may serve on any other party a notice for discovery requiring the party served to make discovery of all documents which are or have been in that party's possession and which, in accordance with Rule 29.01.1, are required to be discovered.
- (2) A notice for discovery must be in Form 29A.
- (3) Despite paragraph (1), a notice for discovery must not be served without leave of the Court in—
 - (a) a proceeding under the **Accident Compensation Act 1985**;
 - (b) a proceeding under the **Workers Compensation Act 1958**.
- (4) If leave is granted under paragraph (3), Rule 63.04 does not apply, unless the Court otherwise orders.

- (5) A notice for discovery must not be served more than 28 days after the day on which notice of defence is given unless the Court otherwise orders.

29.03 Time for making discovery

A party on whom a notice for discovery is served must, within 28 days after service of the notice, make discovery of documents.

29.04 Affidavit of documents

- (1) An affidavit of documents for the purpose of making discovery of documents must be in Form 29B and must—
- (a) identify the documents which are or have been in the possession of the party making the affidavit;
 - (b) enumerate the documents in convenient order and describe each document or, in the case of a group of documents of the same nature, describe the group, sufficiently to enable the document or group to be identified;
 - (c) distinguish those documents which are in possession of the party making the affidavit from those that have been but are no longer in the party's possession, and as to any document which has been but is no longer in the possession of the party, state when the party parted with the document and the party's belief as to what has become of it;
 - (d) if the party making the affidavit claims that any document in the party's possession is privileged from production, state sufficiently the grounds of the privilege.

(2) If a party required to give discovery in accordance with Rule 29.01.1 does not, in making a reasonable search as required by Rule 29.01.1, search for a category or class of document, the party must include in the affidavit of documents a statement of—

- (a) the category or class of document not searched for; and
- (b) the reason why.

29.05 Order limiting discovery

In order to prevent unnecessary discovery, the Court may, before or after any party is required to make discovery by virtue of a notice for discovery served in accordance with Rule 29.02, order that discovery by any party shall not be required or shall be limited to such documents or classes of document, or to such of the questions in the proceeding, as are specified in the order.

29.05.1 Order for general discovery

At any stage of a proceeding, the Court may order any party to give discovery in accordance with Rule 29.01.1.

29.05.2 Order for expanded discovery

- (1) At any stage of a proceeding, the Court may, by order, expand a party's obligation to give discovery beyond that required by Rule 29.01.1.
- (2) Without limiting any power of the Court, an order under paragraph (1) may specify any document or class of document to which the expanded obligation relates.

29.06 Co-defendants and third party

- (1) A defendant who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served on—

- (a) the plaintiff by any other defendant to the proceeding;
 - (b) any other defendant by the plaintiff.
- (2) Where the defendant has served a counterclaim joining another person with the plaintiff as defendant to the counterclaim in accordance with Rule 10.03, paragraph (1), with any necessary modification, shall apply as if—
 - (a) the defendant were the plaintiff; and
 - (b) the plaintiff and the other person were the defendants.
- (3) A third party who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served—
 - (a) by the plaintiff on the defendant by whom the third party was joined;
 - (b) on the plaintiff by that defendant.

29.07 * * * * *

29.08 Order for particular discovery

- (1) This Rule applies to any proceeding in the Court.
- (2) Where, at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any question in the proceeding may be or may have been in the possession of a party, the Court may order that party to make and serve on any other party an affidavit stating—
 - (a) whether that document or any, and if so what, document or documents of that class is or has been in that party's possession; and

- (b) if it has been but is no longer in that party's possession, when the party parted with it and that party's belief as to what has become of it.
- (3) An order may be made against a party under paragraph (2) notwithstanding that the party has already made or been required to make an affidavit of documents.

29.09 Inspection of documents referred to in affidavit of documents

- (1) A party upon whom an affidavit of documents is served in accordance with Rule 29.03 or in accordance with an order made under Rule 29.08 may, by notice to produce, served on the party making the affidavit, require that the party produce the documents in that party's possession referred to in the affidavit (other than any which that party objects to produce) for inspection.
- (2) A party upon whom a notice to produce is served in accordance with paragraph (1) must, within 7 days after that service, serve on the party requiring production a notice appointing a time within 7 days after service of the notice under this paragraph when, and a place where, the documents may be inspected.
- (3) A notice to produce under paragraph (1) must be in Form 29C.
- (4) A party to whom documents are produced for inspection under this Rule may take copies of the documents.
- (5) For the purpose of paragraph (4), taking a copy of a document includes photocopying the document, and if the party to whom a document is produced states that the party wishes to have it photocopied, the party producing the document must at that party's option either—

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- (a) allow the other party to photocopy the document at such place as the parties agree; or
 - (b) supply the other party with a photocopy of the document.
- (6) Unless the Court otherwise orders, the cost of a photocopy of a document supplied to a party in accordance with paragraph (5) must—
- (a) be borne by that party in the first instance and be ultimately a cost in the proceeding; and
 - (b) be in the amount allowed in Appendix A for copy documents.

29.10 Inspection of documents referred to in pleadings and affidavits

- (1) This Rule applies to any proceeding.
- (2) Where, in the originating process filed by a party or in any pleading, interrogatories or answers, affidavit, or notice filed by a party, reference is made to a document, any other party may, by notice to produce served on that party, require that party to produce the document for inspection.
- (3) Except as provided by paragraph (4), Rule 29.09, with any necessary modification, applies to the production and inspection of a document under this Rule.
- (4) A party upon whom a notice to produce is served under paragraph (2) is not required to produce a document for inspection where—
 - (a) the party claims that the document is privileged from production, and that party makes and serves on the other party an affidavit in which the party—
 - (i) makes that claim; and

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- (ii) states sufficiently the grounds of the privilege;
 - (b) the document is not in that party's possession, and the party makes and serves on the other party an affidavit in which the party—
 - (i) states that fact; and
 - (ii) states to the best of the party's knowledge, information and belief where the document is and in whose possession it is; and
 - (iii) where the document has been but is no longer in the party's possession, when the party parted with it and the party's belief as to what has become of it.
 - (5) A notice to produce under paragraph (2) must be in Form 29C.

29.11 Order for discovery

Where a party—

- (a) fails to make discovery of documents in accordance with Rules 29.03 and 29.04;
- (b) fails to serve a notice appointing a time for inspection of documents as required by Rule 29.09 or 29.10;
- (c) objects to produce any document for inspection;
- (d) offers inspection unreasonable as to time or place; or
- (e) objects to allow any document to be photocopied or to supply a photocopy of the document—

the Court may order the party to do such act as the case requires.

29.12 Direction as to documents

- (1) Where a party is entitled under this Order to inspect a document which consists of—
 - (a) a video tape, audio tape, disc, film or other means of recording, the Court may give directions—
 - (i) for the screening or playing thereof; and
 - (ii) for the making by or supply to the party of a transcript of the recording (in so far as it can be transcribed) or a copy of the recording;
 - (b) information which has been processed by or is stored in a computer, the Court may give directions for making the information available.
- (2) On an application under paragraph (1) the Court may make an order for the costs and expenses of the party against whom an order giving directions is sought.
- (3) The Court may make an order giving directions on condition that the party applying give security for the costs and expenses of the party against whom the order is made.

29.12.1 Default notice

- (1) This Rule does not limit the power of the Court under Rule 24.02.
- (2) If a party required to make discovery of documents fails to make discovery within the time limited by these Rules or fixed by any order of the Court, the party entitled to the discovery may serve on that party a notice in Form 29D.

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- (3) If, within 14 days after service of a notice under paragraph (2), the party on whom the notice is served does not make discovery, the Court may order—
- (a) if the party required to make discovery is the plaintiff, that the proceeding be dismissed;
 - (b) if the party required to make discovery is a defendant, that the defendant's defence, if any, be struck out.
- (4) This Rule, with any necessary modification, applies to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.
- (5) For the purpose of Rule 21.01(1), a defendant whose defence is struck out in accordance with paragraph (3) must be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.
- (6) The Court may set aside or vary an order made under paragraph (3).

29.13 Inspection of document by Court

Where an application is made for an order under Rule 29.11 and a claim is made that the document is privileged from production or objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

29.14 * * * *

29.15 Continuing obligation to make discovery

A party who has made an affidavit of documents is under a continuing obligation to make discovery of documents with respect to documents of which the party obtains possession after making the affidavit.

29.16 Discovery after directions

If the Court gives directions about discovery or inspection of documents, no party may, without further order, serve notice for discovery on any other party except in accordance with those directions.

ORDER 30

INTERROGATORIES

30.01 Definitions

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

interrogating party means a party who serves interrogatories;

party interrogated means a party on whom interrogatories are served;

servant or agent, in relation to a corporation, includes officer and member.

30.02 When interrogatories allowed

- (1) Unless these Rules otherwise provide, any party to a proceeding may serve on any other party interrogatories relating to any question between them in the proceeding.
- (2) Despite paragraph (1) interrogatories must not be served without leave of the Court in—
 - (a) a proceeding under the **Accident Compensation Act 1985**;
 - (b) a proceeding under the **Workers Compensation Act 1958**.
- (3) If leave is granted under paragraph (2), Rule 63.04 must not apply, unless the Court otherwise orders.
- (4) Interrogatories must not be served more than 28 days after the day on which notice of defence is given except with the leave of the Court.

30.03 Statement as to who to answer

If interrogatories are to be answered by 2 or more parties, the interrogating party must state in the document containing the interrogatories which of them each party is required to answer.

30.04 Filing interrogatories and time for answers

Where interrogatories are served—

- (a) the interrogating party must forthwith file a copy;
- (b) the party interrogated must within 28 days after service answer by affidavit, file it and serve a copy on the interrogating party.

30.05 Source for answers to interrogatories

- (1) A party interrogated must answer each interrogatory in so far as it is not objectionable in accordance with the following provisions—
 - (a) the party must answer from the party's own knowledge of the fact or matter which is inquired after by the interrogatory, and, if the party has no such knowledge, from any belief the party has as to that fact or matter;
 - (b) a party who has no knowledge of the fact or matter inquired after must be taken not to have a belief as to the fact or matter where the party has no information relating to the fact or matter on which to form a belief or where, if the party has such information, for reasonable cause the party has no belief that the information is true;
 - (c) except as provided by subparagraph (d), the party must answer from any belief the party has as to the fact or matter inquired after irrespective of the source of the information on which the belief is formed;

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- (d) the party must not be required to answer from the party's belief as to any fact or matter where the belief is formed on information that was given to the party in a communication the contents of which the party could not, on the ground of privilege, be compelled to disclose;
 - (e) where the party has no personal knowledge of the fact or matter inquired after, the party must, for the purpose of enabling the party to form a belief as to the fact or matter (so far as the party can), make all reasonable inquiries to determine—
 - (i) whether any person has knowledge of the fact or matter which was acquired by that person in the capacity of that party's servant or agent; and
 - (ii) if that is the case, what that knowledge is;
 - (f) the party must make the inquiries referred to in subparagraph (e) notwithstanding that at the time the party is required to answer the interrogatory any person having the relevant knowledge has ceased to be that person's servant or agent;
 - (g) where the party is a corporation, this Rule applies, with any necessary modification, as if—
 - (i) the person who answers the interrogatories on behalf of the corporation were that party; and
 - (ii) in particular, as if the reference in subparagraph (e) to a servant or agent of the party were a reference to a servant or agent of the corporation.

- (2) Where an interrogatory relates to a fact or matter alleged in the pleading of the party interrogated, nothing in paragraph (1)(d) affects the right of the interrogating party to obtain information as to that fact or matter pursuant to an application of the kind referred to in Rule 13.10.

30.06 How interrogatories to be answered

- (1) A party interrogated must answer each interrogatory specifically by answering the substance of the interrogatory without evasion except in so far as it is objectionable on any of the grounds referred to in Rule 30.07.
- (2) Where the party objects to answer an interrogatory the party must state briefly—
- (a) the ground of objection; and
 - (b) the facts, if any, on which it is based.

30.07 Ground of objection to answer

- (1) A party interrogated must answer each interrogatory except to the extent that it may be objected to on any of the following grounds—
- (a) the interrogatory does not relate to any question between the party and the interrogating party;
 - (b) the interrogatory is unclear or vague or is too wide;
 - (c) the interrogatory is oppressive;
 - (d) the interrogatory requires the party to express an opinion which the party is not qualified to give;
 - (e) privilege.

-
- (2) Without limiting paragraph (1)(a), an interrogatory that does not relate to any question includes an interrogatory the sole purpose of which is to—
- (a) impeach the credit of the party interrogated;
 - (b) enable the interrogating party to ascertain whether the party has a claim or defence other than that which the party has raised in the proceeding;
 - (c) enable the interrogating party to ascertain the evidence by which the party interrogated intends to prove the person's case, including the identity of witnesses.
- (3) A party may not object to answer an interrogatory on the ground that the party cannot answer without going to a place which is not the party's usual place of residence or business if the interrogating party undertakes to pay the reasonable cost of the person going there, unless the Court otherwise orders.

30.08 Who to answer interrogatories

- (1) Interrogatories must be answered—
- (a) where the party interrogated is—
 - (i) a natural person, by the party;
 - (ii) a person under disability, by that person or his or her litigation guardian, whichever is appropriate;
 - (iii) a corporation, by an officer of the corporation or by any person duly authorised by it to answer; or
 - (b) by such person as the Court may direct.

- (2) The answers of a person made in accordance with a direction given under paragraph (1)(b) is as effective and binding in all respects as if made by the party interrogated.

30.09 Failure to answer interrogatories

Where a party interrogated fails to answer the interrogatories within the time limited or does not answer the interrogatories sufficiently, the Court may order that the party answer or answer further, as the case may be, within such time as it directs.

30.09.1 Default notice

- (1) This Rule does not limit the power of the Court under Rule 24.02.
- (2) If a party interrogated fails to answer interrogatories within the time limited by the Rules or fixed by any order of the Court, the interrogating party may serve on that party a notice in Form 30A.
- (3) If, within 14 days after service of a notice under paragraph (2), the party interrogated does not answer the interrogatories, the Court may order—
- (a) if the party interrogated is the plaintiff, that the proceeding be dismissed;
 - (b) if the party interrogated is a defendant, that the defendant's defence, if any, be struck out.
- (4) This Rule, with any necessary modification, applies to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.
- (5) For the purpose of Rule 21.01, a defendant whose defence is struck out in accordance with paragraph (3) must be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.

(6) The Court may set aside or vary an order made under paragraph (3).

30.10 * * * *

30.11 Answers as evidence

Where the answer of a party interrogated is stated to be given on the basis of belief, and the answer is received into evidence, the Court must give the answer such weight as the circumstances require.

30.12 Interrogatories after directions

If the Court gives directions about interrogatories or answers to interrogatories, no party may, without further order, serve interrogatories on any other party except in accordance with those directions.

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ORDER 31

DISCOVERY BY ORAL EXAMINATION

* * * * *

ORDER 32

**PRELIMINARY DISCOVERY AND DISCOVERY FROM
NON-PARTY**

32.01 Definitions

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

applicant means applicant for an order under this Order;

description includes the name, place of residence, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding and whether that person is an individual or a corporation;

possession means possession, custody or power.

32.02 Privilege

An order made under this Order shall not operate to require the person against whom the order is made to produce any document or answer any question which, on the ground of privilege, that person is not required to produce or answer.

32.03 Discovery to identify a defendant

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

-
- (2) The Court may order that the person, and in the case of a corporation, the corporation by an appropriate officer, must—
- (a) attend before the Court to be orally examined in relation to the description of the person concerned;
 - (b) make discovery to the applicant of all documents which are or have been in the possession of the person or the corporation relating to the description of the person concerned.
- (3) If the Court makes an order under paragraph (2)(a), it may order that the person or corporation against whom or which the order is made must produce to the Court on the examination any document or thing in the person's or the corporation's possession relating to the description of the person concerned.

32.04 Party an applicant

Rule 32.03 applies, with any necessary modification, if the applicant is a party to a proceeding and wishes to make in the proceeding against a person who is not a party a claim which the applicant could properly have made in the proceeding had the person been a party.

32.05 Discovery from prospective defendant

If—

- (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from a person whose description the applicant has ascertained;
- (b) after making all reasonable inquiries, the applicant has not sufficient information to enable the applicant to decide whether to

commence a proceeding in the Court to obtain that relief; and

- (c) there is reasonable cause to believe that that person has or is likely to have or has had or is likely to have had in the person's possession any document relating to the question whether the applicant has the right to obtain the relief and that inspection of the document by the applicant would assist the applicant to make the decision—

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

32.06 Party an applicant

Rule 32.05 applies, with any necessary modification, if the applicant is a party to a proceeding and there is reasonable cause to believe that the applicant has or may have the right to obtain against a person who is not a party relief which the applicant could properly have claimed in the proceeding had the person been a party.

32.07 Discovery from non-party

On the application of any party to a proceeding the Court may order that a person who is not a party and in respect of whom it appears that the person has or is likely to have or has had or is likely to have had in the person's possession any document which relates to any question in the proceeding must make discovery to the applicant of any such document.

32.08 Procedure

- (1) An application under Rule 32.03 or 32.05 must be made by application served on every party to the proceeding and served personally on the person against whom the order is sought.

-
- (2) An application under paragraph (1) must be supported by an affidavit—
- (a) stating the facts on which the application is made; and
 - (b) specifying or describing the documents or any class of documents in respect of which the order is sought.
- (3) A copy of the supporting affidavit must be served on every person on whom the application is served.

32.09 Inspection of documents

Rule 29.09, with any necessary modification, applies to the inspection of the documents referred to in an affidavit of documents made and served in accordance with this Order as if the affidavit were an affidavit of documents as mentioned in Rule 29.09(1).

32.10 Directions as to documents

Rule 29.12, with any necessary modification, applies to the inspection of a document under this Order.

32.11 Costs

- (1) On an application under this Order the Court may make an order for the costs and expenses of the applicant, of the person against whom the order is made or sought and of any party to the proceeding, including the costs of—
- (a) making and serving any affidavit of documents;
 - (b) producing any document for inspection in accordance with Rule 32.09; or
 - (c) of complying with any direction given under Rule 32.10.

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- (2) The Court may make an order under this Order on condition that the applicant give security for the costs and expenses of the person against whom the order is made.
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ORDER 33

**MEDICAL EXAMINATION AND SERVICE OF HOSPITAL
AND MEDICAL REPORTS**

33.01 Application

This Order applies to a proceeding—

- (a) under the **Accident Compensation Act 1985**; and
- (b) under the **Workers Compensation Act 1958**; and
- (c) in which the plaintiff claims damages for, or otherwise claims in respect of, bodily injury.

33.02 Counterclaim

This Order applies, with any necessary modification, to a counterclaim by which the defendant makes a claim of a kind referred to in Rule 33.01.

33.03 Definitions

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

registered dentist means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the dental profession as a dentist (other than as a student); and;
- (b) in the dentist division of that profession;
- (c) a person registered or qualified to be registered as a dentist under an enactment of a State or Territory of the Commonwealth which corresponds to the Health Practitioner Regulation National Law;

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- (d) a person entitled to practise as a dental care provider in a place outside Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

examination means an examination for medical, dental, or psychological purposes as the case requires;

hospital report means a statement in writing concerning the plaintiff made by or on behalf of a hospital, rehabilitation centre or other like institution;

medical expert means registered medical practitioner, registered dentist or registered psychologist as the case requires;

medical matters includes dental matters and psychological matters;

registered medical practitioner means—

- (a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);
- (b) a person registered or qualified to be registered as a medical practitioner within the meaning of the Health Practitioner Regulation National Law or any corresponding enactment of another State or a Territory of the Commonwealth;

- (c) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

medical report—

- (a) means a statement on medical matters concerning the plaintiff whether in writing or oral made by a medical expert; and
- (b) includes any document which the medical expert intends should be read with the statement whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently;

registered psychologist means—

- (a) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);
- (b) a person who practises psychology in a place outside Victoria;

serve, in relation to the service of a medical report, means—

- (a) if the medical report was in writing, serve a copy; and
- (b) if the medical report was oral, serve notice in writing of its substance.

33.04 Notice for examination

- (1) The defendant may request the plaintiff in writing to submit to appropriate examinations by a medical expert or experts at specified times and places.
- (2) If a plaintiff refuses or neglects without reasonable cause to comply with a request under paragraph (1), the Court may, if the request was on reasonable terms, stay the proceeding.

33.05 Expenses

- (1) The costs of and incidental to the examination must be costs in the proceeding.
- (2) Without limiting paragraph (1), the defendant must, on request by the plaintiff whether before or after the plaintiff is examined, pay to the plaintiff a reasonable sum to meet his or her travelling and other expenses of and incidental to the examination.

33.06 Report of examination of plaintiff

- (1) A defendant for whom a plaintiff is examined under Rule 33.04 must as soon as practicable after the examination obtain from the medical expert a medical report.
- (2) Upon obtaining the medical report the defendant must forthwith serve the medical report on the plaintiff.
- (3) If the defendant later obtains another medical report from the medical expert concerning the plaintiff, whether or not the other report is consequent upon a further examination by the medical expert of the plaintiff, the defendant must forthwith serve the medical report on the plaintiff.

33.07 Service of reports by plaintiff

- (1) A plaintiff must serve on each other party who has an address for service in the proceeding any hospital or medical report (other than a hospital or medical report served on or supplied to the plaintiff by another party) which the plaintiff intends to tender or the substance of which the plaintiff intends to adduce in evidence or which otherwise the plaintiff intends to use at the hearing.
- (2) The plaintiff must serve the hospital report or medical report—
 - (a) in a proceeding under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, within 14 days of the proceeding being given a date for hearing; and
 - (b) in a proceeding in which the plaintiff claims damages for, or otherwise claims in respect of, bodily injury within 14 days before the date fixed for a pre-hearing conference, mediation or hearing (whichever occurs first); and
 - (c) in the case of a hospital report or medical report made to or obtained by or for the plaintiff after the time referred to in subparagraph (a) or (b), forthwith—or at such other time as the Court directs.

33.08 Service of reports by defendant

- (1) A defendant must serve on each other party who has an address for service in the proceeding any hospital report or medical report (other than a hospital report or medical report served on or supplied to the defendant by another party)—

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- (a) which the defendant intends to tender or the substance of which the defendant intends to adduce in evidence; or
 - (b) which otherwise the defendant intends to use at the hearing.
 - (2) Paragraph (1) does not require the defendant to serve on the plaintiff a medical report served on the plaintiff under Rule 33.06, but the defendant must by notice to the plaintiff in writing identify any medical report so served—
 - (a) which the defendant intends to tender or the substance of which the defendant intends to adduce in evidence; or
 - (b) which otherwise the defendant intends to use at the hearing.
 - (3) The defendant must serve the hospital report or medical report and give any notice under paragraph (2)—
 - (a) 14 days before the date fixed for a pre-hearing conference, mediation or hearing (whichever occurs first); and
 - (b) in the case of a hospital report or medical report made to or obtained by or for the defendant after the time referred to in subparagraph (a), forthwith—or at such other time as the Court directs.
 - (4) In this Rule *defendant* includes a third or subsequent party.

33.09 Other medical reports to be served

Where after a party has served a medical report under Rule 33.07 or Rule 33.08 the medical expert who made the report makes another medical report to the party, then, notwithstanding that the party—

- (a) no longer intends to tender the medical report so served or to adduce its substance in evidence or to otherwise use it at the hearing; or
- (b) does not intend to tender the other medical report or to adduce its substance in evidence or to otherwise use it at the hearing—

the party must serve the other medical report forthwith on each other party who has an address for service in the proceeding.

33.10 Opinion on liability

Unless the Court otherwise orders, a party who is required to serve a copy of a hospital report or medical report under this Order may exclude from the copy served—

- (a) any expression of opinion in the original report on the question of liability; and
- (b) if the original report contains any statement with respect to the facts on which the opinion is based, any statement with respect to a fact that relates only to the question of liability.

33.11 Medical report admissible

- (1) A medical report that was served under this Order is admissible as evidence of the opinion of the medical expert who gave the report and, if the medical expert's oral evidence of a fact upon which the opinion was based would be admissible, as evidence of that fact.
- (2) Subject to paragraphs (3) and (4), a medical report may be used in evidence by the party who served the report or by any party on whom it was served.

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- (3) If a medical report is tendered by the party who served the report, that party must cause the medical expert who gave the report to attend at the hearing of the proceeding to be cross-examined if notice that such attendance is required is served on the party by any other party not later than 5 days before the commencement of the hearing, and if the medical expert does not attend for cross-examination the Court may order that the medical report be not received in evidence.
- (4) If a medical report is tendered by a party on whom the report was served—
- (a) that party must cause the medical expert who gave the report to attend at the hearing of the proceeding to be cross-examined, and if the medical expert does not attend the Court may order that the medical report be not received in evidence;
 - (b) if the report is received in evidence and the medical expert is cross-examined by any party against whom the report is received, at the conclusion of the cross-examination the party who tendered the report may examine the expert as if by re-examination.

33.12 No evidence unless disclosed in report

Save with the leave of the Court or by consent of the parties, a party must not except in cross-examination adduce evidence from a medical expert on medical matters concerning the plaintiff unless that evidence is disclosed by a medical report served in accordance with this Order.

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ORDER 34

DIRECTIONS

* * * * *

ORDER 35

ADMISSIONS

35.01 Definition

In this Order, *authenticity of a document* means that a document—

- (a) is what it purports to be;
- (b) if an original or described as such, is an original document and was printed, written, signed or executed as it purports to have been;
- (c) if a copy or described as such, is a true copy.

35.02 Voluntary admission of facts

- (1) A party may, by notice served on another party, admit, in favour of the other party, for the purpose of the proceeding only, the facts specified in the notice.
- (2) A party may, by leave of the Court, withdraw an admission made in accordance with paragraph (1).

35.03 Notice for admission of facts

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which must not be less than 14 days after service), disputes the facts specified in the notice, that party must, for the purpose of the proceeding only, be taken to admit those facts.
- (2) If the party served with the notice does not dispute any fact specified by serving notice that the party disputes the fact within the time allowed for that purpose, the party must, for the purpose of the proceeding only, be taken to admit that fact.

- (3) A party may, by leave of the Court, withdraw an admission which is taken to have been made under paragraph (2).
- (4) A notice under paragraph (1) must be in Form 35A, and a notice under paragraph (2) must be in Form 35B.

35.04 Order on admissions

- (1) If a party makes an admission of fact in a proceeding, whether by his or her pleading or otherwise, the Court may, on the application of the other party, make the order to which the applicant is entitled on those admissions.
- (2) The Court may exercise its powers under paragraph (1) without waiting for the determination of any other question in the proceeding.

35.05 Notice for admission of documents

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which must not be less than 14 days after service), disputes the authenticity of the documents mentioned in the notice, that party must, for the purpose of the proceeding only, be taken to admit the authenticity of those documents.
- (2) If the party served with the notice does not dispute the authenticity of any document mentioned by serving notice that the party disputes its authenticity within the time allowed for that purpose, the party must, for the purpose of the proceeding only, be taken to admit its authenticity.
- (3) A party may, by leave of the Court, withdraw an admission which is taken to have been made under paragraph (2).

- (4) A notice under paragraph (1) must be in Form 35A, and a notice under paragraph (2) must be in Form 35B.

35.06 Cost of non-admission of fact or document

Where a party serves a notice under Rule 35.03(2) or 35.05(2) disputing a fact or the authenticity of a document, and afterwards that fact or document is proved in the proceeding, liability for costs must be determined in accordance with Rule 63.18.

35.07 Restrictive effect of admission

An admission made by a party under this Order is for the purpose of the particular proceeding only and must not be used against the party as an admission in any other civil proceeding.

35.08 Notice to produce documents

- (1) A party to a proceeding may serve on any other party a notice requiring that other party to produce the documents mentioned in the notice on any application in or at the hearing of the proceeding.
- (2) Unless the Court otherwise orders, the party on whom the notice is served must produce on the application or at the hearing such of the documents mentioned in the notice—
- (a) as are in that party's possession, custody or power; and
 - (b) which that party does not object to produce on the ground of privilege.
- (3) Where the party on whom the notice is served fails to comply with the notice, the Court may order that the party produce the document or give such directions for the proof of any matter in relation to the document, including the contents of the document and its making, delivery or receipt, as it thinks fit.

ORDER 36

AMENDMENT

36.01 General power of amendment

- (1) For the purpose of—
 - (a) determining the real question in controversy between the parties to any proceeding; or
 - (b) correcting any defect or error in any proceeding; or
 - (c) avoiding multiplicity of proceedings—the Court may, at any stage, order that any document in the proceeding be amended or that any party have leave to amend any document in the proceeding.
- (2) In this Part *document* includes a complaint, an application and a pleading.
- (3) A pleading may be amended under paragraph (1) notwithstanding that the effect is to add or substitute a cause of action arising after the commencement of the proceeding.
- (4) A mistake in the name of a party may be corrected under paragraph (1), whether or not the effect is to substitute another person as a party.
- (5) If an order to correct a mistake in the name of a party has the effect of substituting another person as a party, the proceeding must be taken to have commenced with respect to that person on the day the proceeding commenced.
- (6) The Court may, notwithstanding the expiry of any relevant limitation period after the day a proceeding is commenced, make an order under paragraph (1) if it is satisfied that any other party to the proceeding would not by reason of the order be prejudiced in the conduct of that party's claim

or defence in a way that could not be fairly met by an adjournment, an award of costs or otherwise.

- (7) For the purpose of paragraph (6) *any other party to the proceeding* includes a person who is substituted as a party by virtue of an order made to correct a mistake in the name of a party.
- (8) Paragraph (1) does not apply to the amendment of an order.

36.02 Failure to amend within time limited

An order giving a party leave to amend a document ceases to have effect if the party has not amended the document in accordance with the order at the expiration of—

- (a) the time limited by the order for making the amendment; or
- (b) if no time was limited, 21 days from the date of the order.

36.03 Amendment of pleading

A party may amend any pleading served by that party at any time, by leave of the Court or with the consent of all other parties.

36.04 Disallowance of pleading amendment

If a party amends a pleading in accordance with Rule 36.02(a), the Court may, on application by any other party made within 21 days after service of the amended pleading on that party, disallow the amendment or allow it either wholly or in part.

36.05 Registrar's power of amendment

- (1) At the request of a party made before service of a complaint, the registrar may amend the complaint.
- (2) The registrar must record on the complaint the date of any amendment.

36.06 How pleading amendment made

- (1) Unless the Court otherwise orders, an amendment to a pleading must be made by—
 - (a) amending the copy of the pleading filed in the Court or filing a copy of that pleading as amended; and
 - (b) serving a copy of the amended pleading on all parties.
- (2) A party who files an amended copy of a pleading in accordance with paragraph (1)(a) must indorse the copy pleading previously filed with a statement to the effect that the amended copy has been substituted.
- (3) Where either of the requirements of paragraph (1)(a) is complied with, the registrar must, as the case requires, indorse the copy of the pleading filed in the Court with the date it is amended or the copy of the pleading as amended with the date it is filed.
- (4) Each amendment to a pleading must be made in such a way as to distinguish the amendment from the original pleading and from any previous amendment to the original.

36.07 Pleading to an amended pleading

- (1) A party must plead to an amended pleading within 21 days after it is served on that party.
- (2) Where a party has pleaded to a pleading which is subsequently amended, the party must be taken to rely on that party's original pleading in answer to the amended pleading unless the party pleads to it within the time limited for so doing.

36.08 Amendment of order

- (1) The Court constituted by a magistrate or a registrar may at any time correct a clerical mistake in an order or an error arising in an order from any accidental slip or omission.
 - (2) A registrar may at any time correct a clerical mistake in an order or an error arising in an order from any accidental slip or omission if the order is an order of the Court constituted by a registrar.
-

ORDER 37

**INSPECTION, DETENTION AND PRESERVATION OF
PROPERTY**

37.01 Inspection, detention etc. of property

- (1) In any proceeding the Court may make an order for the inspection, detention, custody or preservation of any property, whether or not in the possession, custody or power of a party.
- (2) An order under paragraph (1) may authorise any person to—
 - (a) enter any land or do any other thing for the purpose of obtaining access to the property;
 - (b) take samples of the property;
 - (c) make observations (including the photographing) of the property;
 - (d) conduct any experiment on or with the property;
 - (e) observe any process.
- (3) On an application under paragraph (1), the Court may make an order for the costs and expenses of any person not being a party if—
 - (a) that person attends on the hearing of the application served under Rule 37.03(1); or
 - (b) the Court makes an order under paragraph (1) which will affect that person.
- (4) The Court may make an order under this Rule on condition that the party applying for the order give security for the costs and expenses of any person, whether or not a party, who will be affected by the order.

37.02 Inspection from prospective defendant

- (1) This Rule applies to any property not being a document.
- (2) In this Rule ***applicant*** means an applicant for an order under the Rule.
- (3) If—
 - (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from an identified person; and
 - (b) after making all reasonable enquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain that relief; and
 - (c) there is reasonable cause to believe that that person has or is likely to have in that person's possession, custody or power any property relating to the question whether the applicant has the right to obtain the relief and that inspection of the property by the applicant would assist the applicant to make the decision—the Court may make an order for the inspection, detention, custody or preservation of the property.
- (4) An order under paragraph (3) may authorise any person to do any of the things referred to in Rule 37.01(2).
- (5) On an application under this Rule, the Court may make an order for the costs and expenses of the applicant and the person against whom the order is sought.

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

37.03 Procedure

- (1) An application for an order under Rule 37.01 must be made by application served on all parties to the proceeding and served personally on each person who would be affected by the order if made.
- (2) The Court may make an order under Rule 37.01 notwithstanding that any person not being a party who will be affected by the order has not been served with the application personally or at all.
- (3) An application under Rule 37.02 must be made by application to which the person against whom the order is sought must be made respondent.
- (4) An order must not be made under Rule 37.02 except by a magistrate.
- (5) An application under paragraph (1) or (3) must be supported by an affidavit—
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the property in respect of which the order is sought.
- (6) A copy of the supporting affidavit must be served on every person on whom the application is served.

37.04 Disposal of perishable property

If, in a proceeding concerning any property (other than land) or in a proceeding in which any question may arise as to any property (other than land), the property is of a perishable nature or is likely to deteriorate or diminish in value if kept,

the Court may make an order for the sale or other disposal of the whole or any part of the property.

37.05 Payment into Court in discharge of lien

- (1) If in any proceeding—
- (a) the plaintiff claims the recovery of specific property (other than land); and
 - (b) it appears from the pleadings or otherwise that the defendant does not dispute the title of the plaintiff but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money—

the Court may order that the plaintiff be at liberty to pay into court, to abide the event of the proceeding, the amount of money in respect of which the security is claimed and such further amount, if any, for interest and costs as the Court may direct and that, upon the making of such payments, the property claimed be given up to the plaintiff.

- (2) This Rule, with any necessary modification, applies to a counterclaim.

37.06 * * * *

37.07 Jurisdiction of Court not affected

The provisions of this Order are not to be taken to affect the exercise by the Court of any power to make orders with respect to the inspection, detention, custody or preservation of property which is exercisable apart from those provisions.

ORDER 37A

FREEZING ORDERS

37A.01 Definitions

In this Order, unless the contrary intention appears—

ancillary order has the meaning given by Rule 37A.03(1);

another court means a court outside Australia or a court in Australia other than the Court;

applicant means a person who applies for a freezing order or an ancillary order;

freezing order has the meaning given by Rule 37A.02(1);

respondent means a person against whom a freezing order or an ancillary order is sought or made.

37A.02 Freezing order

- (1) The Court may make an order (a *freezing order*), upon or without notice to the respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that an order or prospective order of the Court will be wholly or partly unsatisfied.
- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.
- (3) A freezing order may be in Form 37AA.
- (4) In making a freezing order or an ancillary order, the Court must have regard to the practice note concerning freezing orders.

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- (5) The affidavits relied on in support of an application for a freezing order or an ancillary order must, as far as possible, address the following—
- (a) information about the order that has been obtained, or if no order has been obtained, the following information about the cause of action—
 - (i) the basis of the claim for substantive relief;
 - (ii) the amount of the claim; and
 - (iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence;
 - (b) the nature and value of the respondent's assets, so far as they are known to the applicant, within and outside Australia;
 - (c) the matters referred to in Rule 37A.05; and
 - (d) the identity of any person, other than the respondent, who the applicant believes may be affected by the freezing order and how that person may be affected by it.

37A.03 Ancillary order

- (1) The Court may make an order (an *ancillary order*) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.
- (2) Without limiting the generality of paragraph (1), an ancillary order may be made for either or both of the following purposes—
 - (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
 - (b) determining whether the freezing order should be made.

37A.04 Respondent need not be party to proceeding

The Court may make a freezing order or an ancillary order against a respondent, whether or not the respondent is a party to a proceeding in which substantive relief is sought against the respondent.

37A.05 Order against judgment debtor or prospective judgment debtor or third party

- (1) This Rule applies if—
 - (a) an order has been given in favour of an applicant by—
 - (i) the Court; or
 - (ii) in the case of an order to which paragraph (2) applies, another court; or
 - (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
 - (i) the Court; or
 - (ii) in the case of a cause of action to which paragraph (3) applies, another court.
- (2) This paragraph applies to an order if there is a sufficient prospect that the order will be registered in or enforced by the Court.
- (3) This paragraph applies to a cause of action if—
 - (a) there is a sufficient prospect that the other court will give an order in favour of the applicant; and
 - (b) there is a sufficient prospect that the order will be registered in or enforced by the Court.
- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is

satisfied, having regard to all the circumstances, that there is a danger that an order or prospective order of the Court will be wholly or partly unsatisfied because any of the following might occur—

- (a) the judgment debtor, prospective judgment debtor or another person absconds; or
 - (b) the assets of the judgment debtor, prospective judgment debtor or another person are—
 - (i) removed from Australia or from a place inside or outside Australia; or
 - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a ***third party***) if the Court is satisfied, having regard to all the circumstances, that—
- (a) there is a danger that an order or prospective order of the Court will be wholly or partly unsatisfied because—
 - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

- (b) a process in the Court is or may ultimately be available to the applicant as a result of an order or prospective order of the Court, under which process the third party may be obliged to disgorge assets or contribute towards satisfying the order or prospective order.
- (6) Nothing in this Rule affects the power of the Court to make a freezing order or an ancillary order if the Court considers it is in the interests of justice to do so.

37A.06 Jurisdiction of Court not limited

Nothing in this Order limits any other jurisdiction of the Court to make a freezing order or an ancillary order.

37A.07 Service

- (1) An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.
- (2) A freezing order—
 - (a) must be authenticated pursuant to Rule 60.04;
 - (b) when served, must be served together with a copy of—
 - (i) the application, or, if none was filed, any draft application produced to the Court;
 - (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;

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- (iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and
 - (iv) the complaint, or, if none was filed, any draft complaint produced to the Court.

37A.08 Costs

- (1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or an ancillary order.

37A.09 Application to be heard by magistrate

An application under this Order must be heard by a magistrate.

ORDER 37B

SEARCH ORDERS

37B.01 Definitions

In this Order, unless the contrary intention appears—

applicant means an applicant for a search order;

described includes described generally, whether by reference to a class or otherwise;

premises includes a vehicle or vessel of any kind;

respondent means a person against whom a search order is sought or made;

search order has the meaning given in Rule 37B.02(1);

thing includes document.

37B.02 Search order

- (1) The Court may make an order (a *search order*), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.
- (2) A search order may be in Form 37BA.
- (3) In making a search order, the Court must have regard to the practice note concerning search orders.

37B.03 Requirements for grant of search order

- (1) The Court may make a search order if the Court is satisfied that—
 - (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action;
 - (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
 - (c) there is sufficient evidence in relation to the respondent that—
 - (i) the respondent possesses important evidentiary material; and
 - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or an anticipated proceeding before the Court.
- (2) An application for a search order must be supported by an affidavit or affidavits which, unless the Court otherwise orders, must include the following information—
 - (a) a description of the things or the categories of things, in relation to which the search order is sought;
 - (b) the address or location of any premises in relation to which the search order is sought and whether they are private or business premises;
 - (c) why the search order is sought, including whether there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in

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- evidence before the Court unless the search order is made;
- (d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;
 - (e) the name, address, firm and commercial litigation experience of an independent Australian lawyer, who consents to being appointed to serve the search order, supervise its execution and do such other things as the Court considers appropriate;
 - (f) if the premises to be searched are or include residential premises, whether or not the applicant believes that the only occupant of the premises is likely to be—
 - (i) a female;
 - (ii) a child under the age of 18 years;
 - (iii) any other person that a reasonable person would consider to be in a position of vulnerability on the grounds of that person's age, mental incapacity, infirmity or English language ability; or
 - (iv) any combination of sub-subparagraphs (i) to (iii) and any one or more of such persons.
- (3) The applicant must give the usual undertakings as to damages and must undertake to pay the independent Australian lawyer's reasonable costs and disbursements.
- (4) The applicant's Australian lawyer and the independent Australian lawyer must give such undertakings to the Court as the Court considers appropriate.
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37B.04 Jurisdiction of Court not limited

Nothing in this Order limits any other jurisdiction of the Court to make a search order.

37B.05 Terms of search order

- (1) A search order may direct each person who is named or described in the order—
 - (a) to permit, or arrange to permit, such other persons as are named or described in the order—
 - (i) to enter premises specified in the order; and
 - (ii) to take any steps that are in accordance with the terms of the order;
 - (b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order;
 - (c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order;
 - (d) not to disclose any information about the order, for such period as is specified in the order (not exceeding 3 days) after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
 - (e) to do or refrain from doing any act as the Court considers appropriate.
- (2) Without limiting the generality of paragraph (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include—

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- (a) searching premises for, inspecting or removing the thing; and
 - (b) making or obtaining a copy, photograph, film, sample, test or other record of any such thing or any information it may contain.
- (3) A search order—
- (a) must not authorise a search of a natural person;
 - (b) must not be executed at the same time as the execution by the police or other proper authority of a search warrant; and
 - (c) may contain such other provisions as the Court considers appropriate.

37B.06 Independent Australian lawyers

- (1) If the Court makes a search order, the Court must appoint one or more Australian lawyers, each of whom is independent of the applicant's Australian lawyers (the *independent Australian lawyers*) and each of whom is prepared to give such undertakings as the Court requires, to supervise the execution of the search order and to do such other things in relation to the search order as the Court considers appropriate.
- (2) The Court may appoint an independent Australian lawyer to supervise execution of the search order at any one or more premises, and a different independent Australian lawyer or Australian lawyers to supervise execution of the search order at other premises, with each independent Australian lawyer having power to do such other things in relation to the order as the Court considers appropriate.

37B.07 Costs

- (1) The Court may make any order as to costs it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a search order.

37B.08 Service

- (1) A search order—
 - (a) must be authenticated pursuant to Rule 60.04;
 - (b) when served, must be served together with a copy of—
 - (i) the application for the order, or if none was filed, any draft application produced to the Court;
 - (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;
 - (iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and
 - (iv) the complaint, or, if none was filed, any draft complaint produced to the Court.
- (2) Service of the documents referred to in paragraph (1) upon any person who appears to the independent Australian lawyer to be responsible and in charge of the premises or any of the premises at which the search order is to be executed, is taken to be service on the respondent.

37B.09 Application to be heard by magistrate

An application under this Order must be heard by
a magistrate.

ORDER 38

INJUNCTIONS

38.01 When Court may grant

The Court may grant an injunction at any stage of a proceeding or, in the circumstances referred to in Rule 4.08, before the commencement of a proceeding.

38.02 Application before hearing

- (1) In an urgent case, the Court may grant an injunction on application made without notice.
- (2) If a plaintiff applies for an injunction against a defendant, service of notice of application on that defendant may be made at the time of service of a complaint in the proceeding.

38.03 Costs and expenses of non-party

- (1) This Rule applies where an application for an injunction is made before the hearing of a proceeding.
- (2) The Court may grant an injunction on condition that the party applying for the injunction give security for the costs and expenses of any person who might be affected.
- (3) The Court may make such order as it thinks fit for the payment, either in the first instance or finally, of the costs and expenses of any person not being a party who might be affected by the grant of an injunction.

38.04 * * * *

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010
Order 39

r. 39

ORDER 39

RECEIVERS

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ORDER 40

EVIDENCE GENERALLY

40.01 * * * *

40.02 Evidence of witness

Except where otherwise provided by any Act or these Rules, and subject to any agreement between the parties, evidence must be given—

- (a) on an interlocutory or other application in any proceeding, by affidavit;
- (b) at the hearing of a proceeding, orally.

40.03 Contrary direction as to evidence

- (1) Notwithstanding Rule 40.02, the Court may order that evidence be given—
 - (a) orally on the hearing of an interlocutory or other application in any proceeding;
 - (b) by affidavit at the hearing of a proceeding.
- (2) If the Court makes an order under paragraph (1)(a), it may direct that the party on whose application the order is made give such notice as it thinks fit to the other parties of the oral evidence the party proposes to adduce.
- (3) If the Court makes an order under paragraph (1)(b), it may order that the deponent attend at the hearing to be examined or that the deponent's attendance be dispensed with.

40.04 Examination on affidavit

- (1) If an affidavit is filed in any proceeding, the Court may—
 - (a) order that the deponent be examined before the Court; and
 - (b) may order that the deponent attend for that purpose at such time and place as it directs.

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- (2) Unless the Court otherwise orders, a party to a proceeding commenced by complaint on whose behalf an affidavit is filed in the proceeding must cause the deponent to attend at the hearing of the proceeding to be examined if notice that such attendance is required is served on the party by any other party a reasonable time before the commencement of the hearing.
 - (3) If a deponent in respect of whom an order is made under paragraph (1) or a notice is served under paragraph (2) does not attend for examination the Court may order that the affidavit be not received into evidence.

40.05 Evidence of particular facts

- (1) The Court may order that evidence of any particular fact must be given at the hearing or at any other stage of a proceeding in such manner as it directs.
- (2) Without limiting paragraph (1), the Court may order that evidence of any particular fact be given—
 - (a) by statement on oath of information and belief;
 - (b) by the production of documents or entries in books;
 - (c) by the production of copies of documents or entries in books.

40.06 Revocation or variation of order

The Court may, at or before the hearing of any proceeding, revoke or vary any order made under Rules 40.03 to 40.05.

40.07 Deposition as evidence

- (1) No deposition taken in a proceeding must be admissible as evidence at the hearing of the proceeding unless—
 - (a) either—
 - (i) the person against whom the evidence is offered consents; or
 - (ii) the deponent is dead or is unfit by reason of his or her bodily or mental condition to attend the hearing and testify as a witness; or
 - (iii) the deponent is out of Victoria and it is not reasonably practicable to secure the deponent's attendance; or
 - (iv) the deponent cannot with reasonable diligence be found; and
 - (b) the party who applies to have the deposition received into evidence has given reasonable notice of the application to the other party.
- (2) A deposition purporting to be signed by the person before whom it was taken is receivable in evidence without proof of the signature of that person.
- (3) Unless the Court otherwise orders—
 - (a) evidence of facts within paragraph (1)(a) may be given by affidavit; and
 - (b) the affidavit may be made from belief as to those facts, if the grounds for the belief are given.

40.08 Proof of Court documents

- (1) A document purporting to be sealed with the seal of the Court must be admissible in evidence without further proof.

- (2) An office copy of a document filed in or issued out of the Court is admissible in evidence in any proceeding between all parties to the same extent as the original would be admissible.
- (3) A document purporting to be sealed with the seal of the Court and to be a copy of a document filed in or issued out of the Court is admissible as an office copy of the latter document without further proof.

40.09 Evidence of consent

The consent of a person to act in a particular capacity, whether as trustee, receiver or otherwise, or to be added as a plaintiff is to be taken as sufficiently evidenced by a written consent signed by that person, dated and verified by the indorsed certificate of an Australian lawyer.

40.10 Defamation

A defendant in a proceeding for libel or slander who has not by the defendant's defence alleged the truth of the statement complained of must not, except by leave of the Court at the hearing, give evidence in chief at the hearing with respect to—

- (a) mitigation of damages;
- (b) the circumstances of publication; or
- (c) the character of the plaintiff—

unless the defendant gives particulars of the evidence to the plaintiff by notice served not less than 7 days before the hearing.

40.11 Subsequent use of evidence at hearing

The Court may order that any evidence that has been taken at the hearing of a proceeding may be used at any subsequent stage of that hearing.

40.12 Attendance and production

- (1) The Court may in any proceeding make an order for—
 - (a) the attendance of any person for the purpose of being examined; or
 - (b) the attendance of any person and production by that person of any document or thing specified or described in the order; or
 - (c) the production by any corporation of any document or thing described in the order.
- (2) An order under paragraph (1) must not operate to require the person against whom the order is made to produce any document which the person could properly object to produce on the ground of privilege.

40.13 View

The Court may during the proceeding inspect any place, process or thing.

40.14 Quotation or assessment as evidence

- (1) In a complaint counterclaim or claim by third party notice which arises from a motor vehicle collision and includes a claim—
 - (a) for the cost of repairs to a motor vehicle, an itemised quotation of the cost of repairs; or
 - (b) for total loss of a motor vehicle, an assessment of the loss—attached to the complaint counterclaim or claim by third party notice is evidence of the cost of repairs or the loss (as the case may be).
- (2) A party against whom damages are sought may, by notice in writing served on the party claiming relief not more than 42 days after service of the complaint counterclaim or claim by third party

notice to which an itemised quotation or assessment is attached, require the maker of the quotation or assessment to attend the hearing for the purposes of cross-examination.

40.15 Person about to leave Victoria may be ordered to be examined or to produce documents

- (1) If the Court on the application of any party is satisfied by evidence upon oath that any person—
- (a) is able to give material evidence or to produce relevant or material documents or things relating to a pending complaint; and
 - (b) is likely to be absent from Victoria at the time the complaint comes on for hearing—
- the Court may order that, before the hearing—
- (c) the evidence of that person be taken; or
 - (d) the documents or things be produced by that person.
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ORDER 41

EVIDENCE BEFORE TRIAL

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ORDER 41A

**APPLICATION UNDER SECTION 42E(1) OF THE
EVIDENCE (MISCELLANEOUS PROVISIONS)
ACT 1958**

41A.01 Application of Order

This Order applies to an application for a direction under section 42E(1) of the **Evidence (Miscellaneous Provisions) Act 1958**.

41A.02 Form of application

Notice of an application must be in Form 41AA.

41A.03 Filing

The applicant must file the notice at least 14 days before the person the subject of the application is due to appear before or give evidence or make a submission to the Court.

41A.04 Service

As soon as practicable after the filing of the notice the applicant must serve a copy on every other party.

41A.05 Duty of applicant

If, whether before or after a direction has been given, an applicant no longer requires the person the subject of the application to appear before or give evidence or make a submission to the Court by audiovisual link or audio link, the applicant must notify the registrar forthwith.

41A.06 Payment of costs

Unless the Court otherwise orders, the appropriate amount prescribed by the regulations under section 42H(1) of the **Evidence (Miscellaneous Provisions) Act 1958** must be paid in the first instance by the applicant.

ORDER 42

SUBPOENAS

42.01 Definitions

In this Order and in Order 42A, unless the contrary intention appears—

addressee means the person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as prepaid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing party means the party at whose request a subpoena is issued;

subpoena means a summons in writing requiring the addressee—

- (a) to attend to give evidence;
- (b) to produce the summons or a copy of it and a document or thing; or
- (c) to do both of those things—

and includes a witness summons;

subpoena to attend to give evidence means a subpoena requiring the addressee to attend to give evidence;

subpoena to produce means a subpoena requiring the addressee to produce the subpoena or a copy of it and a document or thing.

42.02 Issuing of subpoena

- (1) The Court may, in any proceeding, by subpoena order the addressee—
 - (a) to attend to give evidence as directed by the subpoena;
 - (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
 - (c) to do both of those things.
- (2) The registrar must not issue a subpoena—
 - (a) if the Court has made an order, or there is a Rule of the Court, having the effect of requiring that the proposed subpoena—
 - (i) not be issued; or
 - (ii) not be issued without the leave of the Court and that leave has not been given; or
 - (b) requiring the production of a document or thing in the custody of the Court or another court.
- (3) A subpoena is taken to be issued on its being signed by the registrar.

42.03 Form of subpoena

- (1) A subpoena must be in accordance with Form 42A.
- (2) A subpoena—
 - (a) requiring a person to attend for the purpose of giving evidence may be addressed to any number of persons;
 - (b) requiring the production of a document or thing must be addressed to one person only, except in the case of partners, where all the

members of the firm may be addressed in the subpoena.

- (3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.
- (4) A subpoena to produce must—
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence must specify the date, time and place for attendance.
- (6) The date specified in a subpoena must be the date of hearing or any other date as ordered by the Court.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as ordered by the Court.
- (8) The last date for service of a subpoena—
 - (a) is a reasonable time before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the Court; and
 - (b) must be specified in the subpoena.
- (9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Note

See also Rule 42.10(3) regarding notice and declaration in Form 42B to accompany a subpoena to produce dealing with copies and disposal of documents.

**Note to
rule 42.03(9)
inserted by
S.R. No.
36/2011
rule 11.**

42.03.1 Alteration of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time that is specified in a subpoena as the date or time for attendance or for production or for both.
- (2) If notice is given under paragraph (1), the subpoena has effect as if the date or time notified appears in the subpoena instead of the date or time that is specified in the subpoena.

42.04 Setting aside or other relief

- (1) The Court may, of its own motion or on the application of a party or of any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in respect of it.
- (2) An application under paragraph (1) must be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

42.05 Service

- (1) A subpoena must be served personally on the addressee.
- (2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee, but it is not necessary that the copy served be signed or be served personally.

42.06 Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the day on which attendance is required.

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- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the day specified in the subpoena as the last day for service of the subpoena.
 - (3) Despite Rule 42.05(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.
 - (4) The addressee must comply with a subpoena to produce—
 - (a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
 - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address specified for the purpose in the subpoena, so that they are received not less than 3 days before the day specified in the subpoena for attendance and production or, if the addressee has received notice of a later day from the issuing party, before that later day.
 - (5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by paragraph (4) does not discharge the addressee from the obligation to attend to give evidence.

Rule 42.06(6)
inserted by
S.R. No.
36/2011
rule 12.

- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.

Rule 42.06(7)
inserted by
S.R. No.
36/2011
rule 12.

- (7) The copy of a document may be—
(a) a photocopy; or
(b) in PDF format on a CD-Rom.

42.07 Production otherwise than upon attendance

- (1) This Rule applies if an addressee produces a document or thing in accordance with Rule 42.06(4)(b).
(2) The registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
(3) If the addressee produces more than one document or thing, the addressee must, if requested by the registrar, provide a list of the documents or things produced.
(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

42.08 Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

42.09 Inspection of, and dealing with, documents and things produced otherwise than on attendance

- (1) This Rule applies if an addressee produces a document or thing in accordance with Rule 42.06(4)(b).

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- (2) On the request in writing of a party, the registrar must inform the party whether production in response to a subpoena has occurred, and, if so, include a description, in general terms, of the document and thing produced.
 - (3) Subject to this Rule, no person may inspect a document or thing produced unless the Court has granted leave and the inspection is in accordance with that leave.
 - (4) Unless the Court otherwise orders, the registrar may permit the parties to inspect at the office of the registrar any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this Rule.
 - (5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the registrar in writing of the objection and of the grounds of the objection.
 - (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the registrar in writing of the objection and of the grounds of the objection.
 - (7) On receiving a notice of an objection under this Rule, the registrar—
 - (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) must refer the objection to the Court for hearing and determination.
 - (8) The registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party

must notify the addressee, the objector and each other party accordingly.

- (9) The registrar must not permit any document or thing produced to be removed from the office of the registrar except on application in writing signed by the Australian lawyer for a party.
- (10) An Australian lawyer who signs an application under paragraph (9) and removes a document or thing from the office of the registrar, undertakes to the Court by force of this Rule that—
 - (a) the document or thing will be kept in the personal custody of the Australian lawyer or a barrister briefed by the Australian lawyer in the proceeding; and
 - (b) the document or thing will be returned to the office of the registrar in the same condition, order and packaging in which it was removed, as and when directed by the registrar.
- (11) The registrar may, in the registrar's discretion, grant an application under paragraph (9) subject to conditions or refuse to grant the application.

42.10 Disposal of documents and things produced

Rule 42.10(1)
amended by
S.R. No.
36/2011
rule 20.

- (1) Unless the Court otherwise orders, the registrar may, in the registrar's discretion, return to the addressee any document or thing produced to the registrar in response to the subpoena.
- (2) Unless the Court otherwise orders, the registrar must not return any document or thing under paragraph (1) unless the registrar has given to the issuing party at least 14 days notice of the intention to do so and that period has expired.

- (3) The issuing party must attach to the front of a subpoena to produce to be served on the addressee a notice and declaration in accordance with Form 42B.
- (4) The addressee must—
 - (a) complete the notice and declaration referred to in paragraph (3); and
 - (b) attach it to the subpoena or copy of the subpoena which accompanies the documents produced to the Court under the subpoena.
- (5) Subject to paragraph (6), the registrar may, upon the expiry of four months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena which were declared by the addressee to be copies.
- (6) The registrar may cause to be destroyed those documents declared by the addressee to be copies which have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

Rule 42.10(3)
inserted by
S.R. No.
36/2011
rule 13.

Rule 42.10(4)
inserted by
S.R. No.
36/2011
rule 13.

Rule 42.10(5)
inserted by
S.R. No.
36/2011
rule 13.

Rule 42.10(6)
inserted by
S.R. No.
36/2011
rule 13.

42.11 Costs and expenses of compliance

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under paragraph (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount fixed under this Rule is separate from and in addition to—
 - (a) any conduct money paid to the addressee;
 - (b) any witness expenses payable to the addressee.

42.12 Failure to comply with subpoena—contempt of court

Note

Section 134 of the Act sets out the circumstances in which a person is guilty of contempt of court in the Magistrates' Court.

42.13 Documents and things in the custody of a court

- (1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the registrar in writing accordingly, identifying the document or thing.
 - (2) If the document or thing is in the custody of the Court, the registrar must produce the document or thing—
 - (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the Court directs.
 - (3) If the document or thing is in the custody of another court, the registrar must, unless the Court has otherwise ordered—
 - (a) request the other court to send the document or thing to the registrar; and
 - (b) after receiving it, produce the document or thing—
 - (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
 - (ii) as the Court directs.
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ORDER 42A

SUBPOENA FOR PRODUCTION TO REGISTRAR

42A.01 Application

- (1) This Rule applies where a party who has an Australian lawyer in the proceeding seeks to require a person not a party to produce any document for evidence before—
 - (a) the hearing of an interlocutory or other application in the proceeding; or
 - (b) the hearing of the proceeding.
- (2) Order 42 applies so far as is practicable to a subpoena to produce under this Order.

42A.02 Issuing subpoena

A subpoena issued under this Order must require the addressee to produce to a registrar on or before a day specified by the registrar in the subpoena the document identified in the subpoena.

42A.03 Form of subpoena

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

42A.04 Affidavit of service

- (1) A subpoena under this Order must be served personally on the addressee.
- (2) The issuing party must serve a copy of a subpoena to produce under this Order on each other party as soon as practicable after the subpoena has been served on the addressee, but it is not necessary that the copy served be sealed or be served personally.
- (3) A party who serves a copy of a subpoena under this Order must forthwith file an affidavit of service.

42A.05 Compliance with subpoena

- (1) The addressee must comply with the subpoena under this Order by producing the document to the registrar by delivering or sending it and, if sent, the document must be sent so that the registrar receives it on or before the day specified in the subpoena.
- (2) If the document is not in writing, then, provided the original is held by the person named until hearing, a copy only need be produced to the registrar and, if a copy is produced, it must be clearly marked as such and may be used by the registrar for the purposes of inspection and, if necessary, copying.

42A.06 Receipt for document

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

42A.07 Objection by addressee or other person

If—

- (a) the addressee has any objection to producing a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding; or
- (b) a person having a sufficient interest, other than a party, has any objection to the production of a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding—

that person must notify the registrar in writing of that objection and state the grounds of that objection before the day specified in the subpoena.

42A.08 Objection by party to inspection by other party

- (1) Subject to paragraph (2), if a party has any objection to the inspection by another party of a document identified in the subpoena, the party having the objection must notify the registrar in writing of that objection and state the grounds of that objection before the day specified in the subpoena.
- (2) If a party other than the plaintiff seeks by subpoena the production of any hospital or medical file or record concerning the plaintiff or his or her condition, the plaintiff may, before taking objection under paragraph (1), inspect the file or record produced to the registrar and notify the registrar thereafter of any objection the plaintiff has to inspection by any other party, provided that the plaintiff makes that inspection and notifies that objection and the grounds of that objection in writing within 7 days after the day specified in the subpoena for production of the file or record to the registrar.

42A.09 Procedure after objection

- (1) Upon receiving notice under Rule 42A.07 or 42A.08, the registrar must refer the subpoena to a magistrate for the hearing and determination of the objection.
- (2) The registrar must notify the issuing party in writing of the objection and the grounds of that objection and the time and place at which the objection will be heard and that party must notify the addressee and all other parties accordingly.

42A.10 Inspection of document produced

If no objection is notified under Rule 42A.07 or 42A.08 or to the extent that any such objection is disallowed, each party, unless a magistrate otherwise orders, may by appointment with the

registrar inspect and take copies of a document produced in compliance with a subpoena under this Order.

42A.11 Removal of document

- (1) The registrar must not permit any document produced in compliance with a subpoena under this Order to be removed from the office of the registrar except upon application in writing signed by the Australian lawyer for a party.
- (2) An Australian lawyer who signs an application under paragraph (1) and removes a document from the office of the registrar, undertakes to the Court by force of this Rule that—
 - (a) the document will be kept in the personal custody of the Australian lawyer or a barrister briefed by the Australian lawyer in the proceeding; and
 - (b) the document will be returned to the office of the registrar in the same condition, order and packaging in which it was removed, as and when directed by the registrar.
- (3) The registrar may, in his or her discretion, decline to accede to any application under paragraph (1).

42A.12 Return of document

- (1) Subject to any order of the Court, the registrar—
 - (a) may in his or her discretion return to the addressee any document produced to the registrar in compliance with the subpoena;
 - (b) must, upon returning the document, inform the addressee that the subpoena to produce remains in force until the hearing or other determination of the proceeding; and

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- (c) may specify a date by which the document is to be produced again to the registrar in compliance with the subpoena.
- (2) Subject to paragraph (3), the registrar must not return any document under paragraph (1) until after the registrar has given to the issuing party 14 days notice in writing of his or her intention to do so.
- (3) In an urgent case and at the request of—
- (a) the addressee; or
 - (b) in the case of any hospital or medical file or record concerning the plaintiff or his or her condition, the plaintiff—

the registrar may return a document under paragraph (1) without first giving notice under paragraph (2), but in such a case, after returning the document, the registrar must give notice to the issuing party that the document has been returned.

42A.13 Production of document at hearing

Subject to Rule 42A.12, the registrar must, unless otherwise ordered, produce or hand to the Court for production at the hearing of the proceeding each document produced to the registrar in compliance with a subpoena under this Order.

42A.14 Subpoena for hearing not affected

The issuing of a subpoena under this Order does not preclude the issuing of a subpoena otherwise than under this Order.

ORDER 43

AFFIDAVITS

43.01 Form of affidavit

- (1) An affidavit must be made in the first person.
- (2) Unless the Court otherwise orders, an affidavit must state the place of residence of the deponent and his or her occupation or, if he or she has none, his or her description, and that he or she is a party to the proceeding or employed by a party, if such be the case.
- (3) Notwithstanding paragraph (2), if a deponent makes an affidavit in a professional or other occupational capacity, the affidavit may, instead of stating the deponent's place of residence, state the address of his or her place of business, the position he or she holds and the name of his or her firm or employer, if any.
- (4) An affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- (5) Every affidavit must be signed by the deponent, except as provided by Rule 43.02(1), and the jurat must be completed and signed by the person before whom it is sworn.
- (6) Each page of an affidavit must be signed by the person before whom it is sworn.
- (7) The person before whom an affidavit is sworn must legibly write, type or stamp below his or her signature in the jurat his or her name and address and a statement of the capacity in which he or she has authority to take the affidavit.

43.02 Affidavit by illiterate, blind or incapacitated person

- (1) If it appears to the person before whom an affidavit is sworn that the deponent is illiterate, blind or physically incapacitated he or she must certify in or below the jurat that—
 - (a) the affidavit was read in the person's presence to the deponent; and
 - (b) the deponent seemed to the person to understand it; and
 - (c) the deponent made his or her signature or mark in the person's presence.
- (2) If an affidavit is made by an illiterate, blind or physically incapacitated deponent and a certificate in accordance with paragraph (1) does not appear on the affidavit, it may not be used in evidence unless the Court is satisfied that the affidavit was read to the deponent and that the deponent seemed perfectly to understand it.

43.03 Content of affidavit

- (1) Except where otherwise provided by or under these Rules an affidavit must be confined to facts which the deponent is able to state of his or her own knowledge.
- (2) In an interlocutory application in a proceeding an affidavit may contain a statement of fact based on information and belief if the grounds are set out in the affidavit.

43.04 Affidavit by 2 or more deponents

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

43.05 Alterations

- (1) Notwithstanding any interlineation, erasure or other alteration in the jurat or body, an affidavit—
 - (a) may be filed, unless the Court otherwise orders; but
 - (b) may not be used without the leave of the Court unless the person before whom it is sworn has initialled the alteration.
- (2) Paragraph (1) applies to an account verified by affidavit as if the account were part of the affidavit.

43.06 Annexures and exhibits

- (1) A document referred to in an affidavit must not be annexed to the affidavit but may be referred to as an exhibit.
- (2) An exhibit to an affidavit must be identified by a separate certificate annexed to it bearing the same heading as the affidavit and signed by the person before whom the affidavit is sworn.
- (3) The certificate must be in Form 43A and must contain in the bottom right-hand corner of the page in bold type and in a font size not less than 20 points the distinguishing mark of the exhibit and a brief and specific description of the exhibit.

43.07 Time for swearing

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

43.08 Irregularity

Notwithstanding any irregularity of form an affidavit may with the leave of the Court, be used in evidence.

43.09 Filing

- (1) Unless the Court otherwise orders, an affidavit—
 - (a) which has not been filed; or
 - (b) which has not been served or filed in compliance with an order in respect of its service or filing—must not be used by the party by or on whose behalf it was made.
 - (2) An affidavit may be filed with the registrar or with the proper officer in court.
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ORDER 44

EXPERT EVIDENCE

44.01 Definitions

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

expert means a person who has specialised knowledge based on the person's training, study or experience;

opinion includes more than one opinion;

the code means the expert witness code of conduct in Form 44A.

44.02 Application

- (1) This Order does not apply to the following—
 - (a) the evidence of a party who would, if called as a witness at the hearing of a proceeding, be qualified to give evidence as an expert in respect of any question in the proceeding;
 - (b) a person engaged as an expert before commencement of these Rules;
 - (c) any itemised quotation or assessment attached to a complaint under Rule 5.05(2) or (3);
 - (d) an arbitration of a complaint, where the complaint has been referred to arbitration by the Court under section 102 of the Act.
- (2) With respect to the opinion of a registered medical practitioner, in a proceeding for medical negligence in which the plaintiff claims damages for or in respect of bodily injury this Order applies to an opinion on the liability of the defendant but does not otherwise apply to a medical report to which Order 33 applies.

44.03 Report of expert

- (1) Unless otherwise provided, a party who intends at the hearing of a proceeding to adduce the evidence of a person as an expert must—
 - (a) as soon as practicable after the engagement of the expert and before the expert makes a report under this Rule, provide the expert with a copy of the code; and
 - (b) in the case of evidence to be adduced by an expert as to the cost of repairs to or replacement of a motor vehicle damaged in a motor vehicle collision, not later than 10 days before the day fixed for the hearing of the proceeding, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court;
 - (c) in any other case, not later than 30 days before the day fixed for the hearing of the proceeding, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court.
- (2) The report must state the opinion of the expert and must state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read the code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);

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- (e) in relation to the opinion—
 - (i) the reasons for the opinion;
 - (ii) any literature or other materials utilised in support of the opinion;
 - (iii) a summary of the opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the enquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (j) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
- (3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed his or her opinion on a material matter expressed in an earlier report—
- (a) that party must forthwith serve the supplementary report on all other parties;
and
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- (b) in default of such service, the party and any other party having a like interest must not use the earlier report or the supplementary report at the hearing without the leave of the Court.
- (4) Any report provided by the expert pursuant to this Rule must be signed by the expert and must be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

44.04 Other party's report as evidence

Unless otherwise ordered, a party may put in evidence a report served on that party by another party under this Order.

Rule 44.04
amended by
S.R. No.
36/2011
rule 21.

44.05 No evidence unless disclosed in report

Save with the leave of the Court or by consent of the parties affected, a party must not except in cross-examination adduce any evidence from a person as an expert at the hearing of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served under this Order.

44.06 Conference between experts

- (1) The Court may direct expert witnesses—
 - (a) to confer; and
 - (b) to provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.
- (2) The Court may specify the matters on which the experts are to confer.
- (3) An expert witness may apply to the Court for further directions.

-
- (4) The Court may direct the legal representatives of a party—
- (a) to attend the conference;
 - (b) not to attend the conference;
 - (c) to attend or not to attend at the option of the party whom they represent.
- (5) Subject to paragraph (1)(b), except as the parties affected agree in writing, no evidence is to be admitted of anything said or done by any person at the conference.
- (6) An agreement reached during the conference does not bind a party except in so far as the party agrees in writing.
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ORDER 45

ORIGINATING MOTION

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ORDER 46

APPLICATIONS

46.01 Application of Order

Unless otherwise provided by these Rules this Order applies to any interlocutory or other application in a proceeding.

46.02 Form of application

- (1) An application in a proceeding made on notice to any person must be made on summons, unless the Court otherwise orders, and must be supported by an affidavit or affidavits.
- (2) An application by summons is made when the summons is filed in accordance with Rule 46.04.
- (3) An application not by summons is made when it comes on for hearing.

46.03 Notice of application

On the hearing of an application the Court may order that the person making the application give notice of it to any person having a sufficient interest.

46.04 Form and filing

- (1) A summons must be in Form 46A.
- (2) A summons must be filed with a registrar at the proper venue of the Court.

46.05 Service

- (1) The applicant must serve a copy of a summons and a copy of any affidavit in support on every person to whom notice of the summons is to be given unless otherwise provided by these Rules.
- (2) Every summons must be served within a reasonable time before the day for hearing named in the application, and in no case later than

2.00 p.m. on the previous day, or where the office of the Court was closed on the day before the day for hearing, not later than 2.00 p.m. on the day the office was last open.

46.05.1 Day for hearing

- (1) If a summons has not been served a registrar may, at the request of the party who filed it, amend the summons on or before the day for hearing named in the summons to name another day.
- (2) The summons may be amended—
 - (a) by a magistrate; or
 - (b) by a judicial registrar; or
 - (c) a registrar.
- (3) A summons shall not be amended under this Rule more than once.
- (4) This Rule does not limit the power of the Court under Rule 36.01.

46.06 Adjournment

- (1) The Court may adjourn the hearing of an application on such terms as it thinks fit.
- (2) The Court constituted by a registrar—
 - (a) may by consent order that the hearing of an application be adjourned to a particular date or for a particular time or generally, and reserve the costs of the adjournment; and
 - (b) must record the adjournment and any reservation of the costs by indorsement on the court file.
- (3) If the hearing of an application is adjourned under paragraph (2), the Court may thereafter, whether the costs of the adjournment were reserved or not, make an order in relation to the costs of or occasioned by the adjournment as it thinks fit.

- (4) Rule 63.22 applies to costs reserved under paragraph (2) as if the costs were reserved by order of the Court.

46.07 Absence of party to summons

- (1) If any person to whom a summons is addressed fails to attend, the Court may hear the application if satisfied that the summons was duly served.
- (2) If on an application by summons the applicant fails to attend, the Court may dismiss the application or make such other order as it thinks fit.

46.08 Application for re-hearing

- (1) An application under section 110 of the Act must be filed.
- (2) At least 14 days before the day specified in the application, a copy of the application and of any affidavit in support upon which the applicant intends to rely must be served on the other party or parties at the address for service in the complaint or notice of defence (as the case may be) unless the Court otherwise orders.
- (3) If an application is struck out because the applicant failed to appear at the time fixed for hearing of the application, a further application for re-hearing is taken to be an application for leave to re-apply under section 110(5) of the Act.

46.09 Form of application

- (1) An application under Rule 46.08 must state—
- (a) why the applicant did not appear on the hearing of the complaint; and
- (b) if applicable, why notice of defence was not given.
- (2) An application under Rule 46.08 must be in Form 46B.

46.10 Setting aside

The Court may set aside or vary an order which affects a person where the application for the order—

- (a) was made on notice to that person, but the person did not attend the hearing of the application; or
 - (b) was not made on notice to that person.
- _____

ORDER 47

PLACE AND MODE OF HEARING

47.01 Place of hearing of proceeding

- (1) A civil proceeding must be heard at the venue of the court at which the complaint was filed.
- (2) A defendant may object to the venue at which the proceeding is to be heard by giving notice in writing to the plaintiff no later than 14 days after the giving of the notice of defence.
- (3) If, after giving a notice under paragraph (2), the plaintiff does not agree to a change of venue, the defendant may apply to the Court no later than 14 days after the giving of the notice, for a decision under paragraph (4) as to the appropriate venue.
- (4) Despite paragraph (1), if the Court is satisfied that the interests of justice so require, the Court may adjourn the hearing of a proceeding to another venue of the Court.
- (5) In making a decision under paragraph (4), the Court may have regard to any one or more of the following matters—
 - (a) the places of residence of the parties and of the witnesses likely to be called in the proceeding;
 - (b) the place where the subject matter of the complaint arose;
 - (c) the financial circumstances of the parties;
 - (d) any agreement between the parties about the venue of the Court at which the proceedings should be heard;

- (e) whether a related or similar proceeding has been commenced to which the plaintiff or defendant is a party;
- (f) any other relevant matter.
- (6) A proceeding is not void or in any other way affected merely because the proceeding was filed at or was heard and determined at a venue of the court other than the proper venue of the court.

47.02 * * * *

47.03 * * * *

47.04 Separate hearing of question

The Court may order that—

- (a) any question in a proceeding be heard before, at or after the hearing of the proceeding, and may state the question or give directions as to the manner in which it is to be stated;
- (b) different questions be heard at different times or places.

47.05 Order after determination of preliminary question

If the determination of any question in a proceeding and heard separately from the proceeding substantially disposes of the proceeding or renders the hearing of the proceeding unnecessary, the Court may dismiss the proceeding or make such other order or give such order as it thinks fit.

47.06 * * * *

Magistrates' Court General Civil Procedure Rules 2010
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Order 48

r. 48

ORDER 48

SETTING DOWN FOR TRIAL

* * * * *

ORDER 49

HEARING

49.00 Application

This Order does not apply to a proceeding to which Order 2 of the Magistrates' Court (Miscellaneous Civil Proceedings) Rules 2010 applies.

49.01 Order of evidence and addresses

- (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the hearing.
- (2) Subject to any direction given under paragraph (1)—
 - (a) if the burden of proof on any question lies on the plaintiff, the plaintiff must begin;
 - (b) if the burden of proof on all the questions lies on the defendant, the defendant must begin.
- (3) Subject to any direction given under paragraph (1)—
 - (a) if the only parties are one plaintiff and one defendant, and there is no counterclaim, the order of evidence and addresses must be as provided by the following paragraphs of this Rule; and
 - (b) in any other case, the order of evidence and addresses must be as provided by those paragraphs with such modifications as the nature of the case requires.
- (4) The party who begins may make an address opening the party's case and may then adduce that party's evidence.

-
- (5) If, in the course of the case for the party who begins, no document or thing is admitted in evidence on tender by the opposite party, and at the conclusion of that case—
- (a) the opposite party adduces evidence, the opposite party may first make an opening address and after adducing that party's evidence, the opposite party may make a closing address and thereafter the party who began may make a closing address;
 - (b) the opposite party does not adduce evidence, the party who began may make a closing address and then the opposite party may make an address.
- (6) If, in the course of the case for the party who begins, any document or thing is admitted in evidence on tender by the opposite party, and at the conclusion of that case—
- (a) the opposite party adduces evidence, the order of proceedings must be as provided by paragraph (5)(a);
 - (b) the opposite party does not adduce evidence, the opposite party may make an address and then the party who began may make a closing address.

49.02 Absence of party

- (1) If, when the hearing of a proceeding is called on, any party is absent, the Court may—
- (a) order that the hearing be not had unless the proceeding is again fixed for hearing, or unless such other steps are taken as the Court directs;

-
- (b) proceed with the hearing generally or so far as concerns any claim for relief in the proceeding; or
 - (c) adjourn the hearing.
- (2) The Court may set aside or vary any order obtained if a party is absent at the hearing.

49.03 Adjournment of hearing

The Court may adjourn a hearing on such terms as it thinks fit.

49.04 Death before judgment

- (1) Where a party to a proceeding dies after the verdict or finding on the questions of fact, the Court may give judgment notwithstanding the death.
- (2) Paragraph (1) does not affect the power of the Court under Rules 9.08 and 9.09.

49.05 * * * * *

ORDER 50

PART 1—PRE-HEARING CONFERENCES

50.01 Referral of complaint for pre-hearing conference

For the purposes of section 107(1) of the Act, the Court constituted by—

- (a) a magistrate; or
- (b) a registrar—

may order that a complaint be referred to a magistrate or a registrar for a pre-hearing conference.

50.02 Parties must attend a pre-hearing conference

- (1) For the avoidance of any doubt, in this Rule a complaint includes a claim by counterclaim and a claim by third party notice, and a notice of defence includes a notice of defence to a counterclaim and a notice of defence to a claim by third party notice.
- (2) If a proceeding or any part of a proceeding is referred to a pre-hearing conference, all parties must attend the pre-hearing conference—
 - (a) personally; and
 - (b) if a party has appointed an Australian lawyer or other person empowered by law to appear for the party, together with that Australian lawyer or other person.
- (3) If a party referred to in paragraph (2) is a corporation—
 - (a) an Australian lawyer; and

- (b) a person in the exclusive employment of the corporation who is authorised in writing to attend the pre-hearing conference on behalf of the corporation—

must attend the pre-hearing conference.

- (4) In addition to the requirements of paragraphs (2) and (3), all parties must have present at the pre-hearing conference a person who has the authority to decide whether or not to settle the proceeding or settle the part of the proceeding that has been referred to a pre-hearing conference.
- (5) If an insurer is indemnifying a party, the person referred to in paragraph (4) may be an officer or employee of the insurer.
- (6) If a party does not attend a pre-hearing conference after receiving notice to attend, the magistrate or the Court constituted by a registrar may—
 - (a) in the case of failure by a plaintiff, dismiss the complaint; or
 - (b) in the case of failure by a defendant or other party, make an order that that party's notice of defence be struck out.
- (7) Where at a pre-hearing conference, the Court, including the Court constituted by a registrar, dismisses a complaint or strikes out a notice of defence the Court may also—
 - (a) make an order for the defendant's costs of the proceeding; or
 - (b) make an order on the claim, if the claim is for a debt or liquidated demand or is a claim arising from a motor vehicle collision and the claim is for the cost of repairs only or for total loss of the vehicle only.

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- (8) Where the Court, whether constituted by a magistrate or a registrar, adjourns a pre-hearing conference, the Court may make an order as to the costs of the adjournment in accordance with the scale of costs in Appendix A.
- (9) A party whose notice of defence is struck out in accordance with paragraph (6)(b) shall, for the purposes of Rule 21.01, be taken to be a defendant who does not give notice of defence.
- (10) If all the parties to a proceeding (including any third parties) agree at a pre-hearing conference upon the terms in which an order should be made, including an order for the final disposition of a complaint, the Court constituted by a registrar, if satisfied that the order sought is one proper to be made under this Rule, may make the order.
- (11) Where a proceeding or part of a proceeding is referred to a pre-hearing conference, the Court constituted by a registrar may exercise the powers of the Court under—
- (a) Rule 3.02;
 - (b) Rule 9.12;
 - (c) Rule 11.05(2)(b) or 11.16;
 - (d) Rule 13.10(1), unless the sufficiency of further particulars is in issue;
 - (e) Rule 24.02;
 - (f) Rule 25.01;
 - (g) Rules 29.08, 29.11 and 29.12.1(3) unless the sufficiency of discovery is in issue;

**Rule 50.02
(11)(c)
amended by
S.R. No.
36/2011
rule 22(1).**

- (h) Rules 30.09 and 30.09.1(3) unless the sufficiency of answers to interrogatories is in issue;
 - (i) Rule 36.01, but not as to costs, except to order that the question of costs be reserved;
 - (j) Rule 36.08;
 - (k) Rule 37.01(1) for an order for inspection of property, but excluding an order for detention or preservation of property;
 - (l) Rule 47.01(4);
 - (m) Rule 11.03, 11.05 and 11.06(1) of the Magistrates' Court (Miscellaneous Civil Proceedings) Rules 2010, except orders as to preservation of property;
 - (n) section 102(3) of the Act (to order that a complaint be heard and determined by the Court and not referred to arbitration).
- (12) The Court constituted by a registrar may dispense with compliance with any of the requirements of this Rule, either before or after the occasion for compliance arises.

**Rule 50.02
(11)(m)
amended by
S.R. No.
36/2011
rule 22(2).**

Note

Also refer to Rule 2.04.

- (13) In exercising any power referred to in paragraph (11), the Court constituted by a registrar may make an order requiring a party to file and serve a document or to perform any act and on failure to do so—
- (a) if the party is a plaintiff, that the complaint be dismissed; or
 - (b) if the party is a defendant, that the party's notice of defence, if any, be struck out.

50.03 Confidentiality

The proceedings of a pre-hearing conference shall be confidential and no answers given or admissions made at a pre-hearing conference shall be used or referred to at the hearing nor be disclosed to the Court or arbitrating magistrate at the hearing without the consent of all parties.

PART 2—MEDIATION

50.04 Referral of proceeding or part of a proceeding to mediation

A magistrate or a registrar may refer a proceeding or any part of a proceeding to an acceptable mediator for mediation under section 108(1) of the Act.

50.05 Definitions

In this Order—

acceptable mediator means a person whom a magistrate or a registrar decides is acceptable to mediate a complaint, including, but not restricted to, a person who is—

- (a) a registrar or deputy registrar;
- (b) a local legal practitioner (within the meaning of the **Legal Profession Act 2004**), who has been approved as a mediator by the Law Institute (within the meaning of that Act);
- (c) a local legal practitioner (within the meaning of the **Legal Profession Act 2004**), who has been approved as a mediator by the Victorian Bar (within the meaning of that Act);
- (d) a mediator accredited by The Institute of Arbitrators and Mediators Australia, ACN 008 520 045;

- (e) a mediator within the meaning of section 21K of the **Evidence (Miscellaneous Provisions) Act 1958**, or a person working with or for the body known as the Dispute Settlement Centre of Victoria, established by Order of the Governor in Council of 7 June 1994 under section 21K of the **Evidence (Miscellaneous Provisions) Act 1958**;

mediation report means a notice in Form 50A.

50.06 Parties must attend mediation

- (1) If a proceeding or any part of a proceeding is referred to mediation, all parties must attend the mediation—
- (a) personally; and
 - (b) if a party has appointed an Australian lawyer or other person empowered by law to appear for the party, together with that Australian lawyer or other person.
- (2) If a party referred to in paragraph (1) is a corporation—
- (a) an Australian lawyer; and
 - (b) a person in the exclusive employment of the corporation who is authorised in writing to attend the mediation on behalf of the corporation—
- must attend the mediation.
- (3) In addition to the requirements of paragraphs (1) and (2), all parties must have present at the mediation a person who has the authority to decide whether or not to settle the proceeding or settle the part of the proceeding that has been referred to mediation.

- (4) If an insurer is indemnifying a party, the person referred to in paragraph (1) may be an officer or employee of the insurer.

50.07 Consequences of failure to attend

- (1) If a party does not attend a mediation at the time and place nominated by the mediator, a magistrate or a registrar may—
- (a) if the party is a plaintiff, dismiss the proceeding; or
 - (b) if the party is a defendant or other party, make an order that the party's notice of defence be struck out.
- (2) In this Rule a proceeding includes a claim by counterclaim and a claim by third party notice, and a notice of defence includes a notice of defence to a counterclaim and a notice of defence to a claim by third party notice.
- (3) An order under paragraph (1) may include an order for the costs of the mediation that may be in accordance with the scale of costs in Appendix A.
- (4) For the purposes of Rule 21.01, a party whose notice of defence is struck out in accordance with paragraph (1)(b), is to be taken to be a defendant who does not give notice of defence.

50.08 Orders by consent

If all the parties to a proceeding (including any third parties) agree at mediation upon the terms of an order to be made, including an order for the final disposition of a proceeding, a registrar may make the order.

50.09 Mediator may adjourn a mediation

- (1) On or before the day fixed for mediation, the mediator may, with the consent of the parties, adjourn a mediation to another date.

(2) In the case of a mediation of a complaint by a person described in paragraph (e) of the definition of *acceptable mediator* in Rule 50.05, the mediation may be adjourned to another date without the consent of the parties by—

- (a) the person appointed as an acceptable mediator; or
- (b) the Mediation Coordinator appointed by the Dispute Settlement Centre.

50.10 Mediation report

Within 7 days of a mediation having been completed, the mediator must file a mediation report in Form 50A and provide a copy of the report to each party who attended the mediation.

50.11 Confidentiality

Except as all the parties who attend the mediation in writing agree, no evidence shall be admitted of anything said or done by any person at the mediation.

50.12 Extension of time limits

Despite any other Rules, but subject to any order made under Rule 50.07, if a proceeding is referred to mediation, the time for taking any step in a proceeding under any of those Rules must be calculated from the date of filing of a mediation report and not the day on which notice of defence is given.

ORDER 51

ASSESSMENT OF DAMAGES OR VALUE

* * * *

ORDER 52

ACCOUNT AND ENQUIRIES

* * * *

ORDER 53

SUMMARY PROCEEDING FOR RECOVERY OF LAND

* * * *

ORDER 54

ADMINISTRATION OF ESTATES AND EXECUTION OF TRUSTS

* * * *

ORDER 55

SALE OF LAND BY ORDER OF COURT

* * * *

ORDER 56

JUDICIAL REVIEW

* * * *

ORDER 57

HABEAS CORPUS

* * * *

ORDER 58

APPEALS FROM INFERIOR JURISDICTIONS

* * * *

ORDER 59

ORDERS

59.01 General relief

The Court may at any stage of a proceeding on the application of any party make such order as the case requires notwithstanding that the order was not sought in the complaint or in any other document of the party in the proceeding.

59.02 Date of effect

An order made by the Court must, unless the Court otherwise orders, bear the date of and take effect on and from the day it is made.

59.03 Time for compliance

- (1) Subject to paragraph (3), an order which requires a person to do an act is to be taken to mean, unless the Court otherwise orders, that the act must be done within 14 days after service of an order or of a certified extract from the register of the order.
- (2) Where an order requires a person to do an act within a fixed time, the Court may, by order, fix another time.
- (3) Paragraph (1) does not apply to—
 - (a) so much of an order as requires a person to pay money otherwise than into Court; or
 - (b) an order for the delivery of goods.
- (4) Where an order requires a person to do an act but does not fix a time within which the person is required to do the act, the Court may, by order, fix a time.
- (5) Where the Court fixes a time under paragraph (4), the Court may, by subsequent order, fix another time.

59.04 Statement of reasons for order

If the Court makes any order the reasons for which have been reduced to writing, it is sufficient to state the result orally without reasons, but the written reasons must then and there be published by delivery to the registrar.

59.05 * * * *

59.06 * * * *

59.07 Consent to order by parties not in attendance

- (1) Where parties to a proceeding are agreed upon the terms in which an order should be made, in the proceeding, the Court may, if satisfied that the parties who are to be bound consent, make an order in those terms without requiring the attendance of the parties.
- (2) As evidence of the consent of a party not in attendance, the Court may accept a document or facsimile copy of a document signed by the Australian lawyer on the record for that party, or the barrister (within the meaning of the **Legal Profession Act 2004**) for the party.
- (3) Any document accepted under paragraph (2) must be placed on the Court file.
- (4) Notwithstanding paragraph (1), the Court may require a party to attend upon the making of an order in the proceeding.
- (5) The Court constituted by a registrar may make any order (which order may include an order for costs) in any proceeding, summons or application with or without appearance of any party if satisfied that the order sought is by the consent of the parties to the proceeding, summons or application.

- (6) If the registrar is not satisfied that an order should be made under paragraph (5), the registrar may, or if a party requests must, refer the matter to the Court for decision.

59.08 Orders may be drawn up and certified extract

- (1) An order may be drawn up by a party and verified by the registrar if a party so desires.
- (2) Except where a special form of order is prescribed by these Rules, a certified extract from the Court record of any order is sufficient for any purpose for which an order is required.

59.09 Order where excess abandoned

An order of the Court in a complaint referred to in Rule 4.01(2) is conclusive evidence for any purpose of abandonment of the excess of a claim above the jurisdictional limit of the Court.

59.10 Setting aside or varying self-executing order

- (1) In this Rule, *self-executing order* means an order that upon the failure of a party to do any act or take any step which under these Rules the party is required to do or take or to comply with an order that the party do any such act or take any such step—
- (a) if the party is a plaintiff, that the complaint be dismissed;
- (b) if the party is a defendant, that the notice of defence of the party, if any, be struck out.
- (2) A defendant whose defence is struck out upon the failure to comply with a self-executing order is, for the purpose of Part 1 of Order 21, taken to be a defendant who does not give notice of defence.

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- (3) The Court may set aside or vary, as the case requires—
- (a) a self-executing order;
 - (b) the dismissal of a complaint upon the failure of a plaintiff to comply with a self-executing order;
 - (c) the striking out of a notice of defence upon the failure of a defendant to comply with a self-executing order;
 - (d) an order made under Rule 21.01 upon the failure of a defendant to comply with a self-executing order;
 - (e) an order made under Rule 21.08 upon the failure of a plaintiff to comply with a self-executing order.
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ORDER 60

AUTHENTICATION AND FILING OF ORDERS

60.01–60.03* * * * *

60.04 Order signed by magistrate

- (1) Where a magistrate makes an order, he or she—
 - (a) may sign the order; or
 - (b) may direct that the order be drawn up by a party and signed by the magistrate.
- (2) Where that magistrate is unable for sufficient cause to sign the order, it may be signed by another magistrate, as the case requires.

60.05 Authentication of an order

For the purposes of section 18(2) of the Act, an order is authenticated—

- (a) when the order is recorded in writing and signed by the person who constituted the Court; or
- (b) if the order is entered into a computerised data storage and retrieval system, when it is confirmed in that system.

60.06 Issue and authentication of process

Process may be issued by the person issuing the process—

- (a) signing it; or
- (b) stamping with a signature stamp.

60.07 Authentication of warrants

For the purposes of section 57(9) of the Act, the execution copy of a warrant produced by a computer data storage and retrieval system may be authenticated by the person who issued the warrant including on that copy—

- (a) his or her name; and
- (b) the date of issue of the warrant.

60.08 Particulars of warrants to be entered in the register

For the purposes of section 57(2) of the Act, the following particulars are prescribed—

- (a) type of warrant issued;
 - (b) date of issue of warrant;
 - (c) in the case of a warrant to arrest or a warrant to imprison, the person to whom the warrant is directed for execution.
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ORDER 61

JUDGMENT DEBT INSTALMENT ORDERS

61.01 Definition

In this Order—

Act means the **Judgment Debt Recovery Act 1984**;

proper officer means a registrar.

61.02 Application under section 6 or 8

- (1) An application under section 6 or 8 of the Act must—
 - (a) be in Form 61A;
 - (b) if made by a judgment debtor, be accompanied by a Statement of Affairs in Form 61B or in Form 61C if the judgment debtor is a corporation;
 - (c) be filed.
- (2) An affidavit or declaration of service of an application under section 6 or 8 must be filed within a reasonable time after service of the application.
- (3) If an applicant under section 8 of the Act fails to comply with paragraph (2)—
 - (a) the applicant must be taken to have abandoned the application; and
 - (b) the proper officer must give notice in writing to the applicant of that abandonment.

61.03 Notice of objection

- (1) The period for filing a notice of objection under section 6(5) of the Act is 14 days.
- (2) A notice of objection must be in Form 61D.

61.04 Agreement under section 7

An instalment agreement under section 7 of the Act must—

- (a) be in Form 61E;
- (b) be accompanied by a Statement of Affairs in Form 61B or in Form 61C if the judgment debtor is a corporation;
- (c) be filed.

61.05 Order in absence of parties

An order made by a proper officer under section 7(3) of the Act may be made in the absence of the parties.

61.06 Summons for examination

- (1) A summons under section 14 or 17 of the Act must be in Form 61F.
- (2) An application for issue of a summons under section 17 of the Act must be made by affidavit in Form 61G.
- (3) An affidavit under paragraph (2) may contain statements of fact based on information and belief if the grounds are set out.

61.07 Warrant of apprehension

A warrant of apprehension under section 14 or 17 of the Act must be in Form 61H.

61.08 Forms of notice

A notice—

- (a) under section 6(4), 6(7), 7(4) or 18(2) of the Act must be in Form 61I;
- (b) under section 14(6) or 17(5) of the Act must be in Form 61J;
- (c) under section 6(6) or 8 of the Act must be in Form 61K.

61.09 Warrant of commitment

A warrant of commitment under section 19 of the Act must be in Form 61L.

61.10 Payments to be made to registrar

Payments under section 19(3) of the Act must be made to the proper officer.

61.11 Certificate of discharge

A certificate under section 19(3) of the Act must be in Form 61M.

61.12 Service and notification

- (1) A summons required to be served under the Act or this Order must be served personally.
- (2) If any notice is required to be given or any document required to be served under this Order, it is sufficient to serve the notice or document by post.

61.13 Adjournment

The proper officer may at any time adjourn an application or proceeding as he or she thinks fit.

ORDER 62

SECURITY FOR COSTS

62.01 Definitions

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

defendant includes any person against whom a claim is made in a proceeding;

originating process means a complaint, counterclaim, notice or any other process in which a claim is made;

plaintiff includes any person who makes a claim in a proceeding.

62.02 When security for costs may be ordered

(1) If—

- (a) the plaintiff is ordinarily resident out of Victoria;
- (b) the plaintiff is a corporation or (not being a plaintiff who sues in a representative capacity) sues, not for the plaintiff's own benefit, but for the benefit of some other person, and there is reason to believe that the plaintiff has insufficient assets in Victoria to pay the costs of the defendant if ordered to do so;
- (c) a proceeding by the plaintiff in another court for the same claim against the same defendant is pending;
- (d) subject to paragraph (2), the address of the plaintiff is not stated or is not stated correctly in the plaintiff's originating process;

(e) the plaintiff has changed his, her or its address after the commencement of the proceeding in order to avoid the consequences of the proceeding;

(f) under any Act the Court may require security for costs—

the Court may, on the application of a defendant, order that the plaintiff give security for the costs of the defendant of the proceeding and that the proceeding as against the defendant be stayed until the security is given.

(2) The Court must not require a plaintiff to give security by reason only of paragraph (1)(d) if in failing to state the plaintiff's address or to state the plaintiff's correct address the plaintiff acted innocently and without intention to deceive.

62.03 Manner of giving security

If an order is made requiring the plaintiff to give security for costs, security must be given in the manner and at the time the Court directs.

62.04 Failure to give security

If a plaintiff fails to give the security required by an order, the Court may dismiss the plaintiff's complaint.

62.05 Variation or setting aside

The Court may set aside or vary any order requiring a plaintiff to give security for costs.

ORDER 63

COSTS

PART 1—PRELIMINARY

63.00.1 Costs in accordance with Appendix A

Costs for work done in a proceeding must be fixed or determined in accordance with Appendix A to these Rules.

63.00.2 Application of scale

- (1) In fixing or taxing costs for work done in a proceeding the appropriate scales in Table 1 and Table 2 to Appendix A to apply must be determined as follows—
 - (a) as between—
 - (i) party and party, the amount recovered or the value of the property in litigation regulates the scale of the plaintiff's costs, and the amount sought to be recovered or the value of the property in litigation regulates the scale of the defendant's costs; and
 - (ii) Australian lawyer and client, unless the Court otherwise orders, the amount sued for, or the value of the property in litigation, regulates the scale without reference to the result;
 - (b) in a proceeding for an injunction coupled with a claim for damages or without such claim or in a proceeding or matter within the equitable jurisdiction of the Court, the Court, may, despite any other provision of this paragraph, either at the hearing or within a reasonable time after the hearing, at its discretion, fix the scale of costs which applies;

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- (c) where a counter claim is made the scale on which the costs of the parties are to be fixed or taxed must be determined as follows—
- (i) if the plaintiff is successful on both claim and counter claim, by the amount which the plaintiff recovers on the claim, unless the amount of the defendant's claim is the larger, in which case the costs incurred subsequently to the delivery of the counter claim must be determined by the amount of that counter claim;
 - (ii) if the defendant is successful on both claim and counter claim by the amount which the defendant recovers on the counter claim, or the amount of the plaintiff's claim, whichever may be the larger;
 - (iii) if both parties are successful, by the amounts which they recover on their respective claims; and if both claims fail, by the amount claimed by the opposite party;
- (d) in a proceeding or matter for which no provision has been specifically made, the Court may direct that the scale of costs specified by the Court applies;
- (e) despite anything in these Rules, if in a proceeding or matter the Court considers that the provisions of paragraphs (a) and (c) are inappropriate or unjust the Court may, either at the hearing, or within a reasonable time after the hearing, fix the scale of costs which applies.

(2) For the purposes of paragraph (1)(a) the amount recovered is—

- (a) the amount of the order in the plaintiff's favour including any amount for interest or damages in the nature of interest; and
- (b) any interest or damages in respect of the amount awarded by the Court under any Act—

but does not include any amount recovered by or awarded to the plaintiff for interest or damages in the nature of interest relating to the period after the day the payment into Court was made or the offer of compromise was served.

63.00.3 Fixing or taxing of costs in accordance with scale at the time work done

(1) The Court, when fixing the costs for work done in a proceeding, must do so as follows—

- (a) as to any work done on or after the commencement of these Rules, according to the scales in Table 1 and Table 2 in Appendix A, as in force at the time the work is done;
- (b) as to any work done before the commencement of these Rules, according to the scale of costs contained in any previous corresponding Rules in force at the time the work was done.

(2) The Costs Court, when taxing the costs for work done in a proceeding, must do so as follows—

- (a) as to any work done on or after the commencement of these Rules, according to the scales in Table 1 and Table 2 in Appendix A, as in force at the time the work is done;

- (b) as to any work done before the commencement of these Rules, according to the scale of costs contained in any previous corresponding Rules in force at the time the work was done.
- (3) Subject to the provisions of any Act for the time being in force, in proceedings which have been remitted or transferred to the Magistrates' Court from some other Court, the costs incurred in the other Court before the remission or transfer must be fixed or taxed according to the scale of costs and fees in use in the other Court at the time the work was done, unless this Court otherwise directs.
- (4) Paragraphs (1) and (2) have effect despite anything to the contrary in Rule 1.06.

63.00 Costs to be fixed on day of hearing

- (1) Unless it is impracticable to do so, the Court must fix the costs of any complaint or application on the day on which the complaint or application is heard and determined.
- (2) If costs are not fixed by the Court as provided for by paragraph (1), the costs must be taxed in accordance with this Order.

63.01 Definitions and application

- (1) In this Order—
 - bill* means bill of costs, account, or statement of charges;
 - costs* includes disbursements;
 - party* includes—
 - (a) a person not a party to a proceeding by or to whom costs in respect of the proceeding are payable by or under any

Act or these Rules or any order of the Court;

- (b) in the case of a proceeding in another court or before a tribunal or of an arbitration, a person whether or not a party to that proceeding or arbitration by or to whom costs in respect of the proceeding or arbitration are payable where by or under any Act or these Rules or any order of the Court the costs are to be taxed in the Costs Court;

taxation or **taxation of costs** means the assessment, settling, taxation or review of costs;

taxed costs means costs taxed in accordance with this Order;

trustee includes an executor of a will and an administrator of the estate of a deceased person.

(2) In this Order—

- (a) references to the Costs Court, a Costs Judge or an Associate Judge who is a Costs Judge include references to another officer of the Supreme Court conducting a taxation of costs under this Order or the Supreme Court Rules;
 - (b) references to a fund held by a trustee include references to any property to which the trustee is entitled as trustee, whether alone or together with any other person and whether the property is for the time being in the possession of the trustee or not.
- (3) This Order applies to costs payable or to be taxed under these Rules or under any order of the Court and to costs to be taxed under any Act.

- (4) This Order applies subject to the powers of the Supreme Court and the Costs Court in relation to costs under Division 2 of Part 6 of the **Supreme Court Act 1986**.

63.02 General powers of Court

The power and discretion of the Court as to costs under section 131 of the Act must be exercised subject to and in accordance with this Order.

63.03 Time for costs order and payment

- (1) The Court may in any proceeding exercise its power and discretion as to costs at any stage of the proceeding or after the conclusion of the proceeding.
- (2) Costs which a party is required to pay under any of these Rules or an order of the Court must, unless the Court otherwise orders, be paid forthwith.
- (2.1) Costs which a party is required to pay under an order of the Costs Court shall, unless the Costs Court otherwise orders, be paid forthwith.
- (3) If the Court makes an interlocutory order for costs, the Court may then or thereafter order that if the party liable to pay the costs fails to do so—
- (a) if that party is the plaintiff, that the proceeding be stayed or dismissed;
- (b) if that party is a defendant, that the defendant's defence is to be struck out.
- (4) In paragraph (3)—
- defendant*** includes any person against whom a claim is made in a proceeding;
- plaintiff*** includes any person who makes a claim in a proceeding.

63.04 Costs of question or part of proceeding

- (1) The Court may make an order for costs in relation to a particular question in or a particular part of a proceeding.
- (2) If the Court makes an order under paragraph (1), the Court must by order fix the proportion of the total costs of the proceeding which is attributable to the particular question in or the particular part of the proceeding.

63.05 By whom costs to be taxed

Unless the Court otherwise orders, costs taxed in accordance with this Order must be taxed—

- (a) in the Costs Court by a Costs Judge; or
- (b) if a Costs Judge so directs, by a Costs Registrar, Deputy Costs Registrar, the Prothonotary or a Deputy Prothonotary, as the case requires.

63.06 * * * *

63.07 Taxed or other costs provision

- (1) Subject to this Order, if by or under these Rules or any order of the Court costs are to be paid to a party, that party is entitled to taxed costs.
- (2) If the Court orders that costs are to be paid to a party, the Court may then or thereafter order that as to the whole or any part of the costs specified in the order, instead of taxed costs, that party is entitled to—
 - (a) a portion specified in the order of taxed costs;
 - (b) taxed costs from or up to a stage of the proceeding specified in the order;

- (c) a gross sum specified in the order instead of taxed costs;
- (d) a sum in respect of costs to be determined in such manner as the Court directs.

63.08 Default order

- (1) If an order is made for costs in default of defence or compliance under Part 2 of Order 21, unless the Court otherwise orders, the costs must not be taxed but must be fixed by a registrar in accordance with the appropriate scale in Appendix A.
- (2) Where costs are fixed under paragraph (1), the party by whom or the party to whom the costs are payable may appeal to the Costs Court, in accordance with the Rules of the Supreme Court, in respect of the amount so fixed on the ground that the registrar did not fix the proper amount.

63.09 * * * *

63.10 No order for taxation required

If—

- (a) the Court makes an order for costs;
- (b) a proceeding is dismissed with costs;
- (c) an application in a proceeding is refused with costs;
- (d) a party is otherwise liable under these Rules to pay the costs of another party;
- (e) a party may tax costs under any of these Rules;
- (f) parties have agreed in writing that costs payable by one party to another may be taxed, and the agreement is filed—

the costs may be taxed, in the Costs Court, without an order for taxation.

63.11 Enforcement of order of taxing officer

- (1) If costs are taxed otherwise than under an order for costs, an order of the Costs Court for payment of any amount found to be due may be enforced in the same manner as an order for the payment of money.
- (2) Paragraph (1) applies to an interim order for payment of any item in a bill of costs.

63.12 Costs in account

If the Court orders that an account be taken and the amount consists in part of costs, the Court may, then or thereafter, direct that those costs be fixed, or be taxed in accordance with this Order.

PART 2—ENTITLEMENT TO COSTS

63.13 Order for payment

Subject to these Rules, a party to a proceeding is not entitled to recover any costs of the proceeding from any other party except by order of the Court.

63.14 Extension or abridgement of time

If a party applies for an extension or abridgement of any time fixed by these Rules or by any order fixing, extending or abridging time, that party must, unless the Court otherwise orders, pay the costs of and occasioned by the application.

63.15 Discontinuance or withdrawal

Unless the Court otherwise orders, a party who discontinues or withdraws part of a proceeding, counterclaim or claim by third party notice must pay the costs of the party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.

63.16 Offer of compromise

If an offer of compromise is served and the offer has not been accepted at the time a final order is made on the claim that relates to the offer, liability for costs must be determined in accordance with Rule 26.08.

63.16.1 Failure to make discovery or answer interrogatories

A party on whom a notice is served in accordance with Rule 29.12.1 or 30.09.1 must pay the costs of the notice unless the Court otherwise orders.

63.16.2 Proceeding or counterclaim dismissed

- (1) A proceeding that is or stands dismissed by or under an order of the Court or these Rules must, unless the Court otherwise orders, be taken to be a proceeding that is dismissed with costs.
- (2) Paragraph (1), with any necessary modification applies to a counterclaim and to a claim by third party notice as if the counterclaim or third party claim were a complaint.

63.17 Amendment

A party who amends a pleading or other document by leave must, unless the Court otherwise orders, pay the costs of and occasioned by the amendment.

63.18 Non-admission of fact or document

If a party serves a notice—

- (a) under Rule 35.03(1) disputing a fact, and afterwards that fact is proved in the proceeding;

(b) under Rule 35.05(1) disputing the authenticity of a document, and afterwards the authenticity of that document is proved in the proceeding—

that party must pay the costs of proof, unless the Court otherwise orders.

63.19 Interlocutory injunction

If the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to the costs of the further injunction must, unless the Court otherwise orders, include the costs of the first injunction.

63.20 * * * *

63.21 * * * *

63.21.1 Costs in proceedings before registrar or Costs Court

Where in any proceeding before the registrar or the Costs Court—

- (a) any party is guilty of neglect of delay; or
- (b) puts any other party to unnecessary or improper expense relative to the proceeding—

the registrar or the Costs Court may direct that party to pay any costs that the registrar or the Costs Court, as the case requires, thinks proper.

63.22 Costs reserved

- (1) If by order of the Court the costs of any interlocutory or other application or of any step in a proceeding are reserved, and the Court does not thereafter direct by and to whom those costs are to be paid, then, unless the Court otherwise orders, the Costs Court may by order so direct.

- (2) Paragraph (1) does not apply if, after the order that costs be reserved is made, the Court determines that no further order be made with respect to those costs.

63.22.1 Evidence transcript costs

If any evidence in a proceeding is recorded and transcribed, and the Court does not direct by and to whom the costs of the recording and transcribing are to be paid, then, unless the Court otherwise orders, the Costs Court may by order so direct.

63.23 * * * *

63.24 * * * *

63.25 * * * *

63.26 Trustee or mortgagee

A party who sues or is sued as trustee or mortgagee must, unless the Court otherwise orders, be entitled to the costs of the proceeding out of the fund held by the trustee or out of the mortgaged property in so far as the costs are not paid by any other person.

PART 3—COSTS OF PARTY IN A PROCEEDING

63.27 Application

This Part applies to costs in a proceeding that by or under any Act or these Rules or any order of the Court are to be paid to a party to the proceeding either by another party or out of a fund.

63.28 Bases of taxation

Subject to this Part, costs in a proceeding that are to be taxed must be taxed on—

- (a) a party and party basis; or
- (b) an Australian lawyer and client basis; or

- (c) an indemnity basis; or
- (d) such other basis as the Court may direct.

63.29 Party and party basis

On a taxation on a party and party basis all costs necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed must be allowed.

63.30 Australian lawyer and client basis

On a taxation on an Australian lawyer and client basis all costs reasonably incurred and of reasonable amount must be allowed.

63.30.1 Indemnity basis

- (1) Subject to paragraph (2), on a taxation on an indemnity basis all costs must be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
- (2) Any doubt which the Costs Court may have as to whether the costs were unreasonably incurred or were unreasonable in amount must be resolved in favour of the party to whom the costs are payable.

63.31 General basis

Except as provided by these Rules or any order of the Court costs must be taxed on a party and party basis.

63.32 If Australian lawyer and client basis is applicable

- (1) The Court may order that costs be taxed on an Australian lawyer and client basis.
- (2) Without limiting paragraph (1), the Court may order that costs be taxed on an Australian lawyer and client basis if the Court makes an order for—

- (a) the payment to a party of costs out of a fund;
- (b) the payment of costs to a party who sues or is sued as trustee.

63.33 Party as trustee

If a party who sues or is sued as trustee is entitled to be paid costs out of any fund which the trustee holds in that capacity, the costs must, unless the Court otherwise orders, be taxed on an Australian lawyer and client basis.

63.34 Charges of Australian lawyer

- (1) The Australian lawyer for the party to whom costs are payable is entitled to charge and be allowed the fees set out in Appendix A.
- (2) Witnesses' expenses and interpreters' allowances are to be fixed in accordance with Appendix A.

PART 4—COSTS OF TAXATION

63.35	*	*	*	*	*
63.36	*	*	*	*	*

PART 5—PROCEDURE ON PARTY AND PARTY TAXATION

63.37 Application

- (1) This Part applies to the costs of any proceeding in the Court.
- (2) Subject to Part 6, this Part applies to the taxation of costs payable to an Australian lawyer by the Australian lawyer's client.

63.38 Application for taxation

An application to the Costs Court for costs to be taxed must be made in accordance with the Supreme Court Rules.

63.39	*	*	*	*	*
63.40	*	*	*	*	*
63.41	*	*	*	*	*
63.42	*	*	*	*	*
63.43	*	*	*	*	*
63.44	*	*	*	*	*
63.45	*	*	*	*	*
63.46	*	*	*	*	*
63.47	*	*	*	*	*

63.48 Discretionary costs

- (1) Except as these Rules or any order of the Court otherwise provides, the fees and allowances that are discretionary that are referred to in Appendix A must be allowed at the discretion of a registrar or the Costs Court.
- (2) In exercising the discretion under paragraph (1) a registrar or the Costs Court must have regard to—
 - (a) the complexity of the item or of the proceeding in which it arose and the difficulty or novelty of the questions involved;
 - (b) the nature and importance of the proceeding;
 - (c) the skill, specialised knowledge and responsibility involved;
 - (d) the number and importance of the documents prepared or perused, without regard to length;
 - (e) the place where and the circumstances in which the business involved was transacted;
 - (f) the labour involved and the time spent by the Australian lawyer or counsel;

- (g) the amount or value of any money or property involved;
- (h) any other fees and allowances payable to the Australian lawyer or counsel in respect of other items in the same proceeding;
- (i) any other relevant circumstances.

63.49 * * * *

63.50 * * * *

63.51 Reference to a magistrate

In the exercise of its jurisdiction, the Costs Court may refer to a magistrate for directions any question arising on a taxation.

63.52 Notice to person interested in fund

- (1) If costs are payable out of a fund, the Costs Court may—
 - (a) adjourn the taxation to a specified day; and
 - (b) order that the party to whom the costs are payable serve on any person interested in the fund, without charge to that person, a copy of the whole or any part of the bill and a notice in accordance with paragraph (2).
- (2) A notice under paragraph (1)(b) must state—
 - (a) that the costs are payable out of the fund, identifying it, and that the bill is being taxed;
 - (b) the day to which the taxation is adjourned; and
 - (c) such other information as the Costs Court may direct.
- (3) Unless the Costs Court otherwise orders, service under paragraph (1)(b) must be personal.

63.53 Application by person liable to pay

- (1) If a party who is entitled to be paid costs and to have the costs taxed under this Part does not apply to have the costs taxed within 30 days after service on that party of a request in writing to do so by a party liable for the costs, a registrar—
 - (a) may order the party entitled to file and serve a summons in the Costs Court under the Supreme Court Rules; and
 - (b) may fix a time for compliance.
- (2) If a party in respect of whom an order is made under paragraph (1) fails to comply with the order, a registrar may—
 - (a) disallow the costs of the party or allow a nominal or other sum for costs;
 - (b) order the party to pay the costs of any other party.

63.54 Australian lawyer at fault

- (1) This Rule applies if—
 - (a) a party fails to apply to have costs taxed within a time fixed under Rule 63.53(1) and the failure is occasioned by the neglect or delay of the party's Australian lawyer; or
 - (b) in any proceedings before a registrar the Australian lawyer for any party—
 - (i) is guilty of neglect or delay; or
 - (ii) causes any other party unnecessary expense.
- (2) A registrar may—
 - (a) order the Australian lawyer to pay costs to any party in respect of the proceedings before the registrar;

- (b) refuse to allow the fees to which the Australian lawyer would otherwise be entitled for drawing any bill or for any attendance before the registrar.

63.55	*	*	*	*	*
63.56	*	*	*	*	*
63.56.1	*	*	*	*	*
63.57	*	*	*	*	*

PART 6—COSTS OF AUSTRALIAN LAWYER

63.58 Application

This Part applies—

- (a) if costs are payable to an Australian lawyer by the Australian lawyer's client in respect of a proceeding in the Court, and by or under any Act or these Rules or any order of the Court or any agreement between the Australian lawyer and the client the costs are required or permitted to be taxed in the Court;
- (b) if any person not the client of an Australian lawyer is liable to pay or, having been so liable, has paid costs which are or were chargeable by the Australian lawyer to the client, in respect of a proceeding in the Court, and by or under any Act or these Rules or any order of the Court or any agreement between that person and the client the costs are required or permitted to be taxed in the Court.

63.59 Basis of taxation of costs payable by client

- (1) Costs payable to an Australian lawyer by the Australian lawyer's client to which this Part applies must, subject to any Act or any order of the Court or any agreement between the Australian lawyer and the client, be taxed on an Australian lawyer and client basis.
- (2) The Australian lawyer and client basis of taxation must be as provided by Rule 63.61.

63.60 Basis of taxation of costs payable otherwise than by client

Costs payable to an Australian lawyer by a person other than the client to which this Part applies must, subject to any Act or any order of the Court or any agreement between that person and the client, be taxed on a party and party basis in accordance with Rule 63.29.

63.61 Australian lawyer and client basis

- (1) On a taxation of the costs payable to an Australian lawyer by the Australian lawyer's client all costs reasonably incurred and of reasonable amount must be allowed.
- (2) Costs not reasonably incurred or not of reasonable amount may nevertheless be allowed if—
 - (a) the costs were incurred with the authority of or the amount was authorised by the client; and
 - (b) before the costs were incurred the Australian lawyer expressly warned the client that the costs might not be allowed on a taxation of costs on a party and party basis.
- (3) If the client is a person under disability, references to the client in paragraph (2) include references to the litigation guardian of the client.

63.62 * * * *

63.63 Procedure on taxation

Subject to these Rules and to any Act or order of the Court, costs under this Part must be taxed as provided by the Supreme Court Rules.

63.64 * * * *

63.65 Reference for taxation

- (1) This Rule applies if the Court by order, whether or not made by or under any Act, refers a bill of costs to the Costs Court for taxation or directs that a bill of costs be taxed.
- (2) The taxation must be brought before the Costs Court by application in accordance with the Supreme Court Rules.

63.66 * * * *

63.67 * * * *

PART 7—ALLOWANCES ON TAXATION GENERALLY

63.68 Application and interpretation

This Part applies to any taxation of costs in the Court.

63.69 Necessary or proper costs

All costs must be allowed as are necessary or proper for the attainment of justice or for enforcing or defending the rights of any party.

63.70 Unnecessary work

- (1) The Court by order or a registrar on a taxation may disallow the costs of any work that is not necessary or is done without due care.

- (2) If a document is of unnecessary length, for the purpose of paragraph (1) work that is not necessary includes work for the part of the document that is not necessary.
- (3) A party whose costs for work is disallowed under paragraph (1) must, unless the Court or a registrar otherwise orders, pay costs for any work by another party occasioned by the work for which the costs were disallowed.

63.71 Gross sum for costs

- (1) If costs are incurred improperly or without reasonable cause or are wasted by undue delay or negligence or by any other misconduct or default or from any other cause the amount of costs is excessive, only costs that were reasonable and proper must be allowed, and a registrar may assess those costs at a gross sum.
- (2) A registrar may apportion costs assessed under paragraph (1) among different parties.

63.72 Increased allowance

A registrar or the Costs Court may increase the amount of value of any allowance or expense in Appendix A as the registrar or the Costs Court thinks fit.

63.73	*	*	*	*	*
63.74	*	*	*	*	*
63.75	*	*	*	*	*
63.76	*	*	*	*	*
63.77	*	*	*	*	*
63.78	*	*	*	*	*
63.79	*	*	*	*	*
63.80	*	*	*	*	*

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63.81	*	*	*	*	*
63.82	*	*	*	*	*
63.83	*	*	*	*	*
63.84	*	*	*	*	*
63.85	*	*	*	*	*

ORDER 64

APPEAL TO COURT OF APPEAL

* * * * *

ORDER 65

APPLICATIONS TO COURT OF APPEAL

* * * * *

ORDER 66

ENFORCEMENT OF ORDERS

66.01 Definitions

In this Order—

officer of a corporation has the same meaning as
in section 9 of the Corporations Act;

order means an order made by the Court—

- (a) for the payment of money with or
without costs; or
- (b) for the payment of costs alone; or
- (c) for the delivery of goods; or
- (d) for the delivery of goods or the
payment of their assessed value.

66.02 Enforcement of orders for the payment of money

Note

See section 111(1) of the Act which provides that an order made
by the Court in a civil proceeding for the payment of money may
be enforced by one or more of—

- (a) a warrant to seize property;
- (b) an attachment of earnings order;
- (c) an attachment of debts order.

66.03 * * * *

66.04 Enforcement of orders for the delivery of goods

Note

See section 111(8) of the Act, which provides for—

- (a) an order for the delivery of goods; or
- (b) an order for the delivery of goods or the payment of their
assessed value—

to be enforced by a warrant of delivery.

66.05 Enforcement of orders for the doing or abstaining from doing of any act

Note

See section 135 of the Act which provides that the Court may exercise a power given to the Court under the Act or any other Act by an order—

- (a) requiring any person to do or abstain from doing any act or thing, other than the payment of money; or
- (b) requiring any act or thing, other than the payment of money, to be done or left undone.

66.06 Attendance of natural person

Note

For enforcement of attendance of natural person, see section 134 of the Act which sets out the circumstances in which a person is guilty of contempt of court and the manner in which the Court may enforce a contempt of court, or section 135 of the Act.

66.07 Attendance of corporation

- (1) This Rule applies where—
 - (a) the Court by subpoena or otherwise makes an order in any proceeding for the production by a corporation of any document or thing; and
 - (b) after service of the order the corporation defaults in producing the document or thing in accordance with the order.
- (2) In the circumstances referred to in paragraph (1), the Court may—
 - (a) make an order that the officer of the corporation produce the document or thing; and
 - (b) order the corporation to pay any costs and expenses occasioned by the default.

66.08	*	*	*	*	*
66.09	*	*	*	*	*

66.10 Service of orders to be enforced

- (1) If an order under section 135 of the Act is made against a person—
 - (a) a copy of the order must be served on the person by—
 - (i) leaving a copy of the document with the person to be served; or
 - (ii) if the person to be served does not accept the copy, by putting down a copy in the person's presence and telling the person the nature of the document; and
 - (b) if the order requires the person to do any act within a fixed time, the copy of the order must be served a reasonable time before the expiry of the time fixed for the doing of the act.
- (2) If an order under section 135 of the Act is made against a corporation—
 - (a) a copy of the order must be served personally on any officer of the corporation; and
 - (b) if the order requires the corporation to do an act within a fixed time, the copy of the order must be served on the officer of the corporation a reasonable time before the expiry of the time fixed for the doing of the act.
- (3) A copy of an order that is served under this Rule must be indorsed, with a notice, naming the person who is to be served with the order and stating that the person so named is liable to a fine or a term of imprisonment under section 135 of the Act if the person does not comply with the order.

(4) If an order under section 135 of the Act is made against a person that requires the person to do an act and an order is made under Rule 59.03 fixing a time within which the act is to be done, a copy of—

(a) the order requiring the act to be done, indorsed with a notice under paragraph (3); and

(b) the order fixing the time within which the act is to be done—

must be served on the person within a reasonable time before the expiry of the time fixed for the doing of the act.

(5) Paragraphs (1) to (4) of this Rule do not apply to an order under section 135 of the Act if the person against whom the order has been made has notice of the order—

(a) by being present when the order is made; or

(b) by being notified of the terms of the order, whether by telephone or otherwise.

(6) The Court may dispense with service under this Rule.

66.11 Substituted performance

(1) If an order that has been made against a person requires the person to do an act and the person does not do the act, the Court may—

(a) direct that the act be done by a person appointed by the Court; and

(b) order the person against whom the order has been made to pay any costs and expenses occasioned by the default.

(2) Paragraph (1) does not affect the power of the Court to punish for contempt.

66.12 Enforcement by or against non-party

- (1) A person not being a party who obtains an order or in whose favour an order is made may enforce the order by the same means as if that person were a party.
- (2) If an order may be enforced against a person not a party, the order may be enforced against the person by the same means as if the person were a party.
- (3) If an order may be enforced against a corporation not a party, the processes of enforcement apply to an officer of the corporation as if the corporation were a party.

66.13 Non-performance of condition

A person entitled to an order subject to the fulfilment of a condition who fails to fulfil the condition must be taken to have abandoned the benefit of the order, and, unless the Court otherwise orders, any other person interested may take any steps which are warranted by the order or which might have been taken if the order had not been made.

66.14 Matters occurring after order

The Court may stay execution of an order, or make any order that the nature of the case requires, on the ground of matters occurring after the order.

66.15 Order in aid of enforcement

- (1) The Court may make any order that it thinks fit in aid of the enforcement of a warrant of execution and for that purpose may make an order that any person, whether or not a party—
 - (a) attend before the Court to be examined;
 - (b) do or abstain from doing any act.

-
- (2) An application for an order under paragraph (1) may be made by the Sheriff or other person to whom a warrant of execution is directed.

66.16 Stay of execution

The Court may stay execution of an order.

ORDER 67

EXAMINATION OF JUDGMENT DEBTOR

67.01 Examination of judgment debtor

- (1) If an order has been made for the recovery or payment of money (with or without costs) or for costs alone a registrar may upon application of the judgment creditor issue a summons requiring the judgment debtor (or, if the judgment debtor is a corporation, an officer of the corporation) to appear before the Court to be orally examined by the registrar as to—
 - (a) the amount and source of the income of the judgment debtor;
 - (b) the property and assets of the judgment debtor;
 - (c) the cash that is readily available to the judgment debtor or that can be made so available;
 - (d) the debts, liabilities and other financial obligations of the judgment debtor—and the registrar may examine the person as to any other matter related to the financial circumstances generally of the judgment debtor and the judgment debtor's means and ability to satisfy the order.
- (2) A summons under paragraph (1) must be in Form 67A.
- (3) The judgment creditor must serve a summons under paragraph (1) and a copy of Form 67B, or Form 67C if the judgment debtor is a corporation, not less than 7 days before the day named for the examination.
- (4) The person must be examined on oath.

-
- (5) The registrar may issue a summons calling on other persons to give evidence or produce documents or to give evidence and produce documents.
 - (6) A summons under paragraph (5) must be in Form 67D.
 - (7) An examination under this Part must be conducted by the registrar or counsel for the judgment creditor (if present) and no persons other than the judgment debtor being examined and his, her or its counsel and the judgment creditor and his, her or its counsel may be present without the consent of both parties.
 - (8) If the examination is conducted by the registrar a copy of the record in Form 67B or 67C must be sent to the judgment creditor.
 - (9) At an examination the registrar may make an order as to the costs of the examination in accordance with the scale of costs in Appendix A, the fees, if any, for filing and service of the summons and any other prescribed fees.
 - (10) A registrar may adjourn an examination under this Rule as he or she thinks fit.
 - (11) Where a summons under this Rule has not been served, the registrar may, on application of the judgment creditor—
 - (a) in the case of a summons under paragraph (1), alter, to a later day, the day named in the summons for the examination of the judgment debtor; or
 - (b) in the case of a summons under paragraph (5), alter, to a later day, the day named in the summons for the person to give evidence or produce documents, or to give evidence and produce documents.

(12) Despite paragraph (11), the registrar must not—

- (a) alter, to a later day, a day named in a summons under this Rule more than once unless the registrar is satisfied that reasonable efforts have been made to serve the summons; or
- (b) alter a day named in a summons under this Rule when the summons has ceased to be valid under Rule 5.12.

67.02 Issue of summons for oral examination consequent to application by electronic message

- (1) An application to the registrar under Rule 67.01 for the issue of a summons under that Rule may be made by an authorised user lodging an electronic message with the Court.
- (2) The electronic message must state—
 - (a) the allocated Court number for the proceeding in which the order was made;
 - (b) the name of the judgment debtor (and, if the judgment debtor is a corporation, the name of an officer of the corporation who is to appear before the Court to be orally examined);
 - (c) the address of the judgment debtor (and, if the judgment debtor is a corporation, the address of the officer of the corporation who is to appear before the Court to be orally examined);
 - (d) the date of the order;
 - (e) particulars, including dates, of any amounts recovered since the date of the order;
 - (f) whether further penalty interest is being claimed.

-
- (3) The date of issue of a summons issued consequent to an application by electronic message as provided for in paragraph (1), and which complies with the requirements of paragraph (2), is the date the electronic message is received at Court.
- (4) The summons is valid for all purposes if it bears the—
- (a) allocated Court number;
 - (b) name of the principal registrar;
 - (c) date of its issue;
 - (d) hearing venue;
 - (e) date and time for the person named in the summons to be orally examined.
- (5) A copy of the summons must be retained by or on behalf of the authorised user and such copy must be provided to the Court at the request of the registrar.
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ORDER 68

WARRANTS OF EXECUTION

PART 1—WARRANTS GENERALLY

68.01 Definitions

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

Sheriff includes a person to whom a warrant of execution is directed;

warrant of execution means a warrant to seize property and a warrant of delivery.

68.02 * * * * *

68.03 Separate execution for costs

A person entitled to enforce an order entered or given with costs may have execution to enforce the order and, when the costs become payable, have execution separately to enforce payment of the costs.

68.04 Issue of warrant

- (1) A warrant other than a warrant referred to in Rule 68.09, must not be issued unless the person requesting it to be issued—
 - (a) produces to a registrar a form of the warrant;
 - (b) if the warrant is to enforce an order for the payment of money, files a request to issue a warrant which must state—
 - (i) the date of the order;
 - (ii) the amount for which the order was made; and
 - (iii) the amount, including any interest accrued and any costs due and payable in respect of the order at the date of

request with particulars stating how that amount is calculated or made up; and

- (iv) the daily amount of interest, if any, which subject to any future payment under the order, will accrue after the date of request in respect of the amount of the order and costs; and
 - (v) particulars of any amounts paid on account or recovered under any previous warrant or other proceeding.
- (2) A warrant referred to in paragraph (1) is issued when the warrant is sealed by the registrar with the seal of the Court.
- (3) A warrant referred to in paragraph (1) must bear the date of its issue.

68.05 Duration

- (1) A warrant is valid for the purpose of execution for one year after the day it is issued.
- (2) Despite paragraph (1), a registrar may from time to time extend the period of the validity of the warrant for the purpose of execution for a period of not more than one year from the day on which it would otherwise expire and so on from time to time.
- (3) An extension under paragraph (2) must not be made after the day of expiry of the warrant.
- (4) An application for an order under paragraph (2) may be made without notice to any person.
- (5) A copy of an order under paragraph (2) must be delivered to the sheriff by the party obtaining the order.
- (6) The priority of a warrant in respect of which an extension under paragraph (2) had been made must be determined by reference to the date on

which the warrant was originally delivered to the person to whom it is directed.

68.06 Costs of prior execution

The amount for which a warrant of execution may be issued must, unless the Court otherwise orders, include—

- (a) the costs, fees and expenses (including the costs of any unsuccessful previously attempted execution of the order) incurred in respect of any prior warrant of execution on the same order, whether the prior warrant was or was not productive; and
- (b) money recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth.

68.07 Order against 2 or more persons

- (1) If in a complaint an order is made against 2 or more defendants jointly, the order may be enforced by warrant or otherwise against any of the defendants as if the order had been made against that defendant separately.
- (2) If an order against 2 or more defendants jointly is satisfied by any of the defendants, no further steps may be taken by the party in whose favour the order so satisfied was made against any other defendant.

68.08 Order against partners

- (1) An order made against a firm may be enforced against any or all of the persons who were members of the firm at the time the cause of action arose.
- (2) If a person is sued under Rule 17.10 in a name or style other than the person's own name and an order is made against the person in that name or

style, the order may be enforced against the person.

- (3) An enforcement proceeding must not be commenced under an order referred to in paragraph (1) or (2) against a person whose name is not mentioned in the order or complaint unless the person in whose favour the order was made files with the registrar an affidavit stating—
- (a) the name and address of the person against whom it is proposed to commence the enforcement proceeding; and
 - (b) that, at the time the cause of action arose, that person was a member of the firm or was carrying on business in the name or style in which the order was made; and
 - (c) the enforcement proceeding it is desired to take under the order.

68.09 Issue of warrant after request by electronic message

- (1) A request for the issue of a warrant to enforce an order for the payment of money may be made by an authorised user lodging an electronic message with the Court.
- (2) A request by electronic message under paragraph (1) must state—
 - (a) the name of the judgment creditor;
 - (b) the name of the judgment debtor;
 - (c) the Court number;
 - (d) the date of the order;

- (e) particulars, including dates, of any amounts paid or recovered under any previous warrant or other proceeding since the date of the order;
 - (f) whether interest is being sought from the date of the order.
- (3) A warrant is issued when a request lodged by electronic message, which complies with the requirements of paragraph (2), is received at the Court.
- (4) A warrant issued under paragraph (3) is valid for all purposes if it bears—
- (a) the name of the principal registrar; and
 - (b) the date of its issue.

68.10 Application of certain rules, practice and procedure of Supreme Court

Subject to this Order and except where otherwise expressly provided by these Rules, the rules, practice and procedure of the Supreme Court which apply to or are adopted by the sheriff in the execution of warrants of execution apply, with such modifications as are necessary, to the execution of warrants to seize property and warrants of delivery.

68.11 Form of warrant to seize property and warrant of delivery

- (1) For the purposes of section 111(1)(a) of the Act, a warrant to seize property must be in Form 68A.
- (2) For the purposes of section 111(8) of the Act, a warrant of delivery must be in Form 68B.

PART 2—WARRANTS OF DELIVERY

68.12 Warrant of delivery

- (1) If an order is made by the Court—
 - (a) for delivery of goods; or
 - (b) for delivery of goods or recovery of their assessed value—a registrar may issue a warrant of delivery.
 - (2) If the order of the Court is for the assessed value of goods only, the order may be enforced by the same means as any other order for the payment of money.
-

ORDER 69

WARRANTS TO SEIZE PROPERTY

69.01 Warrant to seize property

- (1) If an order is made by the Court, a registrar may, in the circumstances referred to in paragraph (2), issue a warrant to seize property for the purpose of satisfying the judgment debt.
- (2) Paragraph (1) applies if the Act under which the order is made either specifies no method of enforcement of the order or provides for enforcement by distress.
- (3) Money or bank notes belonging to a judgment debtor may be seized under a warrant to seize property but need not be sold.
- (4) Cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to a judgment debtor may be seized under a warrant to seize property and held as security for the judgment debt or the unsatisfied part of the judgment debt and when the time of payment arrives the person to whom the warrant is directed may demand and receive payment of them and may sue in any proper court in the name of the judgment debtor or in the name of any person in whose name the judgment debtor might have sued for the recovery of the money secured or made payable by them.

69.02 * * * *

69.03 Notice to person responsible for safe-keeping of seized property

The prescribed form of notice under section 111(7A) of the Act is Form 69A.

69.04–69.06 * * * *

69.07 Notional possession of goods

Notwithstanding that the Sheriff leaves land on which goods have been seized under a warrant, the Sheriff shall be taken to remain in possession of the goods if the Sheriff leaves in a prominent position on or about the land on which the goods were seized or upon the goods seized a notice of the seizure listing the items seized.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010
Order 70

r. 70

ORDER 70

WARRANTS OF POSSESSION

* * * * *

ORDER 71

GARNISHEE ORDERS

71.01 Definitions and application

- (1) In this Order, unless the context or subject matter otherwise requires—

co-operative means a body registered or deemed to be registered under the **Co-operatives Act 1996** as a co-operative;

garnishee means a person from whom a judgment creditor claims that a debt is due or accruing to a judgment debtor.

- (2) In this Order a reference to a garnishee order includes a reference to an attachment of debts order.
- (3) This Order does not apply to debts being earnings within the meaning of Order 72 due or accruing to the judgment debtor.

71.02 Attachable debts

A debt may be attached under this Order if the debt is due or accruing to the judgment debtor from the garnishee on the day an application is made for a garnishee order.

71.03 Bank account

An amount standing to the credit of a judgment debtor in an account in a bank or a co-operative is, for the purpose of this Order, a debt due or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied—

- (a) that a demand or notice is required before money is withdrawn;
- (b) that a personal application must be made before money is withdrawn;

- (c) that a deposit book must be produced before money is withdrawn;
- (d) that a receipt for money deposited in the account must be produced before money is withdrawn.

Note

Bank is defined in Rule 1.13.

71.04 Garnishee

- (1) The Court constituted by a registrar may, on the application of the judgment creditor, order that all debts (other than earnings within the meaning of this Order) due or accruing from a garnishee to a judgment debtor be attached to answer the judgment debt.
- (2) An application for an order under paragraph (1)—
 - (a) must be made by affidavit accompanied by a draft form of the order sought;
 - (b) may be made without notice to any person; and
 - (c) may be made either before or after the examination of the judgment debtor under Order 67.
- (3) An order must not be made under paragraph (1) unless it is shown by affidavit—
 - (a) that the judgment debt is unsatisfied, either wholly or to a stated extent; and
 - (b) that—
 - (i) a debt is due or accruing to the judgment debtor from the garnishee; and
 - (ii) the garnishee is within Victoria; or

-
- (iii) if the garnishee is a partnership, one partner or some person apparently having the control or management of the partnership business, is within Victoria.
- (4) The registrar may refuse to make an order under paragraph (1) if the registrar is of the opinion that the remedy being sought is worthless or vexatious on account of the smallness of the amount to be recovered or of the debt sought to be attached or otherwise.
- (5) The judgment creditor may appeal to a magistrate against the refusal of the registrar to make an order under paragraph (1).
- (6) Any order made under paragraph (1) must be served on the garnishee personally within 7 days of the making of the order and such order binds the debts to which it applies upon service of the order.
- (7) An order under paragraph (1) must be in Form 71A or 71B whichever is appropriate.

71.05 Dispute of liability by garnishee

If the garnishee disputes liability to pay the debt attached, he, she or it may make application to the Court, within 14 days of service of the garnishee order, to determine liability or to give directions for its determination.

71.06 Claim by another person

Any person other than the judgment debtor who claims to be entitled to the attached debt or to a charge or lien on it may make application to the Court to determine the claim of entitlement or to give directions for its determination.

71.07 Discharge of garnishee

Any payment made by a garnishee in compliance with, and any execution levied against a garnishee under a garnishee order is a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid or levied even if subsequently the garnishee proceedings are set aside or the order from which they arose is reversed or varied.

ORDER 72

ATTACHMENT OF EARNINGS

72.01 Definitions

attachment of earnings order means an order under Rule 72.03 or such order as varied from time to time;

earnings, in relation to a judgment debtor, means any amounts payable to the judgment debtor—

- (a) by way of wages or salary, including any fees, bonus commission, overtime pay or other emoluments payable in addition to wages or salary; or
- (b) by way of pension, including—
 - (i) an annuity in respect of past services whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment—

but does not include any pension payable to the judgment debtor under the Commonwealth Acts known as the Social Security Act 1991 of the Commonwealth or the Veterans' Entitlements Act 1986 of the Commonwealth;

employer, in relation to a judgment debtor, means a person (including the Crown, a Minister of the Crown, and any statutory authority representing the Crown) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the judgment debtor;

judgment debt means the amount of money payable under an order and includes the costs of recovering that amount;

net earnings in relation to a pay-day means the amount of the earnings becoming payable by a particular employer on that pay-day after making all proper deductions under income tax legislation of the Commonwealth;

normal deduction, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer;

pay-day means an occasion on which earnings to which the attachment of earnings order relates becomes payable;

protected earnings in relation to an attachment of earnings order and in relation to a pay-day means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and either—

- (a) the last preceding pay-day; or
- (b) where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer;

the Court includes the Court constituted by a registrar.

72.02 Application for attachment of earnings order

- (1) A judgment creditor may apply for an attachment of earnings order.
- (2) An application under paragraph (1) must be by summons in Form 72A and must be supported by an affidavit which may contain statements of fact based on information and belief if the grounds are set out.
- (3) The affidavit must be in Form 72B.
- (4) The summons, a copy of the affidavit and a notice in Form 72C as to the property and assets of the judgment debtor and the debts, liabilities and other financial obligations of the judgment debtor must be served on the judgment debtor not less than 14 days before the day for hearing named in the summons.
- (5) The Court must not make an attachment of earnings order to secure the payment of a judgment debt if a warrant has been issued in that case committing the judgment debtor to prison under the **Imprisonment of Fraudulent Debtors Act 1958** and has not been executed, but in that case the Court may discharge the warrant with a view to making an attachment of earnings order instead.

72.03 Attachment of earnings order

- (1) If the Court is satisfied—
- (a) that a judgment debtor is a person to whom earnings are payable or are likely to become payable; and
 - (b) that a judgment debtor has failed to comply with an order with respect to a judgment debt—

the Court may order a person who appears to the Court to be the judgment debtor's employer in respect of those earnings or part of those earnings to make out of those earnings or that part of those earnings payments in accordance with Rule 72.07.

- (2) If the Court constituted by a registrar is not satisfied that an order should be made under this Part, the registrar may, or if a party requests must, refer the matter to the Court for decision.

72.04 Examination of judgment debtor

- (1) On an application for an attachment of earnings order the Court may—
- (a) direct the judgment debtor to attend for an oral examination at the time and place specified in the direction; or
 - (b) direct any person who appears to the Court to owe money to the judgment debtor or to be the employer of the judgment debtor to give the Court a statement signed by or on behalf of that person containing such particulars as are specified in the direction of money owed by that person to the judgment debtor that became payable during a period specified in the direction.

(2) On an oral examination the Court must examine a judgment debtor as to the following matters—

- (a) the amount and source of the income of the judgment debtor;
- (b) the property and assets of the judgment debtor;
- (c) the cash that is readily available to the judgment debtor or can be made so available;
- (d) the debts, liabilities and other financial obligations of the judgment debtor—

and may examine a judgment debtor as to any other matter related to the financial circumstances generally of the judgment debtor and the judgment debtor's means and ability to satisfy the judgment debt.

(3) A document purporting to be a statement referred to in paragraph (1)(b) that may be in Form 72C is admissible in evidence in any proceedings for the enforcement of the order.

(4) If an application is made to the Court for an attachment of earnings order and the Court is satisfied—

- (a) that the judgment debtor has been served with a copy of the application; and
- (b) that the judgment debtor has had a reasonable opportunity of attending the hearing; and
- (c) that the judgment debtor is employed by a known employer; and
- (d) as to the earnings of the judgment debtor—

the Court may make an attachment of earnings order in the absence of the judgment debtor.

-
- (5) For the purposes of this Rule the Court may act on—
- (a) evidence given by or on behalf of the judgment debtor's employer; or
 - (b) evidence given by the judgment debtor's spouse; or
 - (c) any statement or information furnished under paragraph (1).
- (6) If the Court is considering an application for an attachment of earnings order in the absence of the judgment debtor or his or her spouse and—
- (a) has before it sufficient evidence, in the opinion of the Court, on which to specify a protected earnings rate and a normal deduction rate, the Court must specify those rates;
 - (b) does not have such evidence before it, the Court may, without specifying those rates, make an order requiring the payment by the judgment debtor's employer to the judgment creditor of such amount as the Court thinks reasonable having regard to the circumstances of the judgment debtor so far as they are known to the Court.
- (7) The provisions of paragraph (1)(a) are without prejudice to any other mode of enforcing the attendance of the judgment debtor before the Court.
- (8) An order under paragraph (1) must be in Form 72D or 72E, whichever is appropriate.

72.05 Contents of order

- (1) An attachment of earnings order (except an order under Rule 72.04(6)(b)) must specify either generally or in relation to any particular pay-day or pay-days the normal deduction rate, that is to

say, the rate at which the Court considers it to be reasonable that the earnings of the judgment debtor should be applied in satisfying the order to which the attachment of earnings order relates but not exceeding a rate that appears to the Court to be necessary for the purpose of—

- (a) securing payment of the amount due and unpaid under the order; and
 - (b) securing payment within a reasonable time of any costs ordered by the Court to be paid by the judgment debtor.
- (2) An attachment of earnings order may specify a normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower or higher normal deduction rate to apply to subsequent pay-days.
- (3) An attachment of earnings order (except an order under Rule 72.04(6)(b)) must also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the judgment debtor and of any other person for whom the judgment debtor must or reasonably may provide, the Court considers it to be reasonable that the earnings to which the order relates should not be reduced by a payment under the order.
- (4) An attachment of earnings order must specify an amount in respect of the clerical and administrative costs of making payments under the order which an employer is entitled to deduct in respect of each payment from the earnings of the judgment debtor in addition to any other amount.

(5) Unless the Court—

- (a) has received from the judgment debtor a completed form pursuant to the notice in Form 72C given under Rule 72.02(4) as to the property and assets of the judgment debtor and the debts, liabilities and the financial obligations of the judgment debtor; or
- (b) has examined the judgment debtor as to those matters—

the Court must not under paragraph (3) specify as the protected earnings rate a rate that is less than 80 per cent of the net earnings of the judgment debtor.

- (6) An attachment of earnings order must be in Form 72F.

72.06 Service of order

- (1) An attachment of earnings order must be served on the judgment debtor and on the person to whom the order is directed.
- (2) The order must not come into force until the expiration of 7 days after the day on which the order is served on the person to whom the order is directed.

72.07 Employer to make payments

- (1) An employer to whom an attachment of earnings order is directed must, in respect of each pay-day while the order is in force, if the net earnings of the judgment debtor exceed the sum of—
 - (a) the protected earnings of the judgment debtor; and
 - (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the

protected earnings in relation to that pay-day as has not been made good on any other previous pay-day—

pay, so far as that excess permits, to the person specified in the order the normal deduction in relation to that pay-day and so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

- (2) If an employer fails to comply with a binding order under paragraph (1), the judgment creditor may apply to the Court to have the order enforced against the employer.
- (3) If at the time of an application under paragraph (2) the judgment debtor is not employed by the employer against whom an order is sought to be made, any order against the employer must not exceed the normal deductions that ought to have been deducted by the employer under a binding order under paragraph (1) while the judgment debtor was employed by that employer.
- (4) A payment made by an employer under paragraph (1) is a valid discharge to the employer as against the judgment debtor to the extent of the amount paid.

72.08 Attachment of earnings in place of other orders

On the hearing of an application to enforce an order for the payment of money, the Court may, instead of making any other order, make an attachment of earnings order.

72.09 Execution after attachment of earnings

Unless the Court otherwise orders, if an attachment of earnings order is in force, a warrant or other process of execution must not issue and an order must not be made for the enforcement of

the order to which the attachment of earnings order relates.

72.10 Discharge or variation of order

- (1) If an attachment of earnings order is in force the Court may, on the application of the judgment creditor or the judgment debtor, discharge, suspend or vary the order.
- (2) The order suspending or varying an attachment of earnings order must be served on the respondent to the application and the person to whom the attachment of earnings order is directed.
- (3) An order suspending or varying an attachment of earnings order does not come into force until the expiration of 7 days after the day on which the order is served on the person to whom it is directed.

72.11 Cessation of attachment of earnings order

- (1) An attachment of earnings order ceases to have effect—
 - (a) on being discharged under Rule 72.10; or
 - (b) unless the Court otherwise orders, on the making of any other order for the recovery of the money owing under the order in relation to which the attachment of earnings order was made.
- (2) If an attachment of earnings order ceases to have effect, the registrar must forthwith give notice accordingly to the person to whom the order was directed.
- (3) If an attachment of earnings order ceases to have effect, the person to whom the order is directed does not incur any liability in consequence of treating the order as still in force at any time before the expiration of 7 days after the day on which the notice required by paragraph (2) or a

copy of the order discharging the attachment of earnings order, as the case requires, is served on that person.

72.12 Two or more attachment of earnings orders in force

If earnings become payable to a judgment debtor and there are in force 2 or more attachment of earnings orders, whether made under these Rules or otherwise, in relation to those earnings, the person to whom the orders are directed—

- (a) must comply with those orders according to the respective dates on which they took effect and must disregard any order until the earlier order has been complied with; and
- (b) must comply with any order as if the earnings to which the order relates were the residue of the earnings of the judgment debtor after the making of any payment under an earlier order.

72.13 When varied order taken to be made

For the purpose of this Rule, an attachment of earnings order which has been varied under Rule 72.10 is to be taken to have been made as so varied on the day on which the attachment of earnings order was made.

72.14 Notice to judgment debtor of payments

- (1) A person who makes a payment in compliance with an attachment of earnings order must give to the judgment debtor a notice specifying the particulars of the payment.
- (2) If a person served with an attachment of earnings order directed to that person is not the employer of the judgment debtor at the time of service of the order, that person must, forthwith after service of the order, give notice in writing accordingly to the registrar and the judgment creditor.

- (3) If a person served with an attachment of earnings order directed to that person is the employer of the judgment debtor at the time of service of the order but ceases to be the judgment debtor's employer at any time thereafter, that person must, forthwith after ceasing to be the judgment debtor's employer, give notice in writing accordingly to the registrar and the judgment creditor.

72.15 Determination of earnings

- (1) The Court must, on the application of the person to whom an attachment of earnings order is directed, determine whether payments to the judgment debtor of a particular class or description specified in the application are earnings for the purpose of that order.
- (2) A person to whom an attachment of earnings order is directed who makes an application under paragraph (1) does not incur any liability for failing to comply with the order with respect to any payments of the class or description specified in the application that are made by that person to the judgment debtor while the application, or any appeal from an order made on the application, is pending.
- (3) Paragraph (2) does not apply in respect of any payment made after an application is withdrawn or an appeal from an order made on the application is abandoned.

72.16 Service

An order or document that is required or permitted to be served on a person under this Part must be served on that person—

- (a) personally; or
- (b) by registered post.

ORDER 73

CHARGING ORDERS AND STOP ORDERS AND NOTICES

* * * * *

ORDER 74

ENFORCEMENT BY APPOINTMENT OF RECEIVER

* * * * *

ORDER 75

CONTEMPT

* * * * *

ORDER 76

SEQUESTRATION

* * * * *

ORDER 77

AUTHORITY OF MASTERS

* * * *

ORDER 78

PROCEEDINGS UNDER JUDGMENT

* * * *

ORDER 79

FUNDS IN COURT

* * * *

ORDER 80

SERVICE OF FOREIGN PROCESS

* * * *

ORDER 81

OBTAINING EVIDENCE FOR EXTERNAL TRIBUNAL

* * * *

FORMS

FORM 4A

Rule 4.09

Form 4A
inserted by
S.R. No.
152/2010
rule 7.

OVERARCHING OBLIGATIONS CERTIFICATION

[heading as in Form 5A]

In accordance with section 41 of the **Civil Procedure Act 2010**, I *[name of party]* certify to the Court that I have read and understood the overarching obligations set out in sections 16 to 26 of that Act and the paramount duty set out in section 16 of the Act.

Dated: *[e.g. 5 September, 20]*.

Signed

*[To be signed personally by party
or if party is represented by a litigation guardian
or similar representative,
by that litigation guardian or representative]*

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 4B

Form 4B
inserted by
S.R. No.
152/2010
rule 7.

FORM 4B

Rule 4.10

PROPER BASIS CERTIFICATION

[heading as in Form 5A]

In accordance with section 42 of the **Civil Procedure Act 2010**, I [*name of legal practitioner or if not legally represented, name of party*] certify to the Court that, in relation to the document [*identify document to which certification relates*] filed on behalf of [*specify party*], on the factual and legal material available to me at present:

- (a) each allegation of fact in the document has a proper basis;
- * (b) each denial in the document has a proper basis;
- * (c) there is a proper basis for each non-admission in the document.

Dated: [*e.g.* 5 September, 20].

Signed

*Delete if not applicable

* * * * *

Form 4C
inserted by
S.R. No.
152/2010
rule 7,
revoked by
S.R. No.
36/2011 rule 8.

FORM 5A

Rule 5.02(1)

COMPLAINT

IN THE MAGISTRATES' COURT

Court Number

OF VICTORIA

AT

BETWEEN

A.B.

Plaintiff

(full name)

OF

(address)

and

C.D.

Defendant

(full name)

OF

(address of defendant)

1. The address for service of the plaintiff is—*(address must be within Victoria if the plaintiff sues in person)*
- *2. Name and address of Australian lawyer for the plaintiff—
- *3. The plaintiff sues *(or the defendant is sued)* in the following representative capacity *(e.g. as administrator of the estate of)*.

STATEMENT OF CLAIM

1. *(Here set out in numbered consecutive paragraphs all the material facts relied on for the claim against the defendant including particulars of every fact or matter.*

If the claim arises by or under any Act, identify the specific provision relied on. State specifically the amount or other relief or remedy sought. State the place where and the date when the claim arose.

If the claim arises out of a motor vehicle collision and the claim includes a claim for the cost of repairs to the vehicle or total loss of the vehicle, an itemised quotation of the cost of the repairs or an assessment of the loss (whichever is relevant) must be attached to this complaint).

2. *(etc.)*

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 5A

TO THE DEFENDANT

TAKE NOTICE that this complaint has been brought against you by the plaintiff as set out in the statement of claim.

IF YOU INTEND TO DEFEND this complaint, YOU MUST GIVE NOTICE OF DEFENCE, **within 21 days of service upon you of this complaint**, to—

- (a) the plaintiff; and
- (b) the registrar of the Magistrates' Court of Victoria at (*insert proper venue*).

IF YOU GIVE NOTICE OF DEFENCE, the Court will write to you and tell you of the hearing date.

IF YOU DO NOT GIVE NOTICE OF DEFENCE WITHIN 21 DAYS OF SERVICE, the plaintiff may OBTAIN AN ORDER AGAINST YOU for the amount of the claim and costs without further notice.

IF YOU PAY the amount of \$ and costs of \$ to the plaintiff or the plaintiff's Australian lawyer without giving notice of defence you may avoid further costs.

DATE OF FILING:

THIS COMPLAINT IS VALID IF IT BEARS THE ALLOCATED COURT
NUMBER AND THE DATE OF FILING

Dated: [*e.g.* 5 September 20].

[*To be signed by the Plaintiff
or the Plaintiff's Australian
lawyer*]

* Delete if not applicable.

FORM 6A

Rule 6.17(1)

AFFIDAVIT/DECLARATION OF SERVICE

[heading as in Form 5A]

I, *[full name]* of *[address and occupation]*, *make oath and say/declare that I served a copy of the *[document]* *together with 2 notices of defence on *[name of person served]* by:

*leaving it with *him/her personally at *[address]*

*delivering it to *his/her place of residence to *[name]* a person apparently above the age of 16 years and residing there at *[address]*

*delivering it to *his/her place of business at *[address]* to *[name]* a person apparently above the age of 16 years and apparently in charge of that business or employed in the office of that business.

*posting it by prepaid ordinary post at *[address]* in an envelope addressed to *him/her at *his/her address for service at *[address]* *leaving it at *sending it by post to the registered office of the corporation at *[address]*

on *[day of week]*, the day
of 20 at

*a.m./p.m.

*I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

*Sworn/Declared at
[place]
in the State of Victoria
on *[date]*
Before

[Signed by person]

*authorised under section 107A(1) of the **Evidence (Miscellaneous Provisions) Act 1958** to witness the signing of a statutory declaration.

*authorised under section 123C(1) of the **Evidence (Miscellaneous Provisions) Act 1958** to take an affidavit.

[Name and address in legible writing, typing or stamp]

* Delete if not applicable.

FORM 7A

Rule 7.02(1)

COMPLAINT

(for service out of Australia)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

Court Number

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

OF (ADDRESS)

NATURE OF COMPLAINT (STATE SHORTLY)

STATE THE FACTS AND PARTICULAR PARAGRAPH OF
RULE 7.01(1) BEING RELIED ON TO SUPPORT SERVICE OUT OF
AUSTRALIA—

AMOUNT OF CLAIM

TO THE DEFENDANT

TAKE NOTICE that this complaint has been brought against you by the
plaintiff for the claim set out in the pages attached.

IF YOU INTEND TO DEFEND this complaint, YOU MUST GIVE
NOTICE OF DEFENCE, **within 42 days of service upon you of this
complaint**, to—

(a) the plaintiff whose address for service is; and

(b) the registrar of the Magistrates' Court of Victoria at .

IF YOU GIVE NOTICE OF DEFENCE THE ADDRESS FOR SERVICE
OF THE DEFENDANT MUST BE IN VICTORIA; and

THE COURT will write to you and tell you of the hearing date.

IF YOU DO NOT GIVE NOTICE OF DEFENCE WITHIN 42 DAYS OF
SERVICE, the plaintiff may OBTAIN AN ORDER AGAINST YOU for the
amount of the claim and costs without further notice.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 7A

IF YOU PAY the amount of \$ and costs of \$ to the plaintiff
or the plaintiff's Australian lawyer without giving notice of defence you may
avoid further costs.

DATE OF FILING:

THIS COMPLAINT IS VALID IF IT BEARS THE ALLOCATED COURT
NUMBER AND THE DATE OF FILING

[next page]

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 7A

TO THE PLAINTIFF If your claim arises from a motor vehicle collision, complete Part A.

If your claim does not arise from a motor vehicle collision complete Part B.

If your claim combines Part A and Part B, complete the appropriate parts.

PART A

(CLAIM ARISING FROM A MOTOR VEHICLE COLLISION
INCLUDING PERSONAL INJURY)

WHAT IS THE NATURE OF YOUR CLAIM? (e.g. cost of repairs to motor vehicle; cost of repairs to damaged fence.)

WHERE DID YOUR CLAIM ARISE? [*Give the location of any collision, including a Melway reference if possible, and in the space below draw a sketch plan of the collision with names of roads, etc. Identify your vehicle as "1", the vehicle driven by the defendant as "2" and any other vehicles involved as "3", "4", "5", etc.*]

WHEN DID YOUR CLAIM ARISE?

HOW DID THE COLLISION HAPPEN? [*You must set out here in as much detail as you can how the collision happened and why you believe the defendant is at fault. If the space is insufficient you may attach other sheets.*]

HOW MUCH ARE YOU CLAIMING?

Dated: [e.g. 5 September 20].

[*To be signed by the plaintiff
or the plaintiff's Australian
lawyer*]

[next page]

PART B

(ANY CLAIM NOT ARISING FROM A MOTOR
VEHICLE COLLISION)

WHAT IS THE NATURE OF YOUR CLAIM? (e.g. work done; money owed; goods or services supplied; personal injury other than that arising from a motor vehicle collision; application to fence; injunction.)

WHERE DID YOUR CLAIM ARISE?

WHEN DID YOUR CLAIM ARISE?

PARTICULARS OF THE CLAIM:

[You must set out here in as much detail as you can the substance of your claim. If the space is insufficient you may add other sheets.]

HOW MUCH MONEY (IF ANY) ARE YOU CLAIMING?

WHAT OTHER RELIEF OR REMEDY (IF ANY) ARE YOU CLAIMING?

Dated: [e.g. 5 September 20].

*[To be signed by the plaintiff
or the plaintiff's Australian lawyer]*

FORM 8A

Rules 8.03(1), 10.04(7), 11.07(5)

NOTICE OF DEFENCE

TO THE PLAINTIFF

AND TO THE REGISTRAR OF THE MAGISTRATES' COURT AT

TAKE NOTICE that the defendant intends to defend this complaint.

AND TAKE NOTICE that the defendant's defence is as follows [*set out the defence of the defendant in paragraphs numbered consecutively with each fact or matter stated so far as practicable in a separate paragraph*].

- 1.
2. etc.

Notes

1. A defence—
 - (a) must state which of the facts in the statement of claim are admitted, denied or not admitted—see Rule 13.02(1); and
 - (b) if the proceeding is referred to arbitration, must state with particularity the date, place, circumstances, facts or other matters relied on in defence of the claim.
2. A defendant who in the defence does not state whether a fact stated in the statement of claim is admitted, denied, or not admitted, will be taken to admit the fact—see Rule 13.02(2).
3. A defendant who states that a fact stated in the statement of claim is denied must—
 - (a) give the reason for denying the fact; and
 - (b) if the defendant intends to prove a fact different from that stated in the statement of claim, state with necessary particulars the fact that the defendant intends to prove—see Rule 13.02(3).
4. Save with the leave of the Court, a defendant who states that a fact stated in the statement of claim is not admitted must not except in cross-examination adduce any evidence with respect to that fact at the hearing of the proceeding—see Rule 13.02(4).

5. The defendant must state specifically with particulars any fact or matter which—
 - (a) makes the claim of the plaintiff not maintainable; or
 - (b) if not stated specifically, might take the plaintiff by surprise; or
 - (c) raise questions of fact arising out of the statement of claim—see Rule 13.02(5).
6. If the defence arises by or under any Act, the defence must identify the specific provision relied on—see Rule 13.02(6).

FILED: [e.g. 5 September, 20].

* Defendant

[signed]

* Defendant's Australian lawyer

[signed]

1. **This notice was signed—**

* by the defendant in person;

* for the defendant corporation by [name of person] of [address] who holds the position of [director, secretary or other person authorised in writing by the defendant corporation];

* for the defendant by [name or firm of Australian lawyer], Australian lawyer(s), of [business address of Australian lawyer].

2. **The address of the defendant is—**

3. **The address for service of the defendant is—**[If the defendant defends by an Australian lawyer, the business address of the Australian lawyer. If the defendant defends in person, the address in].

* Delete if inapplicable.

Form 10A

FORM 10A

Rule 10.02(4) and 10.04(5)

COUNTERCLAIM

NAME AND ADDRESS of Australian lawyer for the defendant—

[*If no Australian lawyer*] Address for service of the defendant—

STATEMENT OF COUNTERCLAIM

(Here set out in numbered consecutive paragraphs all the material facts relied on for the counterclaim against the plaintiff including particulars of every fact or matter.

If the counterclaim arises by or under any Act, identify the specific provision relied on. State specifically the amount or other relief or remedy sought. State the place where and the date when the claim arose.

If the counterclaim arises out of a motor vehicle collision and includes a claim for the cost of repairs to the vehicle or total loss of the vehicle, an itemised quotation of the cost or the repairs or an assessment of the loss (whichever is relevant) must be attached to this counterclaim.)

TO THE PLAINTIFF

TAKE NOTICE that this counterclaim has been brought against you by the defendant as set out in the statement of counterclaim.

IF YOU INTEND TO DEFEND this counterclaim, YOU MUST GIVE NOTICE OF DEFENCE, **within 21 days of service upon you of this counterclaim**, to—

- (a) the defendant; and
- (b) the registrar of the Magistrates' Court of Victoria at (*insert proper venue*).

IF YOU GIVE NOTICE OF DEFENCE, the Court will write to you and tell you of the hearing date.

IF YOU DO NOT GIVE NOTICE OF DEFENCE WITHIN 21 DAYS OF SERVICE, the defendant may OBTAIN AN ORDER AGAINST YOU for the amount of the counterclaim and costs without further notice.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 10A

DATE OF FILING:

THIS COUNTERCLAIM IS VALID IF IT BEARS THE ALLOCATED
COURT NUMBER AND THE DATE OF FILING

Dated: [e.g. 5 September 20].

*[To be signed by the defendant
or the defendant's Australian
lawyer]*

Form 10B

FORM 10B

Rule 10.02(5) and 10.04(6)

COUNTERCLAIM

(service outside Australia)

NAME AND ADDRESS of Australian lawyer for the defendant—

[If no Australian lawyer] Address for service of the defendant—

STATEMENT OF COUNTERCLAIM

(Here set out in numbered consecutive paragraphs all the material facts relied on for the counterclaim against the plaintiff including particulars of every fact or matter.

If the counterclaim arises by or under any Act, identify the specific provision relied on. State specifically the amount or other relief or remedy sought. State the place where and the date when the claim arose.

If the counterclaim arises out of a motor vehicle collision and includes a claim for the cost of repairs to the vehicle or total loss of the vehicle, an itemised quotation of the cost or the repairs or an assessment of the loss (whichever is relevant) must be attached to this counterclaim.)

TO THE PLAINTIFF

TAKE NOTICE that this counterclaim has been brought against you by the defendant as set out in the statement of counterclaim.

IF YOU INTEND TO DEFEND this counterclaim, YOU MUST GIVE NOTICE OF DEFENCE, **within 42 days of service upon you of this counterclaim**, to—

- (a) the defendant; and
- (b) the registrar of the Magistrates' Court of Victoria at *(insert proper venue)*.

IF YOU GIVE NOTICE OF DEFENCE THE ADDRESS FOR SERVICE OF THE DEFENDANT MUST BE IN VICTORIA; and

THE COURT will write to you and tell you of the hearing date.

IF YOU DO NOT GIVE NOTICE OF DEFENCE WITHIN 42 DAYS OF SERVICE, the defendant may OBTAIN AN ORDER AGAINST YOU for the amount of the counterclaim and costs without further notice.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 10B

DATE OF FILING:

THIS COUNTERCLAIM IS VALID IF IT BEARS THE ALLOCATED
COURT NUMBER AND THE DATE OF FILING

Dated: [e.g. 5 September 20].

*[To be signed by the defendant
or the defendant's Australian
lawyer]*

Form 11A

FORM 11A

Rules 11.02, 11.15(4)

THIRD PARTY NOTICE

IN THE MAGISTRATES' COURT
OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

and

E.F.

Third Party

To *E.F.*
of [*address*]

TAKE NOTICE that the plaintiff has brought this proceeding against the defendant for the claim set out in the complaint and statement of claim [or served herewith].

AND TAKE NOTICE that the defendant disputes the plaintiff's claim on the grounds set out in the defendant's Notice of Defence served herewith, and claims to be entitled to relief against you on the grounds set out in the statement of claim indorsed on this notice.

IF YOU INTEND TO DISPUTE the plaintiff's claim against the defendant, or the defendant's claim against you, YOU MUST GIVE NOTICE OF DEFENCE within the proper time for giving Notice of Defence stated below.

YOU OR YOUR AUSTRALIAN LAWYER may file a Notice of Defence at the above venue of the Court.

IF YOU FAIL to give a Notice of Defence within the proper time you will be taken to admit the validity of any final order against the defendant and your own liability to the defendant to the extent claimed in the statement of claim indorsed on this notice, and the defendant may OBTAIN A FINAL ORDER AGAINST YOU without further notice.

*THE PROPER TIME TO GIVE NOTICE OF DEFENCE is as follows—

- (a) where you are served with the notice in Victoria, within 21 days after service;
- (b) where you are served with the notice out of Victoria and in another part of Australia, within 21 days after service;

- (c) where you are served with the notice in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the notice in any other place, within 42 days after service.

FILED [e.g. 15 June 20].

Registrar

Page 2

STATEMENT OF CLAIM

(Here set out in numbered consecutive paragraphs all the material facts relied on for the claim against the third party including particulars of every fact or matter.

If the claim against the third party arises by or under any Act, identify the specific provision relied on. State specifically the amount or other relief or remedy sought. State the place where and the date when the claim arose.

If the claim against the third party arises out of a motor vehicle collision and includes a claim for the cost of repairs to the vehicle or total loss of the vehicle, an itemised quotation of the cost of the repairs or an assessment of the loss (whichever is relevant) must be attached to this claim).

Page 3

1. **This notice was filed—

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

2. The address of the defendant is—

3. The address for service of the defendant is—

4. The address of the third party is—

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 11A

* *[Strike out this paragraph where order made fixing time for giving notice of defence and substitute "THE PROPER TIME TO GIVE NOTICE OF DEFENCE is within days after service on you of this notice.]*

** *[Complete or strike out as appropriate.]*

FORM 11B

Rule 11.15(5)

NOTICE CLAIMING CONTRIBUTION

[heading as in Form 5A]

TO THE DEFENDANT

TAKE NOTICE that the plaintiff has brought this proceeding against the defendants to recover damages for loss sustained *[give brief statement of plaintiff's claim]*.

AND TAKE NOTICE that the *[identify party]* claims to be entitled to contribution from you in respect of any sum which the plaintiff may recover against that party in the proceeding *[where appropriate]* to the extent of such amount as may be found by the Court to be just and equitable, having regard to your responsibility for such damages on the ground that *[insert ground(s)]*.

FILED: *[e.g. 5 September, 20]*.

Registrar

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 12A

FORM 12A

Rule 12.02(3)(c)

STAKEHOLDER'S INTERPLEADER SUMMONS

[heading as in Form 5A]

To *[the claimants]*

of *[address]*

The claimant or claimants, *[name of claimant or claimants]* has claimed the goods *[or certain goods]* *[if only certain goods are claimed, list them]* *[or the proceeds of sale of [goods]]* that are property in dispute in this proceeding.

TAKE NOTICE that the Court will hear the claim at *[time]* on *[date]*.

Dated: *[e.g. 5 September, 20]*.

Registrar

FORM 12B

Rule 12.05(1)(b)

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION

[heading as in Form 5A]

To the *[execution creditor]*

of *[address]*

TAKE NOTICE that *A.B.* has claimed the goods *[or certain goods]* *[where only certain goods are claimed here enumerate them]* taken in execution by the Sheriff under the warrant of execution issued in this proceeding.

WITHIN 5 days of service of this notice on you, you may serve notice in writing on the Sheriff stating whether you admit or dispute the claim of *A.B.* to the goods.

IF you do not within the period of 5 days after service of this notice serve notice on the Sheriff stating that you admit the claim or if within the period of 5 days you serve notice in writing on the Sheriff that you dispute the claim, the Sheriff may apply to the Court by summons for relief by way of interpleader. If you serve notice in writing on the Sheriff stating that you admit the claim you will not be liable for any fees or expenses incurred by the Sheriff after the notice is given.

Dated *[e.g. 5 September 20]*.

Sheriff

Form 12C

FORM 12C

Rule 12.07(2)(c)

SHERIFF'S INTERPLEADER SUMMONS

[heading as in Form 5A]

To *[execution creditor]*

of *[address]*

and

To the *[claimant]*

of *[address]*

The claimant, *[name of claimant]* has claimed the goods *[or certain goods]*
[if only certain goods are claimed, list them] *[or the proceeds of sale of]*
[goods] taken in execution by *[person to whom warrant was directed]* under
the warrant to seize property in this proceeding.

TAKE NOTICE that the Court will hear the claim at *[time]* on *[date]*.

Dated: *[e.g. 5 September, 20]*.

Registrar

FORM 15A

Rule 15.08(7)

ORDER APPROVING COMPROMISE OF CLAIM OF MINOR

[heading as in Form 5A]

MAGISTRATE:

DATE MADE:

HOW OBTAINED:

[state whether on application by summons before hearing with date of summons, or at hearing with date of commencement of hearing]

ATTENDANCE:

OTHER MATTERS:

1. The plaintiff was born on *[insert date of birth]*.
2. By a compromise entered into on 20 the defendant proposes to pay and the plaintiff desires to accept \$ for the benefit of the plaintiff and the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.
3. The Court read the following material:
 - (a) *[identify affidavits by date and name of deponent]*;
 - (b) the exhibits to the affidavits including the opinion of
of Counsel dated 20 .
4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. *[where order is made by a Magistrate]* There be special leave for the application to be made to a Magistrate.
2. The compromise be approved.
3. The defendant within days after service of a copy of this order on the defendant's Australian lawyers pay \$ to the Senior Master of the Supreme Court for the benefit of the plaintiff *[where appropriate]* and \$ to the Australian lawyers for the plaintiff, to be disbursed or retained by them in payment of the items totalling \$ referred to in the affidavit of dated 20].
4. The costs of the plaintiff, including the costs of this application, be taxed, and when taxed, paid by the defendant.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 15A

-
5. Subject to any further order, the Senior Master of the Supreme Court invest \$ for the plaintiff to be paid out with the interest accrued thereon to the plaintiff upon his or her attaining the age of 18 years.
 6. Upon payment by the defendant of the sum[s] and costs referred to, the proceeding be forever stayed.
 7. Each party have liberty to apply.
 8. The exhibits to the affidavits [*where appropriate* and a transcript of the evidence with respect to the application] be transmitted to the Senior Master's clerk.

DATE AUTHENTICATED:

Registrar

FORM 19A

Rule 19.02(3)

NOTICE OF A CONSTITUTIONAL MATTER

[heading as in Form 5A]

1. The *[party whose case raises the matter]* gives notice that this proceeding involves a matter under the Constitution or involving its interpretation within the meaning of section 78B of the Judiciary Act 1903 of the Commonwealth.
2. *[State specifically the nature of the matter]*.
3. *[State the facts showing the matter is one to which section 78B of the Judiciary Act 1903 applies]*.

Dated *[e.g. 5 September 20]*.

[Signed]

To the registrar

And to

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 21A

FORM 21A

Rule 21.01(2)(a)

APPLICATION FOR ORDER IN DEFAULT OF DEFENCE

[heading as in Form 5A]

Nature of complaint *[state shortly]*

1. The plaintiff applies for an order for the claim with interest to the date of the order and costs shown below.
2. The defendant has not given notice of defence to the plaintiff.
3. An affidavit/declaration of service of the complaint has been filed.
4. Details of the order sought are:

CLAIM

Claim	\$	
Less amounts paid since claim	\$	_____
	\$	_____

INTEREST

Date of issue of complaint:				
to	,	days @	%	\$
to	,	days @	%	\$
				\$ _____
				\$ _____

[Attach schedule where necessary]

COSTS

Professional costs	\$	
Fee on complaint	\$	
Fee on this application	\$	
Service fee	\$	
Attempted service fee(s)—total	\$	
Distance fee	\$	
Search fee	\$	
Necessary affidavit(s) <i>[specify]</i>	\$	
Other(s) <i>[specify]</i>	\$	
	\$	_____
	Subtotal	\$ _____
Less any costs paid	\$	_____
	\$	_____

Dated: *[e.g. 5 September 20]*.

[plaintiff or plaintiff's Australian lawyer]

FORM 21B

Rule 21.08(2)

APPLICATION FOR AN ORDER FOR COSTS

[heading as in Form 5A]

Nature of complaint *[state shortly]*

1. The defendant applies for an order for costs against the plaintiff.
2. The complaint was dismissed on *[insert date or date of noncompliance]*.
3. Details of the order sought are:

COSTS

Instructions to defend \$

Fee on this application \$

Necessary affidavit(s) *[specify]* \$

Other(s) *[specify]* \$

Dated: *[e.g. 5 September 20]*.

[defendant or defendant's Australian lawyer]

Form 22A

FORM 22A

Rule 22.02(2)

APPLICATION FOR SUMMARY ORDER

[heading as in Form 5A]

Nature of complaint *[state shortly]*

1. The plaintiff applies for an order on the claim with interest to the date of the order and costs on the grounds set out in the accompanying affidavit(s).
2. UNLESS you satisfy the Court, by affidavit or otherwise, that you have a good defence to the claim, or disclose facts deemed by the Court sufficient to entitle you to defend the claim, the Court may make an order in favour of the plaintiff for the amount of the claim, or part of the claim.
3. The application will be heard by the Court at *[venue]* on *[date]*.

FILED: *[e.g. 5 September 20]*.

Registrar

This application was filed by _____, Australian lawyer for the
[identify party].

FORM 28A

Rule 28.05(3)

ELECTRONIC LODGEMENT AUTHORISATION

This is to certify that

[name of authorised user]

is authorised to file documents in the Magistrates' Court of Victoria by
lodging electronic messages with the Court.

Dated:

Chief Magistrate

FORM 29A

Rule 29.02(2)

NOTICE FOR DISCOVERY

[heading as in Form 5A]

To the *[identify party]*

You are required to make discovery of documents within 28 days after
service of this notice on you.

Dated *[e.g. 15 June 20]*.

[Signed]

Form 29B

FORM 29B

Rule 29.04

AFFIDAVIT OF DOCUMENTS

[heading as in Form 5A]

I, the abovenamed _____, make oath and say as follows:

1. I have in my possession, custody or power, the documents enumerated in Schedule 1 which are required to be discovered.
2. The documents enumerated in Part 2 of Schedule 1 are privileged, and I object to produce them. The documents are privileged on the ground—
 - (a) as to documents numbered 4 to 6, that
[state the ground];
 - (b) as to document numbered 7, that
[state the ground].
3. I have had, but no longer have, in my possession, custody or power, the documents enumerated in Schedule 2 which are required to be discovered.
4. Document numbered *[e.g. 8]*, referred to in Schedule 2, was last in my possession, custody or power on *[state when]* and I believe that *[state belief as to what has become of it]*.
5. To the best of my knowledge, information and belief neither I nor my Australian lawyer nor any other person on my behalf has now, or ever had, in my or his, her or its possession, custody or power, any document required to be discovered, other than the documents enumerated in the said Schedules 1 and 2.
- *6. In making a reasonable search as required by Rule 29.01.1 of Chapter I of the Rules of the Magistrates' Court, I did not search for the following category or class of document *[specify which category or class of document for which no search was made]*.
- *7. The reason why I did not make a search for the category or class of documents referred to in clause 6 is *[specify reason]*.

[Describe each document in the Schedules as original or copy.]

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 29B

SCHEDULE 1

Part 1

- 1.
- 2.
- 3.

Part 2

- 4.
- 5.
- 6.
- 7.

SCHEDULE 2

- 8.

Sworn, etc.

* Delete if not applicable.

Form 29C

FORM 29C

Rules 29.09(3), 29.10(5)

NOTICE TO PRODUCE

[heading as in Form 5A]

To the *[identify party]*

TAKE NOTICE that the *[identify party]* requires you to produce for that party's inspection the following documents referred to in your [complaint, pleading, particulars, affidavit, etc.] *[describe documents required]*.

Dated [*e.g.* 15 June 20].

[Signed]

FORM 29D

Rule 29.12.1(2)

**NOTICE OF DEFAULT IN MAKING DISCOVERY OF
DOCUMENTS**

[heading as in Form 5A]

To the *[identify party]*

YOU have failed to make discovery of documents to the *[identify party]* within the time limited by the Rules [or fixed by order of the Court made on [*e.g.* 20 June 20]].

TAKE NOTICE that unless you make discovery of documents to the *[identify party]* within 14 days of the day of service of this notice on you the plaintiff will apply to the Court for an order that the defence served by you be struck out [*or* the defendant will apply to the Court for an order that the proceeding be dismissed].

Dated [*e.g.* 20 June 20].

[Signed]

FORM 30A

Rule 30.09.1(2)

NOTICE OF DEFAULT IN ANSWERING INTERROGATORIES

[heading as in Form 5A]

To the *[identify party]*

YOU have failed to answer interrogatories served by the *[identify party]* for your examination within the time limited by the Rules *[or fixed by order of the Court made on e.g. 20 June 20]*.

TAKE NOTICE that unless you answer the interrogatories within 14 days of the day of service of this notice on you the plaintiff will apply to the Court for an order that the defence served by you be struck out *[or the defendant will apply to the Court for an order that the proceeding be dismissed]*.

Dated *[e.g. 20 June 20]*.

[Signed]

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 35A

FORM 35A

Rules 35.03(4), 35.05(4)

NOTICE TO ADMIT

[heading as in Form 5A]

To the *[identify party]*

TAKE NOTICE that if you do not, within *[specify a number not less than 14]* days after service of this notice upon you, serve a notice upon the
disputing any fact specified *[or the authenticity of any document mentioned]* below, that fact *[or the authenticity of that document]* shall, for the purpose of this proceeding only, be taken to be admitted by you in favour of the . If you do serve a notice disputing that fact *[or the authenticity of that document]*, and afterwards that fact *[or the authenticity of that document]* is proved, you must pay the costs of proof, unless the Court otherwise orders.

1.

2. *[specify each fact]*

or

1. *[mention each document]*

2.

Dated *[e.g. 15 June 20]*.

[Signed]

FORM 35B

Rules 35.03(4), 35.05(4)

NOTICE OF DISPUTE

[heading as in Form 5A]

To the *[identify party]*

The disputes the following facts specified in the 's notice dated
[insert date of notice].

1.

[identify each fact]

2.

or

The disputes the authenticity of the following documents mentioned in
the 's notice dated *[insert date of notice]*.

1.

[identify each document]

2.

Dated [*e.g.* 15 June, 20].

[Signed]

Form 37AA

Form 37AA
amended by
S.R. No.
36/2011
rule 16.

Rule 37A.02(3)

FORM 37AA

FREEZING ORDER

[title of proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU:

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: *[name of person against whom the order is made]*

This is a "freezing order" made against you on *[insert date]* by Magistrate *[insert name of Magistrate]* at a hearing without notice to you after the Court has been given the undertakings set out in Schedule A to this order and after the Court has read the affidavits listed in Schedule B to this order¹.

The applicant has given to the Court the undertakings set out in Schedule A to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
(b) The time for service of *[describe documents required to be served]* is abridged and service is to be effected by *[insert time and date]*².
2. Subject to the next paragraph, this order has effect up to and including *[insert date]* ("the return date"). On the return date there will be a further hearing in respect of this order at *[insert time]* a.m./p.m. before Magistrate *[insert name of Magistrate]*³.

3. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
4. In this order—
 - (a) **"applicant"**, if there is more than one applicant, includes all the applicants;
 - (b) **"you"**, where there is more than one of you, includes all of you and includes you if you are a corporation;
 - (c) **"third party"** means a person other than you and the applicant;
 - (d) **"unencumbered value"** means value free of mortgages, charges, liens or other encumbrances.
5.
 - (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
 - (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

FREEZING OF ASSETS

[For order limited to assets in Australia]

6.
 - (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets which are in Australia (**"Australian assets"**) up to the unencumbered value of AUD\$ **("the relevant amount")**.
 - (b) If the unencumbered value of your Australian assets exceeds the relevant amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the relevant amount.

[If the Court makes a world wide order, the following additional paragraph (c) also applies]

- (c) If the unencumbered value of your Australian assets is less than the relevant amount, and you have assets outside Australia (**"ex-Australian assets"**)—
 - (i) you must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the relevant amount; and

Form 37AA

- (ii) you may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the relevant amount.

[For either form of order]

7. For the purposes of this order—

- (a) your assets include—
 - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
 - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
 - (iii) the following assets in particular—
 - (A) the property known as *[title/address]* or, if it has been sold, the net proceeds of the sale;
 - (B) the assets of your business [known as *[name]*] [carried on at *[address]*] or, if any or all of the assets have been sold, the proceeds of the sale; and
 - (C) any money in account *[numbered account number]* *[in the name of]* at *[name of bank and name and address of branch]*;
- (b) the value of your assets is the value of the interest you have individually in your assets.

PROVISION OF INFORMATION⁴

8. Subject to paragraph 9, you must—

- (a) at or before the further hearing on the return date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in [Australia] [world wide], giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) within [] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.

-
9. (a) This paragraph 9 applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 9 also applies if you are a corporation and all persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

EXCEPTIONS TO THIS ORDER

10. This order does not prohibit you from—
- (a) paying [up to \$..... a week/day on] [your ordinary] living expenses;
 - (b) paying [\$.....on] [your reasonable] legal expenses;
 - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred;
 - (d) in relation to matters not falling within subparagraphs (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least 2 working days written notice of the particulars of the obligation.

Form 37AA

-
11. You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may thereafter order that the exceptions are varied accordingly.
12. (a) The order will cease to have effect if you—
- (i) pay the sum of \$..... into Court; or
 - (ii) pay that sum into a joint bank account in the name of your Australian lawyer and the Australian lawyer for the applicant as agreed in writing between them; or
 - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant to subparagraph (a), you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

COSTS

13. The costs of this application are reserved.

PERSONS OTHER THAN THE APPLICANT AND RESPONDENT

14. Set off by banks

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

15. Bank withdrawals by the respondent

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

[For world wide order]

16. Persons outside Australia

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.

-
- (b) The terms of this order will affect the following persons outside Australia—
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
 - (ii) any person (including a bank or financial institution) who—
 - (A) is subject to the jurisdiction of this Court;
 - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
 - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
 - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

[For world wide order]

17. Assets located outside Australia

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

SCHEDULE A

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will—
 - (a) file a copy of this order and [*describe documents required to be filed*]; and
 - (b) serve on the respondent copies of this order and [*describe documents required to be served*].
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect⁵ the applicant will promptly take all reasonable steps to inform in writing anyone to whom the applicant has given notice of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.
- [(8) The applicant will—
 - (a) on or before [*date*] cause an irrevocable undertaking to pay in the sum of \$ to be issued by a bank with a place of business within Australia, in respect of any order the court may make pursuant to undertaking (1) above; and
 - (b) immediately upon issue of the undertaking, cause a copy of it to be served on the respondent.]⁶

SCHEDULE B⁷

AFFIDAVITS RELIED ON

Name of Deponent of Affidavit

Date Affidavit Made

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The applicant's legal representatives are—

[Name, address, reference, fax and telephone numbers both in and out of office hours and email]

1 The words “without notice to you” and “after the Court has read the affidavits listed in Schedule B to this order” are appropriate only in the case of an order without notice.

2 Paragraph 1 is appropriate only in the case of an order without notice.

3 Paragraph 2 is appropriate only in the case of an order without notice.

4 See Practice Note paragraphs 13 and 14.

5 For example, if the respondent pays money into Court or provides security, as provided for in paragraph 12 of the Order.

6 See Practice Note paragraph 17.

7 Schedule B is appropriate only in the case of an order without notice.

Form 37BA

Form 37BA
amended by
S.R. No.
36/2011
rule 17.

Rule 37B.02(2)

FORM 37BA

SEARCH ORDER

[title of proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: *[name of person against whom the order is made]*

This is a "search order" made against you on *[insert date]* by Magistrate *[insert name of Magistrate]* at a hearing without notice to you after the applicant has given to the Court the undertakings set out in Schedule B to this order and after the Court has read the affidavits listed in Schedule C to this order.

The applicant has given to the Court the applicant's undertakings set out in Schedule B to this order.

The applicant's Australian lawyer has given to the Court the applicant's Australian lawyer's undertakings set out in Schedule B to this order.

Each independent Australian lawyer has given to the Court the independent Australian lawyer's undertakings set out in Schedule B to this order.

Each independent computer expert has given to the Court the independent computer expert's undertakings set out in Schedule B to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
(b) The time for service of [*describe documents required to be served*] is abridged and service is to be effected by [*insert time and date*].
2. Subject to the next paragraph, this order has effect up to and including [*insert date*] ("*the return date*"). On the return date at [*insert time*] a.m./p.m. there will be a further hearing in respect of this order before Magistrate [*insert name of Magistrate*].
3. You may apply to the Court at any time to vary or discharge this order.
4. This order may be served only between [*insert time*] a.m./p.m. and [*insert time*] a.m./p.m. [on a business day]¹.
5. In this order—
 - (a) **"applicant"** means the person who applied for this search order, and if there is more than one applicant, includes all the applicants;
 - (b) **"independent computer expert"** means the person (if any) identified as the independent computer expert in the search party referred to in Schedule A to this order;
 - (c) **"independent Australian lawyer"** means the person identified as the independent Australian lawyer in the search party referred to in Schedule A to this order;
 - (d) **"listed thing"** means the things referred to in Schedule A to this order;
 - (e) **"premises"** means the premises and any of the premises identified in Schedule A to this order including any vehicles and vessels that are under the respondent's control on or about those premises or that are otherwise identified in Schedule A;
 - (f) **"search party"** means the persons identified or described as constituting the search party in Schedule A to this order;
 - (g) **"thing"** includes document;
 - (h) **"you"**, where there is more than one of you, includes all of you and includes you if you are a corporation;
 - (i) any requirement that something shall be done in your presence means—
 - (i) in the presence of you or of one of the persons described in paragraph 6 below; or

- (ii) if there is more than one of you, in the presence of each of you or, in relation to each of you, in the presence of one of the persons described in paragraph 6 below.
- 6. This order must be complied with by you by—
 - (a) yourself;
 - (b) any director, officer, partner and responsible employee or agent of yourself; or
 - (c) any other person having responsible control of the premises.
- 7. This order must be served by, and be executed under the supervision of, the independent Australian lawyer.

ENTRY AND SEARCH

- 8. Subject to paragraphs 10 to 19 below, upon service of this order you must permit members of the search party to enter the premises so that they can carry out the search and other activities referred to in this order.
- 9. Having permitted members of the search party to enter the premises, you must—
 - (a) permit them to leave and re-enter the premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the listed things and to make or obtain a copy, photograph, film, sample, test or other record of the listed things;
 - (c) disclose to them the whereabouts of all the listed things in the respondent's possession, custody or power, whether at the premises or otherwise;
 - (d) disclose to them the whereabouts of all computers, computer disks and electronic information storage devices or systems at the premises in which any documents among the listed things are or may be stored, located or recorded and cause and permit those documents to be printed out;
 - (e) do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate computers and providing them with all necessary passwords;

- (f) permit the independent Australian lawyer to remove from the premises into the independent Australian lawyer's custody—
 - (i) the listed things or things which reasonably appear to the independent Australian lawyer to be the listed things and any things the subject of dispute as to whether they are listed things;
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to above; and
- (g) permit the independent computer expert (if there is one) to search any computer and make a copy or digital copy of any computer hard drive and permit the independent computer expert (if any) or the independent Australian lawyer to remove any computer hard drive and computer from the premises as set out in paragraphs 20 and 21 below.

RESTRICTIONS ON ENTRY, SEARCH AND REMOVAL

- 10. This order must not be executed at the same time as the execution by the police or other proper authority of a search warrant.
- 11. You are not required to permit anyone to enter the premises until—
 - (a) the independent Australian lawyer serves you with copies of this order and the documents referred to in Schedule C (confidential exhibits, if any, need not be served until further order of the Court); and
 - (b) you are entitled to read this order and to have the independent Australian lawyer explain the terms of this order to you.
- 12. Before permitting entry to the premises by anyone other than the independent Australian lawyer, you, for a time (not to exceed 2 hours from the time of service or such longer period as the independent Australian lawyer may permit)—
 - (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided you are not a corporation) may gather together any things which you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent Australian lawyer in (if you wish) a sealed envelope or container; and
 - (d) may gather together any documents passing between you and your lawyers for the purpose of obtaining legal advice or otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent Australian lawyer in (if you wish) a sealed envelope or container.

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13. Subject to paragraph 22 below, the independent Australian lawyer must not inspect or permit to be inspected by anyone, including the applicant and the applicant's Australian lawyers, any thing handed to the independent Australian lawyer in accordance with paragraphs 12(c) and (d) above and the independent Australian lawyer must deliver it to the Court at or prior to the hearing on the return date.
 14. During any period referred to in paragraph 12 above, you must—
 - (a) inform and keep the independent Australian lawyer informed of the steps being taken;
 - (b) permit the independent Australian lawyer to enter the premises but not to start the search;
 - (c) not disturb or remove any listed things; and
 - (d) comply with the terms of paragraphs 25 and 26 below.
 15. Any thing the subject of a dispute as to whether it is a listed thing must promptly be handed by you to the independent Australian lawyer for safekeeping pending resolution of the dispute or further order of the Court.
 16. Before removing any listed thing from the premises (other than the things referred to in the immediately preceding paragraph), the independent Australian lawyer must supply a list of them to you, give you a reasonable time to check the correctness of the list, and give you and the applicant's Australian lawyers a copy of the list signed by the independent Australian lawyer.
 17. The premises must not be searched, and things must not be removed from the premises, except in the presence of you or of a person who appears to the independent Australian lawyer to be your director, officer, partner or employee, agent or other person acting on your behalf or on your instructions.
 18. If the independent Australian lawyer is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the independent Australian lawyer may permit the search to proceed and the listed things to be removed without full compliance.
 19. The applicant's Australian lawyers and the independent Australian lawyer must not allow the applicant in person to inspect or have copies of any thing removed from the premises nor communicate to the applicant information about their contents or about anything observed at the premises until 4.30 p.m. on the return date or other time fixed by further order of the Court.

COMPUTERS

20. (a) If it is expected that a computer will be searched, the search party must include a computer expert who is independent of the applicant and of the applicant's Australian lawyers ("**the independent computer expert**").
- (b) Any search of a computer must be carried out only by the independent computer expert.
- (c) The independent computer expert may make a copy or digital copy of the computer hard drive and remove that copy or digital copy from the premises.
- (d) The independent computer expert may search the computer or the copy or digital copy of the computer hard drive at the premises or away from the premises or both for listed things and may copy the listed things electronically or in hard copy or both.
- (e) The independent computer expert must as soon as practicable and, in any event, prior to the hearing on the return date, deliver the copy or digital copy of the computer hard drive and all electronic and hard copies of listed things to the independent Australian lawyer, together with a report of what the independent computer expert has done including a list of such electronic and hard copies.
- (f) The independent Australian lawyer must, at or prior to the hearing on the return date, deliver to the Court all things received from the independent computer expert and serve a copy of the latter's report on the parties.
- (g) If no independent computer expert has been appointed, but the independent Australian lawyer considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent Australian lawyer may remove the computer from the premises for that purpose and cause that purpose to be achieved.
21. (a) This paragraph 21 applies if you are not a corporation and you wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
- (ii) are liable to a civil penalty.

-
- (b) This paragraph 21 also applies if you are a corporation and all persons who are able to comply with paragraph 20 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

INSPECTION

22. Prior to the return date, you or your Australian lawyer or representative shall be entitled, in the presence of the independent Australian lawyer, to inspect any thing removed from the premises and to—
- (a) make copies of the same; and
 - (b) provide the independent Australian lawyer with a signed list of things which are claimed to be privileged or confidential and which you claim ought not to be inspected by the applicant.

PROVISION OF INFORMATION

23. Subject to paragraph 24 below you must—
- (a) at or before the further hearing on the return date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing as to—
 - (i) the location of the listed things;
 - (ii) the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;
 - (iii) the name and address of every person to whom you have supplied, or offered to supply, any listed thing; and
 - (iv) details of the dates and quantities of every such supply and offer; and

-
- (b) within [] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.
24. (a) This paragraph 24 applies if you are not a corporation and you wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 24 also applies if you are a corporation and all persons who are able to comply with paragraph 23 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

PROHIBITED ACTS

25. Except for the sole purpose of obtaining legal advice, you must not, until 4.30 p.m. on the return date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against you by the applicant.
26. Until 4.30 p.m. on the return date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of this order or further order of the Court.

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COSTS

27. The costs of this application are reserved.

SCHEDULE A

Premises

The premises located at *[insert address or addresses]* including any vehicle or vessel or vehicles or vessels under the respondent's control on or about those premises.

Listed Things

- 1.
- 2.
- 3.

Search Party

1. The independent Australian lawyer: *[insert name and address]*
 2. The applicant's Australian lawyer or Australian lawyers:
 - (a) *[insert name and address]* [or description e.g. a partner or employed Australian lawyer] of *[name of firm]*;
 - (b) *[insert name and address]* [or description e.g. a partner or employed Australian lawyer] of *[name of firm]*;
 - (c) *[insert name and address]* [or description e.g. a partner or employed Australian lawyer] of *[name of firm]*.
 3. Other members of the search party:
 - (a) *[insert name and address]* in the capacity of *[e.g. an independent computer expert]*;
 - (b) *[insert name and address]* in the capacity of *[insert capacity]*.
-

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT

Undertakings given to the Court by the applicant:

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) The applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (3) The applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
- (4) If the applicant has not already done so, as soon as practicable the applicant will file a copy of this order and [*describe documents required to be filed*].
- (5) The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value.]²
- [(6) The applicant will³—
 - (a) on or before [*insert date*] cause a written irrevocable undertaking to pay in the sum of \$[*insert amount*] to be issued from a bank with a place of business within Australia, in respect of any order the Court may make referred to in the undertaking as to damages referred to in undertaking (1) above; and
 - (b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.]

Undertakings given to the Court by the applicant's Australian lawyer:

- (1) The applicant's Australian lawyer will pay the reasonable costs and disbursements of the independent Australian lawyer and of any independent computer expert.
- (2) The applicant's Australian lawyer will provide to the independent Australian lawyer for service on the respondent copies of this order and the documents which are listed in Schedule C.
- (3) The applicant's Australian lawyer will answer at once to the best of his or her ability any question as to whether a particular thing is a listed thing.

-
- (4) The applicant's Australian lawyer will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
 - (5) The applicant's Australian lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
 - (6) The applicant's Australian lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
 - (7) The applicant's Australian lawyer will not disclose to the applicant any information that the Australian lawyer acquires during or as a result of execution of the search order, without leave of the Court.
 - (8) The applicant's Australian lawyer will use his or her best endeavours to follow all directions of the independent Australian lawyer.

Undertakings given to the Court by the independent Australian lawyer:

- (1) The independent Australian lawyer will use his or her best endeavours to serve the respondent with this order and the other documents referred to in undertaking (2) of the above undertakings by the applicant's Australian lawyer or Australian lawyers.
 - (2) Before entering the premises, the independent Australian lawyer will—
 - (a) offer to explain the terms of the search order to the person served with the order and, if the offer is accepted, do so;
 - (b) inform the respondent of his or her right to take legal advice.
 - (3) Subject to undertaking (4) below, the independent Australian lawyer will retain custody of all things removed from the premises by the independent Australian lawyer pursuant to this order until delivery to the Court or further order of the Court.
 - (4) At or before the hearing on the return date, the independent Australian lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the applicant's Australian lawyers and to the respondent or the respondent's Australian lawyers. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an independent computer expert.
 - (5) The independent Australian lawyer will use his or her best endeavours—
 - (a) to ensure that members of the search party act in conformity with the order; and
-

-
- (b) to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent; and
 - (c) to give such reasonable directions to other members of the search party as are necessary or convenient for the execution of the order.
- (6) The independent Australian lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (7) The independent Australian lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.

Undertakings given to the Court by the independent computer expert:

- (1) The independent computer expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the independent computer expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
 - (2) The independent computer expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
 - (3) The independent computer expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
 - (4) The independent computer expert will use his or her best endeavours to follow all directions of the independent Australian lawyer.
-

SCHEDULE C

DOCUMENTS THAT MUST BE SERVED WITH THIS ORDER

The following affidavits and exhibits to them:

<i>Name of deponent</i>	<i>Date affidavit was made</i>	<i>Exhibits numbered</i>
(1)		
(2)		
(3)		

The following written submissions put to the Court:

Other documents provided to the Court:

A transcript [note] of any oral allegation of fact that was made, and of any oral submission that was put, to the Court:

The application [draft application] produced to the Court:

The complaint [draft complaint] produced to the Court:

NAME AND ADDRESS OF APPLICANT'S AUSTRALIAN LAWYERS

The Applicant's Australian lawyers are: *[insert name, address, reference, fax and telephone numbers both in and out of office hours and email]*.

- 1 Normally the order should be served between 9.00 a.m. and 2.00 p.m. on a weekday to enable the respondent more readily to obtain legal advice.
- 2 Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required.
- 3 See Practice Note paragraph 18.

Form 41AA

FORM 41AA

Rule 41A.02

**NOTICE OF APPLICATION UNDER SECTION 42E(1) OF THE
EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1958**

[heading as in Form 5A]

PART 1—PARTICULARS OF APPLICATION

I, *[name of applicant]*

of *[address of applicant or firm of Australian lawyer for applicant]*

hereby request an *audiovisual/*audio link in accordance with the following details—

1. *Audiovisual/*Audio link—
From *[originating city/town]*
To *[receiving city/town]*
2. Type of hearing—*[e.g. Practice Court Hearing]*
3. Number of persons to appear before, or give evidence by
*audiovisual/*audio link—
4. Suggested time *(if any)* for link—
5. Estimate of duration of link—
6. Is this application being made with the consent of the parties to the proceeding?—
7. If the answer to question 6 is No, what parties have not given consent?—
8. If a hearing date has been fixed, what is the date of the hearing?—

I hereby undertake to pay, in the first instance, the appropriate amount prescribed by the regulations under section 42H(1) of the Act.

Date:

[Signature]

*strike out as appropriate.

PART 2—PARTICULARS OF HEARING

(to be completed by the registrar)

The application will be heard before a Magistrate at the Magistrates' Court of Victoria at on [e.g. 20 June 20] at a.m. [or p.m.] or so soon afterwards as the business of the Court allows.

FILED [e.g. 15 June 20].

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 42A

Form 42A
amended by
S.R. No.
36/2011
rule 14.

FORM 42A

Rule 42.03(1)

SUBPOENA

[heading as in Form 5A]

To *[name]*

of *[address]*:

YOU ARE ORDERED:

- ☐ *to attend to give evidence—see section A of this form;
- ☐ *to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see section B of this form; or
- ☐ *to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see section C of this form.

**Select one only of these 3 options*

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

The last day for service of this subpoena is:

(See Note 1)

Please read Notes 1 to 13 at the end of this subpoena.

[signed]

Date:

Issued at the request of *[name of party]*, whose address for service is:

A. Details of subpoena to attend to give evidence only

Date, time and place at which you must attend to give evidence:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Alternatively, if notice of a later day is given to you by the issuing party, you must attend on that day until you are excused from further attending.

B. Details of subpoena to produce only

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the registrar at the address below so that they are received not less than 3 days before the day specified for attendance and production. (*See Notes 5 to 9*)

Alternatively, if notice of a later day is given to you by the issuing party, you must attend and produce the subpoena, or a copy of it, with the required documents or things on that day.

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things:

Date:

Time:

Place:

Address to which the subpoena (or copy) and documents or things may be delivered or sent:

The registrar

Magistrates' Court of Victoria
at [venue]

SCHEDULE

The documents and things you must produce are as follows:

[*If insufficient space attach list*]

Form 42A

C. Details of subpoena both to attend to give evidence and to produce

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Alternatively, if notice of a later day is given to you by the issuing party, you must attend on that day until you are excused from further attending.

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the registrar at the address below so that they are received not less than 3 days before the day specified for attendance and production. (*See Notes 5 to 9*)

Alternatively, if notice of a later day is given to you by the issuing party, you must attend and produce the subpoena, or a copy of it, with the required documents or things on that day until you are excused from further attending.

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things:

Date:

Time:

Place:

Address to which the subpoena or a copy of it and documents or things must be delivered or sent:

The registrar

Magistrates' Court of Victoria
at [venue]

SCHEDULE

The documents and things you must produce are as follows:

[If insufficient space attach list]

NOTES

Last day for service

1. Subject to Note 2, you need not comply with the subpoena unless it is served on you on or before the day specified in the subpoena as the last day for service of the subpoena.
2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the day on which your attendance is required.

Production to the registrar

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address specified in the subpoena for the purpose so that they are received not less than 3 days before the day specified in the subpoena for attendance and production or if you receive notice of a later day from the issuing party, before the later day.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the registrar in writing of your objection and of the grounds of your objection.

Form 42A

7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the registrar may permit the parties to the proceeding to inspect the document or thing.
8. If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.
9. If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
- 9A. The copy of a document may be—
 - (a) a photocopy; or
 - (b) in PDF format on a CD-Rom.

Applications in relation to subpoena

10. You have the right to apply to the Court—
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs reasonably incurred in complying with the subpoena.

Contempt of court—arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any Rules of the Supreme Court to enforce compliance with a subpoena.

FORM 42B

Rule 42.10(3)

Form 42B
inserted by
S.R. No.
36/2011
rule 15.

NOTICE TO ADDRESSEE AND DECLARATION

[heading as in Form 5A]

To: *[name of person to whom the subpoena is addressed and who will be the recipient of the subpoena]*

of: *[address]*

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be—

- (a) a photocopy; or
- (b) in PDF format on a CD-Rom.

You must complete the declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, the registrar may, without further notice to you, destroy the copies after the expiry of a period of four months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

[tick the relevant option below, provide your address as appropriate, sign and date]

- ☐ **All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.
- ☐ **Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address—

[insert address for return of material].

Magistrates' Court General Civil Procedure Rules 2010
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Form 42B

Date:

[signature of addressee]

[name of addressee]

FORM 42AA

Rule 42A.03

Form 42AA
amended by
S.R. No.
36/2011
rule 23.

SUBPOENA FOR PRODUCTION TO REGISTRAR

[heading as in Form 5A]

To *[name]*

of *[address]*:

YOU ARE ORDERED:

To produce to the registrar this subpoena or a copy of it and the documents or things specified in the Schedule.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

The last day for service of this subpoena is:

Please read Notes 1 to 18 at the end of this subpoena.

[registrar]

Date:

Issued at the request of *[name of party]*, whose address for service is:

You must comply with this subpoena by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the registrar at the address below so that they are received on or before the date for production specified below.

Date for production:

The address of the registrar to which the subpoena (or copy) and documents or things must be delivered or sent is:

The registrar

Magistrates' Court of Victoria
at *[venue]*

SCHEDULE

The documents and things you must produce are as follows:

[If insufficient space attach list]

NOTES

Last day for service

1. Subject to Note 2, you need not comply with the subpoena unless it is served on you on or before the day specified in the subpoena as the last day for service of the subpoena.
2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Document not in writing

4. If compliance with the subpoena requires the production of a document which is not in writing (such as a photograph, computer disc, audiotape, videotape etc.: see section 38 of the **Interpretation of Legislation Act 1984**) then, provided the original is held by you until the hearing, a copy only need be produced to the registrar. If a copy is produced, it must be clearly marked as such and it may be used by the registrar for the purposes of inspection and, if necessary, copying.

Question concerning subpoena

5. Any question concerning this subpoena should be directed not to the Court but to the Australian lawyer for the party at whose request the subpoena was issued.

Availability of documents for inspection and at trial

6. All documents produced in compliance with this subpoena will be available, unless earlier returned, at the hearing of the proceeding and, subject to the following, may be inspected in the meantime by each party to the proceeding and his, her or its Australian lawyer, and copies taken.

Objection by addressee to production or inspection

7. If you are the person required by this subpoena to produce documents, and you object to producing the documents or to their being inspected by any one or more of the parties to the proceeding, you must notify the registrar in writing of your objection and the

grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by a Magistrate of the Court.

Objection by party served with subpoena to inspection

8. If you are a party to the proceeding and have been served with a copy of this subpoena, and you object to the documents being inspected by another party to the proceeding, you must notify the registrar of your objection and the grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by a Magistrate of the Court.

Objection by plaintiff to production of hospital or medical file or record

9. If you are the plaintiff in this proceeding and this subpoena seeks from another person the production of a hospital or medical file or record concerning you or your condition, you may, before taking objection, inspect the file or record produced to the registrar and, after such inspection, notify any objection you may have to inspection of that file or record by any other party, provided that you make your inspection and notify your objection and the grounds of that objection, if any, in writing within 7 days after the day specified in the subpoena for production.

Obligation of issuing party after objection

10. If you are the party at whose request the subpoena was issued and any objection is taken, either to the production of the documents or to their being inspected, you will be informed by the registrar of the objection and of the time and place when the objection will be heard. You are required promptly to inform the addressee in the subpoena and all other parties to the proceeding accordingly so that they may be heard, if they wish, before the objection is determined.

Removal of document

11. Documents produced in compliance with this subpoena may not be removed from the custody of the registrar, even for the purpose of their being photocopied, except upon application in writing signed by an Australian lawyer for a party. Rule 42A.11(2) of these Rules is then relevant:

"(2) An Australian lawyer who signs an application under paragraph (1) and removes a document from the office of the registrar, undertakes to the Court by force of this Rule that—

- (a) the document will be kept in the personal custody of the Australian lawyer or a barrister briefed by the Australian lawyer in the proceeding; and
- (b) the document will be returned to the office of the registrar in the same condition, order and packaging in which it was removed, as and when directed by the registrar."

A breach of this undertaking may be dealt with as a contempt of court.

Production of a number of documents or things

12. If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.

Production of copy instead of original

13. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

Return of documents or copies

14. Any documents produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena (or a copy) request that the documents be posted to you at another address given by you or that you be informed when they are available to be collected by you.

Applications in relation to subpoena

15. You have the right to apply to the Court—
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

16. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to any conduct money or witnesses' expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

17. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
 18. Note 17 is without prejudice to any power of the Court under any Rules of the Supreme Court to enforce compliance with a subpoena.
-

Form 43A

FORM 43A

Rule 43.06(3)

CERTIFICATE IDENTIFYING EXHIBIT

[heading as in affidavit]

This is the exhibit marked *[e.g. "ABC1"]* now produced and shown to
[identify deponent] at the time of swearing the person's affidavit on *[date]*.

[Signature of person taking affidavit]

*[state distinguishing mark of exhibit
and briefly and specifically describe exhibit:
e.g. Exhibit "ABC1"
 Letter BHP to CRA 15/6/09]**

** print distinguishing mark and description in bold type and in a font size not less
than 20 points in lower right hand corner of the page.*

FORM 44A

Rule 44.01

EXPERT WITNESS CODE OF CONDUCT

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
2. An expert witness is not an advocate for a party.
3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
 - (e)
 - (i) the reasons for,
 - (ii) any literature or other materials utilised in support of,
 - (iii) a summary of—each such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
 - (j) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.

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Form 44A

-
4. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in subparagraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this code and, if applicable, subparagraph (f) of that clause.
 5. If directed to do so by the Court, an expert witness shall—
 - (a) confer with any other expert witness; and
 - (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
 6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement.
-

FORM 46A

Rule 46.04(1)

SUMMONS

[heading as in Form 5A]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party]*.

You are summoned to attend before the Court on the hearing of an application by the _____ for *[describe the order sought]*.

The application will be heard in the Magistrates' Court of Victoria at _____ on *[e.g. 20 June 20__]* at _____ a.m. [or p.m.] or so soon afterwards as the business of the Court allows.

FILED *[e.g. 15 June 20__]*.

This summons was filed by _____ of _____, Australian lawyer for the *[identify party]*.

Registrar

Form 46B

FORM 46B

Rule 46.08

APPLICATION FOR RE-HEARING

[heading as in Form 5A]

To the registrar

and to *[names and addresses of other parties to proceeding]*.

I did not appear at the hearing of the above complaint. The Court on *[date]* in my absence made an order against me for *[set out terms of order]* and for \$ _____ costs.

TAKE NOTICE that I intend to apply to the Court for an order that that order be set aside and the complaint be re-heard as soon as possible.

I did not appear at the hearing for the following reason(s) *[set out reasons]*.

*I did not file a notice of defence for the following reason(s) *[set out reasons]*.

My address for service is:

[Signed]

Filed: *[e.g. 5 September, 20_____]*.

This application will be heard by the Court on *[date]* at *[time]*.

Registrar

* Delete if not applicable.

FORM 50A

Rules 50.05, 50.10

MEDIATION REPORT

DATE OF MEDIATION:

OUTCOME OF MEDIATION:

***NOT HELD**

*Withdrawn prior to mediation; or

*No appearance of—

*Plaintiff

*Defendant

*Other (set out details)

or

***HELD**

*1. Resolved—no orders required

*2. Resolved—orders will be sought

*3. Not resolved

APPEARANCES:

Mr/Ms of Counsel/ Australian lawyer for plaintiff.

*Instructed by *Mr/Ms Instructing Australian lawyer for plaintiff.

*Mr/Ms of *Counsel/ Australian lawyer for defendant.

*Instructed by *Mr/Ms Instructing Australian lawyer for defendant.

*Mr/Ms of Counsel/ Australian lawyer for other party.

*Instructed by *Mr/Ms Instructing Australian lawyer for other party.

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Form 50A

INFORMATION PROVIDED BY PARTIES

NUMBER OF WITNESSES:

Plaintiff:

Defendant:

*Other:

ESTIMATE OF DURATION OF FINAL HEARING:

Dated:

(Signed)

MEDIATOR

Note: The mediator must complete this report and give a copy to the Court and to each of the parties within 7 days of the date of conclusion of a mediation.

* Delete if not applicable.

FORM 61A

Rule 61.02(1)(a)

APPLICATION

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA AT

Court Number

Judgment creditor

and

Judgment debtor

An order was made at the Court on / /

This application is for—

- * an instalment order;
- * an instalment order in substitution of a previous instalment order;
- * the variation of an instalment order (*section 8*);
- * the cancellation of an instalment order (*section 8*).

1. Details of applicant (*debtor/*creditor)

Name:

Address:

Postcode

Telephone: Home

Business

2. Details of respondent (*debtor/*creditor)

Name:

3. State:

(a) amount ordered	Claim	\$
	Interest	\$
	Costs	\$
	Total (judgment debt)	\$

LESS

(b) amount paid since order of / / (<i>State amounts and dates paid</i>)	—	\$
--	---	----

EQUALS

(c) balance of judgment debt owing	=	\$
---------------------------------------	---	----

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Form 61A

PLUS

- (d) interest on the
judgment debt until
the date of this
application + \$

PLUS

- (e) any other amounts
recoverable or
payable in respect of
the order of / /
(including any costs
of warrant);

Please specify—

- (i) \$
(ii) \$

Subtotal \$ + \$

EQUALS

- (f) **Total amount
owing** = \$

- (g) Amount to be paid
per instalment: \$

- (h) Periodical time for
payment: *weekly;
*fortnightly;
*monthly.

- (i) Proposed date of
first instalment / /

- (j) Person/corporation/
firm to whom
instalments are to be
made—

Name:
Address:

4. If this is an application
for variation of an
instalment order, state—

- (a) the date of the
current instalment
order / /

Form 61A

Form 61B

FORM 61B

Rules 61.02(1)(b), 61.04(b)

STATEMENT OF AFFAIRS BY AN INDIVIDUAL
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

Court Number

Judgment creditor

and

Judgment debtor

To the registrar,

1. **Amount and Source of Weekly Income** (*Complete (a)—(c) where applicable)

***(a) Employed persons**

Occupation:

Name and address of employer:

Gross wage: \$

Current overtime (if any): \$

Car and other allowances and commissions: \$

\$

***(b) Self-employed persons**

Average earnings from self-employment or
partnership for last 12 months: \$

***(c) Unemployed persons or persons not working**

If unemployed, state length of last employment, date when last
employment ceased, and gross weekly amount earned:

Pension or Benefit received: \$

WorkCover received: \$

\$

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 61B

(d) **All persons**

Maintenance received:	\$
Superannuation received:	\$
Board or rent received:	\$
Average weekly income from investments in banks, building societies, shares, etc.:	\$
Other (e.g. <i>family allowance—give details</i>)	\$
TOTAL GROSS WEEKLY INCOME:	\$

2. **Weekly expenses**

Income tax:	\$
Superannuation:	\$
Health Insurance:	\$
Union fees:	\$
Housing (<i>mortgage, board, rent</i>):	\$
Municipal rates:	\$
Water and sewerage rates:	\$
Land tax:	\$
Child care costs (kindergarten, day care, etc.):	\$
Maintenance actually paid:	\$
Instalment payments: (<i>state purpose</i>)	
.....	\$
.....	\$
	\$
Electricity:	\$
Gas:	\$
Telephone:	\$
Food:	\$
Other general household expenses:	\$

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S.R. No. 140/2010

Form 61B

Car expenses (*registration, insurance, maintenance, fuel*): \$

Fares: \$

Insurance Policies: \$

School fees and other schooling costs: \$

Clothing and shoes: \$

Medical and chemist expenses: \$

Entertainment: \$

Payments on court orders and fines: \$

Other expenses (*give details*):

.....\$

.....\$

TOTAL WEEKLY EXPENSES: \$

3. **Are there any persons who contribute to paying your expenses?
If so, who are they and how much do they contribute?**

.....
.....

4. **Property and Assets**

Market value of house (*place of residence*)
owned: \$

Amount owing on mortgage: \$

Net value of interest on house: \$

Market value of any other house or land
owned: \$

Amount owing on mortgage: \$

Net value or interest in other house or
land owned: \$

Market value of motor vehicle(s):

(a) Year: Make/Model: \$

(b) Year: Make/Model: \$

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Form 61B

Amounts owing, under finance, on motor
vehicles:

(a) \$

(b) \$

Net value of interest(s) on motor
vehicles:

\$

Cash in banks, building societies, etc:

\$

Cash on hand:

\$

Value of other investments including shares,
debentures, bonds:

\$

Money owed to you:
(state reason)

.....\$

.....\$ \$

Value of interest in partnership or business
(including stock, goodwill equipment,
debtors):

\$

State approximate re-sale value of furniture
and personal goods:

\$

Amount owing on these furniture and personal
goods:

\$

Net value of interest:

\$

Other assets (give details):

\$

TOTAL NET VALUE:

\$

Life insurance policies (specify insurer, policy
number, surrender value(s)):

.....\$

TOTAL PROPERTY AND ASSETS:

\$

Are any assets jointly owned? Give details:

.....

.....

.....

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Form 61B

5. **Debts and liabilities** (*give details*)

(*Hire purchase, leases, credit cards, credit contracts, personal loans, store accounts, guarantees being paid off, etc.*):

Total amount due: \$ To:

Total amount due: \$ To:

Total amount due: \$ To:

TOTAL OTHER DEBTS: \$

6. **Have any of the above debts been jointly incurred with any other person? Give details:**

.....
.....
.....

7. **Give details of any other circumstances which affect your financial position** (*e.g. number and age of dependants, marital status, health, etc.*):

.....
.....
.....

Date:

[Signature]

WARNING

**AN INSTALMENT ORDER THAT IS MADE AS A RESULT OF A
FALSE STATEMENT MAY BE VARIED OR CANCELLED**

FORM 61C

Rules 61.02(1)(b), 61.04(b)

STATEMENT OF AFFAIRS BY AN OFFICER OF A CORPORATION
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA AT

Court number

Judgment creditor

and

Judgment debtor

1. State the address of the registered office of the judgment debtor corporation?
2. Is the corporation still trading? If no, when did it last trade?
3. What is the corporation's average weekly turnover?
4. Is the corporation owed any money? If yes, give details including—
 - (a) who owes the money?
 - (b) the address, telephone number and reference of the person or corporation;
 - (c) how much is owed?
 - (d) what are the circumstances that give rise to the indebtedness?
 - (e) when is the debt due and payable to the corporation? Give details.
5. Give details of the corporation's accounts at any bank/building society/credit union/etc.? For each account give details, including—
 - (a) name of bank etc.;
 - (b) type of account;
 - (c) account number;
 - (d) name of account;
 - (e) present balance of account.

Form 61C

-
6. Do you produce a balance sheet of the corporation? If yes—
 - (a) is it the most up to date balance sheet available?
 - (b) does the balance sheet reflect the corporation's present position? (*give differences*).
 7. What other assets does the corporation have? Give details of all—
 - (1) real estate, listing—
 - (a) locations (*addresses*);
 - (b) values;
 - (c) mortgages.
 - (2) plant and equipment (*not included elsewhere*), listing—
 - (a) a description;
 - (b) locations (*addresses*);
 - (c) values;
 - (d) are there any claims against these items, e.g. finance, etc.
 - (3) motor vehicles, listing for each—
 - (a) make/model/condition;
 - (b) registration number;
 - (c) lease or other finance details;
 - (d) value.
 - (4) stock (*not included elsewhere*), listing—
 - (a) a description;
 - (b) locations (*address*);
 - (c) values;
 - (d) are there any claims against these items, e.g. finance, etc.
 - (5) other deposits, investments, shares and debentures, giving for each details of value and in what business/corporation/firm.
 - (6) forward orders and/or pending contracts.
 - (7) trademarks, labels, intellectual property.
-

8. Is there a registered debenture over the assets of the corporation? If yes, identify the debenture holder, state when the debenture was given and state the amount secured by the debenture.
9. Are there any other unpaid court orders/fines against the corporation? If so, give details of each court order/fine including—
 - (a) (*for court orders*) name/address/phone number of party to whom the money is owed;
 - (b) date of court order/fine;
 - (c) amount outstanding;
 - (d) reference number (*if any*).
10. What other monies does the corporation owe, not previously mentioned?
11. Do you produce a profit and loss statement for the corporation? If yes—
 - (a) is it the most up to date profit and loss statement available?
 - (b) does the profit and loss statement reflect the corporation's present position (*detail differences*)?
12. Give details of any other circumstances which affect the financial position of the corporation.

.....
.....

Date:

[Signature]

Full name:

Position held in judgment debtor corporation:

WARNING

**AN INSTALMENT ORDER THAT IS MADE AS A RESULT OF A
FALSE STATEMENT MAY BE VARIED OR CANCELLED**

Form 61D

FORM 61D

Rule 61.03(2)

NOTICE OF OBJECTION
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

A.B. Judgment creditor
and
C.D. Judgment debtor

To the registrar,

An application under section 6 of the **Judgment Debt Recovery Act 1984**
was ^{*granted}
^{*refused} by the proper officer on [*date*].

Notification of such ^{*order}/_{*refusal} was received by me on [*date*].

TAKE NOTICE that I object to the ^{*order} made/_{*refusal} to make the order
on the grounds that [*set out grounds*].

Dated: [*e.g. 5 September 20*].

[*Signed by judgment creditor or judgment debtor*]

*Delete if not applicable.

FORM 61E

Rule 61.04(a)

INSTALMENT AGREEMENT

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

A.B. Judgment creditor

and

C.D. Judgment debtor

On *[date]* the Court ordered that *[judgment debtor]* pay *[judgment creditor]* the sum of \$ and \$ for interest and \$ for costs.

I, *[judgment debtor]* of *[address]* agree and undertake to pay to *[judgment creditor]* of *[address]* the sum of \$ *[total sum]* in the following manner:

Number of instalments:

Amount of each instalment: \$

Time of payment of each instalment: On or by the day of each
*week/*fortnight/*month.

First instalment is payable on or by the day of 20 .

Last instalment is payable on or by the day of 20 .

Person to whom payment is to be made:

Address at which payment is to be made:

I am aware that should I fail to keep to this agreement, I may be called before the Court.

I attach a Statement of Affairs which I believe to be true and correct in every particular.

Signature of judgment debtor:

Witness:

Date: *[e.g. 5 September 20]*.

*Delete if not applicable.

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 61E

I agree that the judgment debt owing to me shall be paid in the manner set out above.

Signature of judgment creditor:

Witness:

Date: [e.g. 5 September 20].

IMPORTANT NOTE TO DEBTOR

IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD
OBTAIN LEGAL ADVICE IMMEDIATELY.

BEFORE SIGNING THIS DOCUMENT YOU SHOULD OBTAIN
FINANCIAL COUNSELLING.

FORM 61F

Rule 61.06(1)

**SUMMONS FOR EXAMINATION
(Judgment Debt Recovery Act 1984)**

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

A.B. Judgment creditor

and

C.D. Judgment debtor

To [*judgment debtor*]

of [*address*]

An order was made by the Court on [*date*] that you pay to [*judgment creditor*] the sum of \$ and \$ for interest and \$ for costs, and *an application dated has been made to this Court for the *making/*confirming/*varying/*cancelling/*substituting of an instalment order by [*full name of applicant*] and this Court is not satisfied that in the circumstances an instalment order should be *made/*confirmed/*varied/*cancelled/*substituted:

or

* An instalment order was made by [*name of Court*] dated for the payment of the judgment debt; and

[*Full name of judgment creditor*] alleges that you have defaulted in the payment of instalment(s) ordered.

YOU MUST ATTEND the Court at [*venue*] on [*date*] at [*time*]

* to be examined concerning your financial circumstances and your means and ability to satisfy the order against you:

or

* to be examined according to your financial circumstances and, in the case of an alleged default, as to the circumstances of your alleged default.

You are required to produce to the Court on the examination the following documents [*description of documents*].

Date: [*e.g. 5 September 20*].

Registrar

Magistrates' Court General Civil Procedure Rules 2010
S.R. No. 140/2010

Form 61F

WARNING

IF YOU DO NOT ATTEND AS ORDERED BY THIS SUMMONS, A
WARRANT MAY BE ISSUED FOR YOUR ARREST.

*Delete if not applicable.

FORM 61G

Rule 61.06(2)

APPLICATION FOR ISSUE OF SUMMONS
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

A.B. Judgment creditor

and

C.D. Judgment debtor

I, _____ of _____, the judgment creditor make oath and
say that:

1. By an order dated: [*e.g.* 5 September 20____] it was ordered that
[*judgment debtor*] pay me the sum of \$ _____ and \$ _____ for
interest and \$ _____ for costs.
2. An instalment order for the payment of the sum was made on [*date*].
3. The judgment debtor has defaulted in the payment of instalment(s)
under the order in the following way [*set out details of default*].
4. I seek the issue of a summons for the oral examination of the judgment
debtor.

Sworn, etc.

Form 61H

FORM 61H

Rule 61.07

WARRANT OF APPREHENSION
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

A.B. Judgment creditor
and
C.D. Judgment debtor

TO: [*named member or all members of the Police Force*]

[*name of judgment debtor*] of [*address*] has failed to appear at the time and place appointed in the summons dated to be examined regarding **his/*her* financial circumstances.

You are authorised to enter and search any place where you may suspect [*judgment debtor*] to be and you may use all necessary force for that purpose. When you have apprehended [*judgment debtor*] you are to bring **him/*her* before a magistrate or the Court at [*time*] at [*place*] to be dealt with according to law.

Dated: [*e.g. 5 September 20*].

Registrar

NOTE: If apprehended before the date and time of the hearing specified in this Warrant, the judgment debtor may be released on his or her own undertaking to appear for oral examination at the time and place specified in this warrant.

IF UNABLE TO EXECUTE BY THAT DATE PLEASE RETURN
UNEXECUTED.

**Delete if not applicable.*

FORM 61I

Rule 61.08(a)

NOTICE

(Section 6(4); 6(7); 7(4); 18(2))

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

A.B. Judgment creditor

and

C.D. Judgment debtor

TO: *[name and address of judgment creditor or judgment debtor]*.

TAKE NOTICE THAT upon application by *[name of applicant]* for *[type of application]* and *a notice of objection filed by *[name]* having been heard, the proper officer of the Court has

* ordered that *[details of order]*

or

* refused to make the order sought in the application.

Dated: *[e.g. 5 September 20]*.

Registrar

*Delete if not applicable.

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Form 61J

FORM 61J

Rule 61.08(b)

NOTICE

(Section 14(6); 17(5))

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

A.B. Judgment creditor

and

C.D. Judgment debtor

TO: [*name of judgment creditor*].

of [*address*].

A *warrant of apprehension/summons for oral examination was issued on [*date*] requiring the attendance of the judgment debtor at the Court on [*date*] for the *purposes of examination *as to financial circumstances [*and*]/as to the circumstances of the alleged default in payment of instalments.

Dated: [*e.g. 5 September, 20*].

Registrar

*Delete if not applicable.

FORM 61K

Rule 61.08(c)

NOTICE

(Section 6(6), 8)

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

A.B. Judgment creditor

and

C.D. Judgment debtor

TO: [*name of judgment creditor or judgment debtor*] of [*address*].

An application for [*type of application*] was made by [*identify party*] on [*date*] and on [*date*] the proper officer of the Court *made an order in the terms of the application/refused to make an order.

* And the [*identify party*] filed on [*date*] *a notice of objection/application for variation of instalment order/application for cancellation of instalment order.

TAKE NOTICE that the matter will be heard on [*date*] at [*time*] by the Court at [*venue*].

Dated: [*e.g. 5 September, 20*].

Registrar

*Delete if not applicable.

FORM 61L

Rule 61.09

WARRANT OF COMMITMENT

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

TO: All members of the Police Force and to the keeper of Her Majesty's
Prison at

You are commanded to take [judgment debtor] and to convey *him/her to the prison at _____ and deliver *him/her to the keeper of that prison and you, the keeper are required to receive *him/her into your custody and keep *him/her there safely for [number] of days unless you receive a certificate signed by the registrar of the Court at [venue] that the judgment debt has been paid or satisfied or until the judgment debtor is discharged by due course of law.

Dated: [e.g. 5 September, 20].

Registrar

*Delete if not applicable.

FORM 61M

Rule 61.11

CERTIFICATE OF DISCHARGE
(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA
AT

A.B. Judgment creditor

and

C.D. Judgment debtor

TO: The keeper of Her Majesty's Prison at

This is to certify that [*judgment debtor*] presently held by you under a
warrant dated has paid the debt owing [*or* has made satisfaction
for the debt owing] for which the warrant issued and is now entitled to be
discharged out of your custody.

Dated: [*e.g.* 5 September, 20].

Registrar

*Delete if not applicable.

Form 67A

FORM 67A

Rule 67.01(2)

SUMMONS TO ATTEND FOR ORAL EXAMINATION

[heading as in Form 5A]

To *[judgment debtor, or if a corporation, an officer of the judgment debtor]*
of *[address]*

On *[date]* the Court ordered you *[or the corporation]* to pay money.

You are summoned to attend before the Court to be orally examined on the application of *[judgment creditor]* as to your *[or the corporation's]* income, property, assets, debts and other liabilities and your *[or the corporation's]* means and ability to pay the amount ordered to be paid.

The examination will be heard by the Magistrates' Court at *[venue]* on *[date]*
at a.m./p.m.

You are required to produce to the Court on the examination all books of account, papers, documents, passbooks and current statements for all bank/building society/credit union accounts, and all relevant files dealing with your *[or the corporation's]* income, purchases and expenditure.

IF YOU DO NOT ATTEND IN ANSWER TO THIS SUMMONS A
WARRANT MAY BE ISSUED BY THE COURT FOR YOUR ARREST

Dated: *[e.g. 5 September 20]*.

Registrar

The amount due and unpaid on the court order is—

Amount awarded on the claim		\$
Costs ordered		\$
Interest awarded		\$
	Subtotal	\$
Less amount paid since order		\$
Total		\$

Additional amounts that have been accrued against you since the court order are—

Interest from order to this date—		
to , days @	%	\$
to , days @	%	\$

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Form 67A

Costs of this summons	\$	
Filing fee	\$	
Service fee	\$	<hr/>
Total	\$	<hr/>

Form 67B

FORM 67B

Rule 67.01(3)(8)

EXAMINATION OF A JUDGMENT DEBTOR

[heading as in Form 5A]

[name of person being examined], the judgment debtor, having been sworn, has answered the questions set out in Column 1 below in the manner set out in Column 2 below.

<i>Column 1</i> <i>Questions</i>	<i>Column 2</i> <i>Answers</i>
1. What is your full name?	
2. What is your date of birth?	
3. What is your home address and phone number? Do you own, rent or board at this address? Give name, address and phone number of the estate agent or landlord.	
4. Do you propose to change your address in the near future? If so, state the new address.	
5. Are you single, married or living in a defacto relationship?	
6. How many dependants do you have in your care? What is their relationship to you and what are their ages?	
7. Do you own or are you buying any land or building? If yes, give details, including— (a) address(es); (b) value; (c) mortgage (naming financier and balance due); (d) 2nd mortgage (naming financier and balance due); (e) caveat(s);	

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Form 67B

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
(f) when did you buy the property?	
(g) what was the price paid?	
(h) are you buying the land or building with any other person?	
(i) if yes, give the name and address of that other person;	
(j) are you intending to sell the land or building?	
8. Do you own or are you buying a motor vehicle? If yes, give details, including—	
(a) the make;	
(b) the model;	
(c) the condition of the motor vehicle;	
(d) is the motor vehicle registered? If yes, what is the registration number?	
(e) is the vehicle subject to finance? If yes, state— —the name of the financier; —account reference number; —how much is owing? —when will payments be finalised?	
(f) value. Repeat the above information for all extra vehicles.	
9. Are you owed any money? If yes, give details, including—	
(a) who owes you the money;	
(b) the address, telephone number and reference of the person or company;	
(c) how much is owed?	
(d) what circumstances give rise to that indebtedness?	
(e) when is the debt due and payable to you?	
10. Are you employed? If yes, give details—	
(a) the position you hold?	

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Form 67B

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
(b) the name of your employer?	
(c) the address and telephone number of your employer?	
11. What income do you receive after tax and compulsory superannuation is deducted? What is the nature of this income (<i>e.g. wages, salary, commission, benefit, etc.</i>)? Is this income received weekly, fortnightly, monthly, or otherwise? Do you receive overtime or other allowances? If you are unemployed, what is your source of income? (<i>e.g. sole parent benefit, disability pension, WorkCover</i>)?	
12. (a) If unemployed, how long have you been unemployed? (b) What is the name of your previous employer? (c) Will you be starting employment in the near future? If so, give details.	
13. What other source of income do you have? Give details of all sources and amounts (<i>e.g. part-time work, casual work, dividends, rent, etc.</i>).	
14. Have you any accounts at any bank/building society/credit union, etc.? If yes, give details of each account— (a) name and address of financial institution; (b) name of account; (c) type of account; (d) account number; (e) present balance of account. If account is not held solely by you, state name/address/phone number of each other person with whom the account is jointly held.	
15. How much cash money do you have readily available?	

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Form 67B

<i>Column 1</i> <i>Questions</i>	<i>Column 2</i> <i>Answers</i>
16. Have you any personal property or assets not previously mentioned? If so, give details, including— (a) investments, shares, debentures; (b) superannuation, life insurance policy; (c) motor boats, caravans, trailers (<i>give descriptions of the boat, caravan, trailer including the registration number and value</i>). If any of the above personal property or assets are held with another person, give the name and address of the other person.	
17. Give details of your expenses calculated on a weekly basis, including— (a) rent/mortgage/board; (b) food; (c) gas/electricity; (d) clothing; (e) loan repayments etc. (<i>give details of each loan and the balance owing</i>); (f) credit card repayments; (<i>give details of each card and the balance owing</i>); (g) house and contents insurance; (h) municipal and water rates; (i) telephone; (j) car expenses; (<i>including registration, insurance and maintenance</i>); (k) fuel expenses of running your motor vehicle; (l) education expenses; (m) medical/dental/pharmaceutical; (n) entertainment expenses; (o) other (<i>if any</i>) expenses. Total: Are there any persons who contribute to the expenses detailed above? If so, who are they and how much do they contribute?	 Balance \$ Balance \$ \$ _____ \$ _____

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Form 67B

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
18. Are there any other unpaid court orders/fines against you? If so, give details including— (a) name/address/phone number of party to whom money is owed; (b) date of court order; (c) amount outstanding; (d) court and reference number (<i>if any</i>).	
19. What other moneys do you owe, not previously mentioned?	
20. Are you an owner or do you have an interest in any business? If yes, give details, including— (a) What is the name of the business? Is it a registered business name? Is there an ACN and if so what is the ACN? (b) If you have partners give the full name and address of each partner and state each partner's percentage share (<i>including your own</i>) of the business; (c) If a private company, state the number of shares you hold and give the name and address and number of shares of each other shareholder; (d) What is the value of the goodwill of the business? When was the goodwill last valued? (e) What assets does the business have? Give details of all— (i) real estate, listing— (A) locations (<i>addresses</i>); (B) values; (C) mortgages; (ii) plant and equipment (<i>not included elsewhere</i>) listing— (A) a description; (B) locations;	

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Form 67B

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
	(C) values; (D) are there any claims against these items (<i>e.g. finance, etc.</i>); (iii) motor vehicles, listing for each— (A) make/model/condition; (B) registration number; (C) lease or other finance details; (D) value; (iv) stock (<i>not included elsewhere</i>), listing— (A) a description; (B) locations (<i>address</i>); (C) values; (D) are there any claims against these items (<i>e.g. finance, etc.</i>); (v) other deposits, investments, shares and debentures giving for each details of value and in what business/corporation/firm; (vi) forward orders and/or pending contracts; (vii) trademarks, labels, intellectual property.
21. Do you have an offer to pay this debt?	
22. Have you paid any of the amount ordered? If so, how much and when?	

[Signature]

Recorded at

this / /

before me:

[Signature of registrar]

Magistrates' Court General Civil Procedure Rules 2010
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Form 67B

I order the judgment debtor to pay the sum of \$	being the costs of
this examination.	
Filing fee	\$
Hearing fee	\$
Conduct money	\$
Service fee (<i>including attempt(s) and travelling</i>)	\$
Professional costs	\$
	<hr/>
TOTAL	\$
	<hr/>

[Signature of registrar]

**IMPORTANT
PRE-EXAMINATION INFORMATION**

To the judgment debtor

You have been served with a Summons to Attend for Oral Examination (*Form 67A*) and an Examination Sheet (*Form 67B*).

The Examination Sheet sets out the questions you will be asked. It may assist you to complete the answers to the questions before the examination is conducted. **You will not have to swear that the answers on this Examination Sheet are true until the examination is conducted.**

Care must be taken to provide complete and accurate answers as you will be required to take an oath as to the accuracy of the answers on the day of the examination and the information you provide will be forwarded to the judgment creditor/judgment creditor's Australian lawyers.

If you have difficulty in completing any of the answers or have any other queries about the proceedings, you may contact the Magistrates' Court of Victoria for advice.

Payment toward the judgment debt must be made to the judgment creditor/judgment creditor's Australian lawyer.

FORM 67C

Rule 67.01(3)(8)

**EXAMINATION OF AN OFFICER OF A JUDGMENT DEBTOR
WHICH IS A CORPORATION**

[heading as in Form 5A]

[name of person being examined], an officer of the judgment debtor corporation, having been sworn, has answered the questions set out in Column 1 below in the manner set out in Column 2 below.

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
1. What is your full name?	
2. What is your address?	
3. What position do you hold in the judgment debtor corporation?	
4. What is the address of the registered office of the corporation?	
5. Is the corporation— (a) registered; or (b) deregistered— at the Australian Securities and Investment Commission?	
6. Is the corporation still trading? If not, when did it last trade?	
7. What is the nature of the business of the corporation?	
8. At what addresses does the corporation carry on business? If the premises are leased, give details of— (a) the name of the landlord; (b) the expiration date of the lease.	
9. What is the corporation's average weekly turnover?	
10. Is the company owed any money? If yes, give details including— (a) who owes the money?	

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Form 67C

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
(b) the address, telephone number and reference of the person or company;	
(c) how much is owed?	
(d) what are the circumstances that give rise to the indebtedness?	
(e) when is the debt due and payable to the corporation? (<i>give details</i>).	
11. Give details of the corporation's accounts at any bank/building society/credit union/etc. For each account give details, including—	
(a) name of bank etc.;	
(b) type of account;	
(c) account number;	
(d) name of account;	
(e) present balance of account.	
12. Do you produce a balance sheet of the corporation? If yes—	
(a) is it the most up to date balance sheet available?	
(b) does the balance sheet reflect the corporation's present position? (<i>give differences</i>).	
13. What other assets does the corporation have? Give details of all—	
(1) real estate, listing—	
(a) locations (<i>addresses</i>);	
(b) values;	
(c) mortgages (<i>and financier</i>).	
(2) plant and equipment (<i>not included elsewhere</i>) listing—	
(a) a description;	
(b) locations (<i>addresses</i>);	
(c) values;	
(d) are there any claims against these items (<i>e.g. finance, etc.</i>).	

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S.R. No. 140/2010

Form 67C

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
(3) motor vehicles, listing for each— (a) make/model/condition; (b) registration number; (c) lease or other finance details; (d) value.	
(4) stock (<i>not included elsewhere</i>), listing— (a) a description; (b) locations (<i>address</i>); (c) values; (d) are there any claims against these items (<i>e.g. finance, etc.</i>).	
(5) other deposits, investments, shares and debentures, giving for each details of value and in what business/corporation/firm.	
(6) forward orders and/or pending contracts.	
(7) trademarks, labels, intellectual property.	
14. Is there a registered debenture over the assets of the corporation? If yes, identify the debenture holder, state when the debenture was given and state the amount secured by the debenture.	
15. Are there any other unpaid court orders/fines against the corporation? If so, give details of each court order/fine including— (a) (<i>for court orders</i>) name/address/phone number of party to whom the money is owed; (b) date of court order/fine; (c) amount outstanding; (d) reference number (<i>if any</i>).	
16. What other monies does the corporation owe, not previously mentioned?	
17. Has the corporation paid any/all of the amount ordered? If so, how much and when?	

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Form 67C

<i>Column 1 Questions</i>	<i>Column 2 Answers</i>
18. Do you produce a profit and loss statement for the corporation? If yes— (a) is it the most up to date profit and loss statement available? (b) does the profit and loss statement reflect the corporation's present position? (<i>detail differences</i>).	
19. Does the corporation have a proposal to pay the amount claimed by the judgment creditor?	

[Signature]

Recorded at

this / /

Before me:

[Signature of registrar]

I order the judgment debtor to pay the sum of \$
examination.

being the costs of this

Filing fee	\$
Hearing fee	\$
Conduct money	\$
Service fee (including attempt(s) and travelling)	\$
Professional costs	\$
TOTAL	\$

[Signature of registrar]

**IMPORTANT
PRE-EXAMINATION INFORMATION**

To the officer of the judgment debtor corporation

You have been served with a Summons to Attend for Oral Examination (*Form 67A*) and an Examination Sheet (*Form 67C*).

The Examination Sheet sets out the questions you will be asked. It may assist you to complete the answers to the questions before the examination is conducted. **You will not have to swear that the answers on the Examination Sheet are true until the examination is conducted.**

Care must be taken to provide complete and accurate answers as you will be required to take an oath as to the accuracy of the answers on the day of the examination and the information you provide will be forwarded to the judgment creditor/judgment creditor's Australian lawyers.

If you have difficulty in completing any of the answers or have any other queries about the proceedings, you may contact the Magistrates' Court of Victoria for advice.

Payment toward the judgment debt must be made to the judgment creditor/judgment creditor's Australian lawyer.

Form 67D

FORM 67D

Rule 67.01(6)

**SUMMONS TO ATTEND TO GIVE EVIDENCE OR PRODUCE
DOCUMENTS**

[heading as in Form 5A]

To *[name]*

of *[address]*

You are summoned to attend before the Court at *[address of Court]* at
10.00 a.m. *[or as the case requires]* on *[date]* to give evidence or produce the
documents described in the Schedule or both to give evidence and produce
those documents.

SCHEDULE

[description of documents]

IF YOU DO NOT ATTEND IN ANSWER TO THIS SUMMONS A
WARRANT MAY BE ISSUED BY THE COURT FOR YOUR ARREST

Dated: *[e.g. 5 September 20]*.

Registrar

FORM 68A

Rule 68.11(1)

WARRANT TO SEIZE PROPERTY

[heading as in Form 5A]

ORIGINAL/EXECUTION COPY

REQUEST FOR WARRANT

To the registrar

[name] is owed money.

[name] of *[address]* was ordered to pay money in the above matter on *[date]* by the Magistrates' Court at *[venue]*.

Please issue a warrant to seize property to recover *[amount]* which is the amount now owing.

This amount is calculated—

Amount ordered		\$	
Costs ordered		\$	
Interest ordered		\$	
	Subtotal	\$	
Amount paid since order		\$	
	Subtotal	\$	
Interest from order to this date			
to	, days @	%	\$
to	, days @	%	\$
	Subtotal	\$	
Prior costs of recovering amount ordered		\$	
Fees on warrant		\$	
Professional costs		\$	
	Subtotal	\$	
Amount owing		\$	

This request is made by *[name of Australian lawyer or person making request, address and telephone number]*.

It is believed that the personal property of the person ordered to pay can be found at *[address]*.

Dated: *[e.g. 5 September 20]*

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Form 68A

WARRANT TO SEIZE PROPERTY

To the Sheriff:

You are authorised to seize the personal property of the person ordered to pay. If the amount and your costs of execution set out in the request for this warrant are not paid you are to sell the property and pay the amount due to [*judgment creditor*]. You or your officer must indorse details of execution on this warrant.

Issued at:

Dated: [e.g. 5 September 20].

Registrar

FORM 68B

Rule 68.11(2)

WARRANT OF DELIVERY

[To be used for delivery of goods or where the Court order was for the delivery of goods or for payment of their assessed value. If the Court order was for the payment of assessed value of goods only a warrant to seize property may be used.]

[heading as in Form 5A]

REQUEST FOR WARRANT

To the registrar:

1. Please issue a warrant for delivery of *[specify goods]* ordered to be delivered by the Court at *[venue of Court]* on *[date]* plus costs of *[amount]*. *[Either paragraph 1 or 2 must be deleted.]*
2. Please issue a warrant for delivery of *[specify goods]* or the payment of their assessed value *[specify assessed value]* ordered to be delivered or paid by the Court at *[venue of Court]* on *[date]*, plus costs of *[amount]*.
3. The goods were ordered to be returned to *[name and address]* by *[name and address]* who has possession of the goods. It is believed that the goods are located at *[address]*. *[Either paragraph 3 or 4 must be deleted]*.
4. The goods were ordered to be returned to, or payment of their assessed value paid to *[name and address]* by *[name and address]* who has possession of the goods. It is believed the goods are located at *[address]*.
5. This request is made by *[name of Australian lawyer or person making request, address and telephone number]*.

Dated: *[e.g. 5 September 20]*.

WARRANT OF DELIVERY

To the Sheriff:

1. *[name]* is entitled to recovery of goods. *[Either paragraph 1 or 2 must be deleted.]*
2. *[name]* is entitled to recovery of goods or to payment of their assessed value.
3. *[name]* was ordered to deliver those goods. *[Either paragraph 3 or 4 must be deleted.]*
4. *[name]* was ordered to deliver those goods or pay their assessed value.

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Form 68B

-
5. You are authorised to seize the goods described above and demand costs as set out above together with your costs of execution. If those costs are not paid you are to seize and sell property belonging to that person sufficient to cover those costs. [*Either paragraph 5 or 6 must be deleted.*]
 6. You are authorised to seize the goods described above and demand costs as set out above together with your costs of execution. If you cannot cause the goods described above to be so delivered, you are to seize and sell property belonging to that person sufficient to cover the assessed value of those goods, plus the costs as set out above together with your costs of execution.
 7. You or your officer must indorse details of execution on this warrant.

Issued at:

Dated: [e.g. 5 September 20].

FORM 69A

Rule 69.03

**NOTICE TO PERSON RESPONSIBLE FOR SAFE-KEEPING OF
PROPERTY SEIZED UNDER A WARRANT TO SEIZE PROPERTY**

(Magistrates' Court Act 1989, section 111(7A))

To: *(insert name)*

The personal property listed below belonging to *(insert name)* has been seized under a warrant to seize property dated *(insert date)*.

You are now **responsible for the safe-keeping of this property.**

LIST OF PROPERTY: *(description of property seized—add extra pages if space insufficient)*

Section 111(7B) of the **Magistrates' Court Act 1989** provides—

"(7B) A person who knows that the property has been seized under a warrant to seize property or is the subject of a notice served under subsection (7A) must not, except with the written consent of the person executing the warrant to seize property—

- (a) interfere with or dispose of that property; or
- (b) deface or remove any mark attached to that property indicating that it had been so seized; or
- (c) remove that property from the place at which it was situated when the notice was served.

Penalty applying to this subsection: 25 penalty units or 6 months imprisonment or both."

Signature of person executing warrant:

Date: [e.g. 5 September 20]

Form 71A

FORM 71A

Rule 71.04(7)

GARNISHEE ORDER

[where garnishee debt is less than judgment debt, interest and judgment creditor's costs]

IN THE MAGISTRATES' COURT

OF VICTORIA

AT

BETWEEN	<i>A.B.</i>	Judgment creditor
	and	
	<i>C.D.</i>	Judgment debtor
	and	
	<i>E.F.</i>	Garnishee

THE COURT ORDERS that:

1. The garnishee [*where appropriate insert here* (after deducting therefrom \$ for costs of the garnishee application)] pay to the judgment creditor without delay \$, the debt due from the garnishee to the judgment debtor and if the garnishee defaults in payment, execution may issue against the garnishee
[or where the debt is not due but accruing]
pay to the judgment creditor \$, the debt accruing from the garnishee to the judgment debtor, as follows [*state the amount or amounts to be paid and the time or times of payment as directed by the Court*] and that in default of payment, execution may issue against the garnishee.
2. \$, the costs of the judgment creditor of the garnishee application, be added to the judgment debt and the interest accrued thereon and be retained by the judgment creditor out of the money recovered by the judgment creditor under this order in priority to the judgment debt and interest.

By the Court

Dated: [*e.g.* 5 September, 20].

Registrar

FORM 71B

Rule 71.04(7)

GARNISHEE ORDER

[where garnishee debt is greater than judgment debt, interest and judgment creditor's costs]

[heading as in Form 71A]

THE COURT ORDERS that:

1. The garnishee pay without delay to the judgment creditor \$ _____, being so much of the debt due from the garnishee to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued thereon and the costs of the judgment creditor of the garnishee proceedings and that in default of payment execution may issue against the garnishee

[or where the debt is not due but accruing]

pay to the judgment creditor \$ _____, being so much of the debt accruing from time to time to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued thereon and the costs of the judgment creditor of the garnishee proceedings as follows *[state the amount or amounts to be paid and the time or times of payment as directed by the Court]* and that in default of payment execution may issue against the garnishee.

[where appropriate add]

2. The garnishee be at liberty to retain \$ _____ being the garnishee's costs of the garnishee proceedings out of the balance of the debt due *[or accruing]* from time to time to the judgment debtor.

By the Court

Dated: [e.g. 5 September, 20 ____].

Registrar

Form 72A

FORM 72A

Rule 72.02(2)

ATTACHMENT OF EARNINGS SUMMONS

[heading as in Form 5A]

To *[judgment debtor]*

of *[address]*

You are summoned to attend before the Magistrates' Court at *[venue]* on the hearing of an application by *[judgment creditor]* for an order that your earnings be attached to satisfy the order against you in favour of *[judgment creditor]* made by the Court at *[venue]* on *[date]* for *[amount]*, in respect of which *[amount]* is due and unpaid, being—

- (a) *[amount]* due under the order;
- (b) *[amount]* costs of this attachment application;
- (c) *[amount]* other costs incurred subsequent to order;
- (d) *[amount]* interest to date.

The application will be heard by the Court at *[venue]* at *[time]* on *[date]*.

FILED: *[e.g. 5 September 20]*.

Registrar

This application was filed by _____, Australian lawyer for
[identify party].

FORM 72B

Rule 72.02(3)

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTACHMENT
OF EARNINGS ORDER**

[heading as in Form 4A]

I, _____ of _____
the judgment creditor, make oath and say that:

1. By an order dated: [e.g. 5 September 20____] it was ordered that
[*judgment debtor*] pay me the sum of [*amount*] together with costs.
2. [*amount*] is due and unpaid in respect of the order, being—
 - (a) [*amount*] due under the order;
 - (b) [*amount*] costs of this attachment application;
 - (c) [*amount*] other costs incurred subsequent to order;
 - (d) [*amount*] interest to date.

or

[*judgment debtor*] has persistently failed to comply with an order with
respect to the order made by the Court on [date] that [*insert terms or order
not complied with*].

3. [*judgment debtor*] is employed by [*name and address of employer*] as a
[*occupation*].
4. No warrant committing [*judgment debtor*] to prison under the
Imprisonment of Fraudulent Debtors Act 1958 has been issued.

or

A warrant committing [*judgment debtor*] to prison under the **Imprisonment
of Fraudulent Debtors Act 1958** has been issued and has been returned
unexecuted.

Sworn, etc.

Form 72C

FORM 72C

Rules 72.02(4), 72.04(3), 72.05(5)(a)

JUDGMENT DEBTOR'S STATEMENT OF FINANCIAL POSITION

[heading as in Form 5A]

To *[judgment debtor]*

of *[address]*

TAKE NOTICE that you must complete this form by giving the information requested below. The completed forms signed by you must be sent to *[judgment creditor]* at *[address for service]* before *[day of hearing named in the summons]*. If you do not do this, the Court may make an order that you attend before the Court and give the information.

Dated: *[e.g. 5 September, 20]*.

[Signed by judgment creditor or Australian lawyer].

1. Amount and source of weekly income—

Occupation:

If working for an employer:

Name and address of employer:

Gross wage:

Current overtime (if any):

Car and other allowances and commission:

If self-employed or in partnership:

Average pre-tax earnings for last 12 months:

If unemployed:

State length of last employment, when last employment ceased and gross weekly amount earned:

Pension or other benefit received:

Workers' compensation received:

Maintenance received:

Superannuation received:

Board or rent received:

Average weekly interest on bank or building society deposit, debentures etc.:

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Form 72C

Average weekly dividend on shares:

Other income (give particulars):

Total gross weekly income:

2. Property and assets—

Land, including vacant land:

For each piece of land—

Market value:

Amount of mortgage:

Net value:

Motor vehicle:

For each motor vehicle—

Year, make and model:

Market value:

Amount owing to finance company:

Net value:

Deposit in bank, building society, etc.:

Other investments including shares, debentures, bonds:

Money owing to you:

From , \$

From , \$

Total:

Value of interest in partnership or business:

Furniture, household and personal goods:

Market value:

Amount owing to finance company:

Net value:

Life insurance policies:

Give particulars and state surrender value of each policy:

Other assets (give particulars):

Total property and assets:

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Form 72C

3. Debts, liabilities and other financial obligations—

(a) Weekly expenses;

Income tax:

Superannuation:

Housing (mortgage, rent, board, hospital or institution):

Municipal rates:

Water and sewerage rates:

Land tax:

Child care expenses incurred for the purpose of earning income:

Maintenance actually paid:

Instalment payments such as for household goods or tools of trade:

To , \$

To , \$

Total:

Electricity and gas:

Food:

Other general household expenses:

Motor vehicle expenses (registration, insurance, maintenance, fuel):

Fares:

Telephone:

Insurance policy premiums:

School fees and other school expenses:

Clothing and shoes:

Medical and chemist expenses:

Entertainment:

Payment on court orders and fines:

Other expenses (give particulars):

Total:

(b) Other debts outstanding;

Give particulars of debts under hire purchase, leasing, credit card or other credit contracts, department store accounts, guarantee or personal loan:

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Form 72C

\$, to , due on

\$, to , due on

Total:

4. If any of the assets referred to in paragraph 2 above is owned jointly, identify each asset and give the name of the other owner or owners:
5. If any of the debts referred to in paragraph 3 is due jointly, identify each debt and give the name of the other debtor or debtors:
6. Give particulars of any other circumstances which affect the financial situation of the judgment debtor such as the number and age of dependants, marital status and health:

Signature of judgment debtor:

Date:

Form 72D

FORM 72D

Rule 72.04(8)

**ORDER THAT JUDGMENT DEBTOR ATTEND FOR
EXAMINATION**

[heading as in Form 5A]

THE COURT ORDERS that *[judgment debtor]* attend before the Court
at _____ on *[date]* to be examined concerning the means and ability
of *[judgment debtor]* to comply with the order *[state terms of order]*.

By the Court

Dated: *[e.g. 5 September, 20 ____]*.

Registrar

FORM 72E

Rule 72.04(8)

**ORDER THAT PERSON INDEBTED OR EMPLOYER OF
JUDGMENT DEBTOR GIVE STATEMENT**

[heading as in Form 5A]

THE COURT ORDERS that *[name of person indebted or employer]* give to
the Court on or before *[date]* a statement in writing signed by him or her or
on his or her behalf containing the following particulars of indebtedness to
[judgment debtor] that became payable during the period _____,
20 ____ to _____, 20 ____.

[complete appropriately]

By the Court

Dated: *[e.g. 5 September, 20 ____]*.

Registrar

FORM 72F

Rule 72.05(6)

ATTACHMENT OF EARNINGS ORDER

[heading as in Form 5A]

THE COURT ORDERS THAT:

1. *[name]* of *[address]*, the employer of *[judgment debtor]* ("the judgment debtor") on each pay day whilst this order is in force, subject to paragraph 2 of this order, deduct from the earnings of the judgment debtor, the sum of \$ *[amount per week/fortnight/month]* ("the normal deduction rate") until a total sum of \$ *[amount]* has been deducted and remit each payment made under this order to *[name and address of person to whom payments are to be made]*.
2. The protected earnings rate, that is, the rate below which the earnings of the judgment debtor may not be reduced by a payment under this order, shall be \$ *[amount]* per *[week/fortnight/month]*.
3. A deduction on a pay day is only to be made if the net earnings of the judgment debtor exceed the protected earnings.
4. If any deduction is not made from the judgment debtor's earnings on any pay day (or is not made in full) by reason of the protected earnings rate, the employer shall make good such deduction from the excess of any subsequent earnings of the judgment debtor.
5. The employer may deduct each pay day \$ *[amount]* for clerical and administrative costs in complying with this order.
6. In the event that—
 - (a) you are not the employer of the judgment debtor;
 - (b) if you were the employer of the judgment debtor at the time of service of this order but have since ceased to be the employer—you must give written notice of such fact (and the date you ceased to be the employer of the judgment debtor), to the registrar of the Magistrates' Court of Victoria at *[venue]* and to the judgment creditor at *[address of judgment creditor or judgment creditor's Australian lawyer]*.

BY THE COURT

Dated:

Registrar

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Form 72F

NOTES:

1. The first deduction required to be made under this order is on the first pay day following 7 days after the day of service of this order.
2. **"Earnings"** attached by this order means, in relation to a judgment debtor—
 - (a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary; or
 - (b) by way of pension, including—
 - (i) an annuity in respect of past services whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolishment or relinquishment, or any diminution in the emoluments, of any office or employment—

but does not include any pension payable to the judgment debtor under the Commonwealth Acts known as the Social Security Act 1991 as amended from time to time or the Veterans' Entitlements Act 1986 as amended from time to time.
3. Where you are or have been served with 2 or more attachment of earnings orders, you are required to—
 - (a) comply with those orders according to the respective day on which they took effect and disregard a subsequent order until an earlier order has been complied with; and
 - (b) comply with any order as if the earnings to which it relates were residue of the earnings of the judgment debtor after the making of any payment under an earlier order.
4. You are required to give the judgment debtor a notice specifying particulars of the payments made by you under this attachment of earnings order.
5. You are required to give the judgment debtor notice of any deductions made under paragraph 5 of this order.

WARNING:

1. It is an offence to fail to comply with an attachment of earnings order. The maximum penalty for non-compliance is 60 penalty units or 6 months imprisonment or both.

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Form 72F

-
2. It is an offence to dismiss an employee or injure an employee or alter an employee's position to the prejudice of the employee because of the making of an attachment of earnings order or because of a requirement to make payments under an attachment of earnings order. The maximum penalty is 5 penalty units.
 3. If you fail to comply with this order, the judgment creditor may apply to the court to have you the employer liable to pay the deductions.
-

App. A

Appendix A
amended by
S.R. No.
36/2011
rule 24.

APPENDIX A

SCALE OF COSTS

Scale of costs and fees which may be claimed by Australian lawyers and counsel as between party and party as well as between Australian lawyer and client.

If in any case the Court or registrar thinks that any item is inadequate or excessive, the Court or registrar may allow a greater or lesser sum than the scale provides.

If the scale of costs does not provide for any case, the Court or registrar may allow reasonable costs.

<i>Item</i>	<i>Particulars of Service</i>	<i>\$</i>
1.	Claim for debt, liquidated demand or claim arising from a motor vehicle collision for costs of repairs only or for total loss of vehicle only including all professional costs where the amount claimed is—	
	(a) Less than \$500	178
	(b) \$500 to less than \$5000	373
	(c) \$5000 to less than \$7500	458
	(d) \$7500 to less than \$20 000	550
	(e) \$20 000 to less than \$40 000	683
	(f) \$40 000 to less than \$70 000	822
	(g) \$70 000 and over	983

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
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Instructions

2. Instructions to make, issue or oppose an application or summons or any notice of objection under the **Judgment Debt Recovery Act 1984** including instructions for any affidavit (not otherwise provided for).

Institution of proceedings

3. Complaint, including instructions to sue, letter before action, attendances on counsel, copies for service, issuing, and attendances on process server.

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
4.	Consent of litigation guardian including preparation of memorandum, copies and obtaining signature of litigation guardian.
5.	Notices of defence to claim, counterclaim or third party notice including instructions to defend, perusal of claim, counterclaim or third party notice, reply, attendances on counsel, copies, filing and service.
6.	Counterclaim, third party notice, notice of contribution or any further pleading including instructions to issue, attendances on counsel, copies, filing and service.
7.	Perusal of notice of defence, counterclaim, third party notice or any other pleading, and notice of contribution.
	Particulars
8.	Request for particulars of any document including attendances on counsel, copies, filing, service and perusal of further particulars.
9.	Further and better particulars of any documents including perusal of request, attendances on counsel, copies, filing and service.
	View
10.	Attending view, including arranging view and attendance on counsel.
11.	If the attendance exceeds half an hour—for each quarter hour thereafter.
	Discovery
12.	Notice of discovery including filing and service.
13.	Perusal of affidavit of documents and inspection of documents.
14.	Affidavit of documents including instructions, attendances on counsel, copies, swearing, filing, service and production of documents for inspection.
15.	Notice to produce documents including filing and service.
	Interrogatories
16.	Interrogatories for examination including instructions, attendances on counsel, copies, filing, service and perusal of answers.

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App. A

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
17.	Answers to interrogatories including perusal of interrogatories, instructions, attendances on counsel, copies, swearing, filing and service. Brief to advise
18.	Brief to advise including preparation of memorandum to counsel, attendances on counsel and perusal of advice. Notices, certificates, undertakings, etc.
19.	Any necessary notice (including notices before proceeding), certificate (including certificates before proceeding), undertaking, consent, order, memorandum (not otherwise provided for) including copies, filing and service.
20.	Notice to admit including perusal of admissions, copies, filing and service.
21.	Admissions, including perusal of notice to admit, copies, filing and service.
22.	Offer of compromise or notice of acceptance of offer including copies, filing and service. Witnesses and expert witnesses
23.	Subpoena including instructions, copies and issuing.
24.	Attendance on witness to arrange attendance to give evidence without subpoena, including reminders.
25.	Arranging examination or inspection by an expert witness and notifying party, supplying relevant documents to witness, obtaining and perusing report.
26.	Notifying party of examination or inspection arranged by opposite party.
27.	Statement of expert witness (pursuant to Rule 44.03) including instructions, filing and service. Applications
28.	Application or summons or any notice under the Judgment Debt Recovery Act 1984 including copies, issuing and affidavit of service.
29.	Application for an order under Rule 21.01 (in addition to item 1 if applicable) or 21.08 including copies and issuing.

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
	Notice of objection
30.	Notice of objection under the Judgment Debt Recovery Act 1984 including copies, issuing and affidavit of service.
	Affidavits
31.	Affidavit including attendances on counsel, copies, swearing, filing and service.
32.	Affidavit of service, including swearing and filing (not otherwise provided for).
	General preparation
33.	For work necessarily and properly done in preparing for hearing and not otherwise provided for, including— <ul style="list-style-type: none">(a) taking instructions for examination of any party or witness;(b) considering the facts and the law;(c) attending on and corresponding with client;(d) interviewing and corresponding with witnesses and taking proofs of their evidence;(e) obtaining reports or advice from experts and maps, plans, photographs and models;(f) making search in any public office and elsewhere for relevant documents;(g) inspecting any property or place material to the proceeding;(h) perusing relevant documents;(i) general care and conduct of the proceeding.
	Pre-hearing conference
34.	Preparation including all necessary instructions, instructions for brief for counsel or brief notes for Australian lawyer, correspondence and perusals.
35.	Attendance at conference whether by counsel or Australian lawyer.
	Mediation
36.	Preparation including all necessary instructions, instructions for brief for counsel or brief notes for Australian lawyer, all necessary correspondence, perusals, etc.

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App. A

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
37.	Attending mediation by Australian lawyer, for first 4 hours or part thereof.
38.	For each subsequent hour.
39.	Attending mediation with counsel (where necessary) per hour.
40.	If Australian lawyer attends at a place more than 50 kilometres from his or her place of business, an additional fee may be allowed.
41.	The reasonable costs of a mediation held before the commencement of proceedings may be allowed.
	Court attendance
42.	Attendance at Court or upon magistrate or officer of the Court on application, summons, appeal or to hear reserved judgment.
43.	Attendance of Australian lawyer without counsel at a WorkCover directions hearing or at the hearing of an application for revocation of a direction of a conciliation officer.
44.	Attending WorkCover mentions.
45.	Attendance at Court on hearing—Australian lawyer without counsel for the first 6 hours (including any luncheon adjournment).
46.	If attendance at Court exceeds 6 hours—for each hour thereafter.
47.	Attendance at Court by Australian lawyer on hearing with counsel for the first 3 hours.
48.	If attendance exceeds 3 hours—for each hour thereafter.
	Conference with counsel
49.	Appointment and attendance per hour (when necessary).
	Fees to counsel
50.	To draw or settle any necessary document including notice before action, particulars of claim or defence (including special defence), counterclaim, interrogatories and medical panel referral documents including medical questions, section 65(6A) statements, lists of documents and submissions pursuant to the Accident Compensation Act 1985 etc.
51.	To confer, prepare, view or consult—per hour.
52.	To advise on evidence or give opinion.

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App. A

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
53.	Brief on hearing.
54.	For each 6 hours or part thereof after the first six hours of hearing (including any luncheon adjournment).
55.	Attending mediation, for the first 4 hours or part thereof.
56.	For each subsequent hour.
57.	Attending at WorkCover directions hearing.
57A.	Attending at the hearing of an application for revocation of a direction of a conciliation officer.
Documents	
58.	Drawing any document or brief (where not otherwise provided for)—per folio.
59.	Typing any document or brief (where not otherwise provided for)—per folio.
60.	Copies— For the first 50 pages of photocopying in a proceeding, \$2.00 per page. For any photocopying after the first 50 pages in a proceeding, 60 cents per page.
Perusals	
61.	Of any document or part of a document (where not otherwise provided for)—per folio.
62.	Examination or scanning any document which is not necessary to peruse—per folio.
Correspondence	
63.	Special letter.
64.	Ordinary letter (including an agency letter).
65.	Circular letter. After the first, postage may be claimed as a disbursement.
Attendances	
66.	Attendance—such as an attendance at the office of the registrar or on a process server or to serve or an attendance which is capable of being made by a clerk.

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App. A

<i>Item</i>	<i>Particulars of Service</i> <i>(Costs for items 2 to 80 are set out in Table 1)</i>
67.	Attendance (personal or by telephone) of an Australian lawyer or managing clerk and involving the exercise of skill or legal knowledge—for each quarter hour.
68.	Attendance which does not involve the exercise of skill or legal knowledge—for each quarter hour.
	Warrant, summons, etc.
69.	Warrant to seize property or of delivery including instructions, preparation and issuing.
70.	Summons for oral examination, including instructions, preparation of summons and affidavit, issuing, arranging service, forwarding summons and affidavit to registrar with letter.
71.	Proceedings for attachment of debts including all professional costs.
72.	Summons for attachment of earnings, including instructions, preparation of summons, affidavit and Form 72A, issuing summons, arranging service, forwarding summons and affidavit to registrar with a letter (including affidavit of service).
73.	Form 72F, including preparation, filing and service.
74.	Order to attend or to give a statement under Rule 72.04 including preparation, issuing and arranging service.
75.	Registration of interstate judgment.
	Service
76.	For service of Court documents on each person to be served.
77.	For service of Court documents on each person to be served where service is effected by post or by leaving at a document exchange.
78.	For every necessary visit made in attempting service of Court documents and for each report of non-service where the time, date and number of visits attempting service are shown by affidavit.
79.	In addition to the abovementioned service fees an allowance at the rate of 60 cents for each 1 kilometre in respect of any distance measured both ways from the nearest court house or other building where the Court is held, or the residence of the person who served the court document, whichever is the closer, to the place of service or attempted service of the document.

<i>Item</i>	<i>Particulars of Service</i>
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(Costs for items 2 to 80 are set out in Table 1)

Notes to items 76 to 79 inclusive:

- A In these items ***Court documents*** include complaint, summons, application or other document used in a court proceeding.
- B A registrar, upon application made before service of any Court document, may fix and endorse on the document an amount representing an allowance calculated at 60 cents for each kilometre of the distance both ways by the shortest practicable route, from the nearest court house or other building where the Court is held, or the residence of the process server, whichever is the closer to the place of service and the Court in assessing costs on the hearing shall have regard to the amount so fixed and endorsed.
- C For service of 2 or more Court documents in the same proceeding on the same person who was or could have been served at the same time and place, only one service fee shall be allowed.
- D For service of a Court document in the same proceeding on 2 or more persons who were or could have been served at the same time and place, only one service fee shall be allowed.
- E No costs shall be allowed for service of any Court document where service has been effected by an employee of the plaintiff or defendant, unless the Court is satisfied by evidence on oath or affidavit that the employee is exclusively engaged on the service of legal process for the employer.

Substituted service

- 80. Order for substituted service including all professional costs.
- 81. If an advertisement in lieu of service is ordered, the necessary and reasonable costs of the advertisement in addition.

Witnesses' expenses

- 82. Subject to item 82A, witnesses giving evidence in an expert or professional capacity, up to \$242 per hour or part thereof, but not to exceed \$1698 per day.
Other witnesses—up to \$61 per hour or part thereof, but not to exceed \$303 per day.

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App. A

<i>Item</i>	<i>Particulars of Service</i>
<i>(Costs for items 2 to 80 are set out in Table 1)</i>	
82A.	Witnesses giving evidence in the capacity of motor vehicle loss assessors, up to \$126 per hour or part thereof, but not to exceed \$692 per day.
Circuit fees	
83.	<p>(a) A circuit fee may be charged by counsel where the claim or the counterclaim is \$40 840 or more. No circuit fee may be charged where the claim or the counterclaim is less than \$40 840, unless the Court otherwise orders;</p> <p>(b) A circuit fee must be calculated on the same time basis as a fee for counsel on the hearing of a proceeding, namely, for each 6 hours or part thereof after the first 6 hours of hearing (including any luncheon adjournment);</p> <p>(c) Any circuit fee allowed under paragraph (a) or (b) must be in accordance with the Schedule 1 to Appendix A of the Scale of Costs in Chapter I of the Rules of the County Court unless the circuit town appears in Table 2, in which case Table 2 applies. Whether or not Appendix A or Table 2 applies, not more than one circuit fee must be allowed in any one day in relation to any proceeding or matter;</p> <p>(d) A circuit fee may be charged by a mediator who conducts a mediation following a referral of a proceeding or part of a proceeding to mediation. A circuit fee may also be charged for a pre-issue mediation held in accordance with a Practice Direction. A circuit fee may only be charged by a mediator with the agreement of the parties to the mediation.</p>

TABLE 1

(Costs in dollars for items 2 to 80)

<i>Item</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>
	<i>Less than \$500</i>	<i>\$500 to less than \$5000</i>	<i>\$5000 to less than \$7500</i>	<i>\$7500 to less than \$20 000</i>	<i>\$20 000 to less than \$40 000</i>	<i>\$40 000 to less than \$70 000</i>	<i>\$70 000 and over</i>
2.	61	61	61	93	114	137	160
3.	178	374	459	551	684	824	986
4.	n/a	n/a	134	175	178	190	202
5.	83	177	219	261	326	392	470
6.	95	196	241	287	357	430	515
7.	43	43	43	43	43	43	43
8.	62	140	170	205	254	303	360
9.	57	118	141	170	211	255	305
10.	n/a	n/a	143	198	214	241	271
11.	n/a	n/a	16	41	41	41	41
12.	41	66	83	97	124	144	167
13.	50	94	111	139	173	207	243
14.	97	209	255	305	385	455	540
15.	41	62	83	97	124	144	167
16.	81	166	202	241	302	359	416
17.	107	228	289	347	430	517	613
18.	n/a	n/a	143	198	214	241	270
19.	40	71	84	99	125	145	176
20.	107	107	107	145	184	222	265
21.	107	107	107	145	184	223	265
22.	93	93	93	136	170	205	243
23.	20	34	47	47	61	74	88
24.	19	20	20	34	38	44	52

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	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>
		\$500 to less than \$5000	\$5000 to less than \$7500	\$7500 to less than \$20 000	\$20 000 to less than \$40 000	\$40 000 to less than \$70 000	\$70 000 and over
<i>Item</i>	<i>Less than \$500</i>						
25.	58	59	59	90	111	134	160
26.	12	12	12	43	56	66	80
27.	78	142	198	237	298	352	408
28.	33	77	84	95	117	140	165
29.	37	37	37	37	37	37	37
30.	36	36	36	36	36	36	36
31.	81	166	202	241	302	357	415
32.	34	34	34	34	34	34	34
33.	324	1059	1307	1570	1962	2836	4410
34.	79	240	320	387	480	578	660
35.	141	272	388	480	600	724	842
36.	79	240	320	387	471	565	649
37.	141	272	388	480	591	709	829
38.	41	77	95	112	146	176	206
39.	41	77	95	112	146	176	206
40.			<i>refer to item 40</i>				
41.			<i>refer to item 41</i>				
42.	84	187	231	280	350	420	502
43.	141	272	389	482	604	727	844
44.	127	127	127	127	127	127	127
45.	298	600	904	1084	1356	1620	1885
46.	63	118	141	173	214	258	301
47.	136	231	288	347	430	517	598
48.	41	77	95	112	140	170	200
49.	41	84	106	135	169	203	237
50.	54	94	130	150	195	233	270

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<i>Item</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>
	<i>Less than \$500</i>	<i>\$500 to less than \$5000</i>	<i>\$5000 to less than \$7500</i>	<i>\$7500 to less than \$20 000</i>	<i>\$20 000 to less than \$40 000</i>	<i>\$40 000 to less than \$70 000</i>	<i>\$70 000 and over</i>
51.	54	100	130	150	195	233	270
52.	n/a	n/a	172	261	282	315	471
53.	354	797	1074	1287	1606	1930	2107
54.	239	532	713	856	1074	1282	1498
55.	147	285	406	501	628	755	881
56.	44	80	99	118	159	187	220
57.	149	289	413	510	641	769	922
57A.	510	510	510	510	510	510	510
58.	3.7	9.4	9.2	9.2	11	13	18
59.	2.3	2.3	2.3	2.3	2.3	2.3	2.3
60.	<i>refer to item 60</i>						
61.	2.3	2.3	2.3	2.3	2.3	2.3	2.3
62.	1.2	1.2	1.2	1.2	1.2	1.2	1.2
63.	34	34	34	34	34	34	34
64.	24	24	24	24	24	24	24
65.	13	13	13	13	13	13	13
66.	24	24	24	24	24	24	24
67.	41	41	41	41	41	41	42
68.	20	20	20	20	20	20	19
69.	46	94	111	140	176	211	247
70.	48	112	137	151	191	231	270
71.	136	274	307	366	458	547	716
72.	243	345	370	465	581	696	912
73.	41	71	84	99	125	145	168
74.	41	71	84	99	125	145	168
75.	61	61	61	93	93	93	93

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	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>
		\$500 to less than	\$5000 to less than	\$7500 to less than	\$20 000 to less than	\$40 000 to less than	\$70 000 and over
<i>Item</i>	<i>Less than \$500</i>	<i>\$5000</i>	<i>\$7500</i>	<i>\$20 000</i>	<i>\$40 000</i>	<i>\$70 000</i>	
76.	59	59	59	59	59	59	59
77.	11	11	11	11	11	11	11
78.	40	40	40	40	40	40	40
79.	<i>refer to item 79</i>						
80.	120	216	258	304	382	452	525

TABLE 2
CIRCUIT FEES

<i>Circuit town</i>	<i>Fee for first six hours</i>	<i>Further fee for further six hours or part thereafter</i>
Ararat	421	279
Benalla	446	295
Colac	353	234
Echuca	446	295
Mansfield	353	234
Moe	330	220
Portland	487	326
Stawell	446	295
Swan Hill	446	295

APPENDIX B

CIVIL REGISTRY COURTS

Ararat	Hamilton	Orbost
Bacchus Marsh	Heidelberg	Ouyen
Bairnsdale	Hopetoun	Portland
Ballarat	Horsham	Ringwood
Benalla	Kerang	Robinvale
Bendigo	Korumburra	St Arnaud
Broadmeadows	Kyneton	Sale
Castlemaine	Latrobe Valley	Seymour
Cobram	Mansfield	Shepparton
Colac	Maryborough	Stawell
Collingwood	Melbourne	Sunshine
Corryong	Mildura	Swan Hill
Dandenong	Moe	Wangaratta
Dromana	Moorabbin Justice Centre	Warrnambool
Echuca	Myrtleford	Werribee
Frankston	Nhill	Wodonga
Geelong	Omeo	Wonthaggi

SCHEDULE

Rule 1.04

STATUTORY RULES REVOKED

<i>S.R. No.</i>	<i>Title</i>
49/2009	Magistrates' Court Civil Procedure Rules 2009
153/2009	Magistrates' Court Civil Procedure (Scale of Costs and fees Amendment) Rules 2009

Dated: 26 October 2010

I GRAY,
Chief Magistrate

L MARTIN,
Deputy Chief Magistrate

PETER LAURITSEN,
Deputy Chief Magistrate

ENDNOTES

1. General Information

The Magistrates' Court General Civil Procedure Rules 2010, S.R. No. 140/2010 were made on 26 October 2010 by the Chief Magistrate together with 2 Deputy Chief Magistrates jointly under section 16 of the **Magistrates' Court Act 1989**, No. 51/1989 and came into operation on 1 January 2011: rule 1.03.

The Magistrates' Court General Civil Procedure Rules 2010 will sunset 10 years after the day of making on 26 October 2020 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Magistrates' Court General Civil Procedure Rules 2010 by statutory rules, subordinate instruments and Acts.

Magistrates' Court General Civil Procedure (Amendment No. 1) Rules 2010,
S.R. No. 152/2010

Date of Making: 21.12.10
Date of Commencement: 1.1.11: rule 3

Magistrates' Court General Civil Procedure (Amendment No. 2) Rules 2011,
S.R. No. 36/2011

Date of Making: 15.6.11
Date of Commencement: 15.6.11

Endnotes

3. Explanatory Details

No entries at date of publication.