

Authorised Version No. 002
**Supreme Court (Miscellaneous Civil
Proceedings) Rules 2018**

S.R. No. 57/2018

Authorised Version incorporating amendments as at
25 March 2019

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Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

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Authorised Version incorporating amendments as at
25 March 2019

The Judges of the Supreme Court make the following Rules:

Order 1—Preliminary

Part 1—General

1.01 Object and title

- (1) The object of these Rules is to remake with amendments Chapter II of the Rules of the Supreme Court which establish procedures for certain miscellaneous civil proceedings in the Court.
- (2) These Rules constitute Chapter II of the Rules of the Supreme Court and are entitled the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018.

1.02 Authorising provisions

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

1.03 Commencement

These Rules come into operation on 23 July 2018.

1.04 Revocation

The Rules set out in Schedule 1 are **revoked**.

1.05 Definition

In these Rules—

RedCrest means the electronic filing and case management system in operation in the Court from time to time.

1.06 Application

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

1.07 Rules of general procedure

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

Part 2—Trial Division

1.08 Application of Part

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

1.09 Process

Subject to these Rules—

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

1.10 Address for service

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

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

1.11 Jurisdiction of Associate Judges

- (1) Except where otherwise provided by these Rules, an Associate Judge, in addition to exercising the powers and authorities conferred on an Associate Judge by any other provision of these Rules or by any Act may, in any proceeding to which this Part applies, give any judgment or make any order, including any judgment or order in the exercise of the inherent jurisdiction of the Court.
- (2) Subject to paragraph (3) and these Rules—
 - (a) the trial of a proceeding shall not be held before an Associate Judge; and
 - (b) an Associate Judge shall not give any judgment or make any order at the trial of a proceeding.
- (3) Except as provided by paragraph (4), an Associate Judge may—
 - (a) at the trial of a proceeding give judgment or make an order by consent of all parties;
 - (b) hear and determine a trial of an undefended civil proceeding.

- (4) An Associate Judge shall not have authority to hear or determine—
 - (a) any application which by these Rules or any Act is required to be heard only by a Judge of the Court; or
 - (b) any proceeding relating to the liberty of the subject.
- (5) Subject to these Rules, this Rule has effect as if it contained, modified as necessary, Rules 77.03, 77.04, 77.05 and 77.08 of Chapter I.

1.12 Reference by Judge of the Court to Associate Judge

- (1) If a matter before a Judge of the Court, which matter would not otherwise be within the authority of an Associate Judge, is a matter to which these Rules apply and it appears to the Judge to be proper for the determination of an Associate Judge, the Judge of the Court, by order, may refer the matter to an Associate Judge.
- (2) If a Judge of the Court refers a matter to an Associate Judge, the Associate Judge may—
 - (a) hear and determine the matter, subject to any directions in the order referring the matter; or
 - (b) refer the matter back to the Judge of the Court for hearing and determination.
- (3) In hearing and determining a matter referred by a Judge of the Court to an Associate Judge, the Associate Judge has the same powers as a Judge of the Court would have in hearing and determining such a matter, subject to any directions in the order referring the matter.

1.13 Application to be supported by affidavit

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

Order 2—Commercial Lists in the Commercial Court

2.01 Definitions

(1) In this Order—

Commercial List or ***List*** means a list of commercial proceedings which are to be managed by a Commercial List Judge;

Commercial List Judge means a Judge of the Court nominated by the Chief Justice to manage a Commercial List;

commercial proceeding means any proceeding commenced by writ, originating motion or originating process in Form 5F of Chapter I—

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

- (2) The Commercial Court comprises the following—
- (a) a Commercial List to which Order 2 of this Chapter applies, including, for the avoidance of doubt, the List known as the Insurance List;
 - (b) the TEC List to which Order 3 of this Chapter applies;
 - (c) the List known as the Taxation List (which, for the avoidance of doubt, is a List which may include, but is not limited to, proceedings to which Order 7 of this Chapter applies);
 - (d) the List known as the Arbitration List (which, for the avoidance of doubt, is a List which may include, but is not limited to, proceedings to which Order 9 applies);
 - (e) the Corporations List to which Chapter V applies;
 - (f) the Admiralty List to which Chapter VII applies;
 - (g) the Intellectual Property List to which Chapter VIII applies;
 - (h) any other list in the Commercial Court managed by a Judge of the Court;
 - (i) any other commercial proceeding, including those which may be dealt with by an Associate Judge or by a judicial registrar pursuant to any Act or the Rules and any practice note issued by the Court from time to time.

2.02 Commercial List Judges to manage cases in Lists

- (1) Subject to paragraphs (2) and (3), the powers of the Court in relation to a proceeding in a List shall be exercised only by a Commercial List Judge.

- (2) The powers of the Court in relation to a proceeding in a Commercial List may be exercised by a Judge of the Court other than a Commercial List Judge—
 - (a) if a Commercial List Judge so requests; or
 - (b) if in special or urgent circumstances that other Judge of the Court thinks fit to exercise them.
- (3) Subject to Rules 1.11 and 1.12, an Associate Judge may exercise the powers of the Court in relation to a proceeding in a Commercial List on a reference by or by leave of a Commercial List Judge.
- (4) Subject to paragraph (2) and Rule 1.11(5), an appeal from any judgment given or order made by an Associate Judge in a proceeding in a List shall be heard by a Commercial List Judge.

2.03 Entry into a Commercial List

- (1) At the option of the plaintiff, the originating process in a commercial proceeding may be marked in the top left-hand corner with the words "Commercial List" and, after the filing of an originating process so marked, the proceeding shall be entered into a Commercial List.

Note

See Order 28A of Chapter I.

- (2) Any party to a commercial proceeding in which the originating process has not been so marked may apply to a Commercial List Judge for an order entering the proceeding into a Commercial List.

Note

See Order 28A of Chapter I.

- (3) A Commercial List Judge may, on the Judge's own motion, direct that a proceeding be entered into a Commercial List if satisfied that the proceeding should be heard and determined in a Commercial List.

2.04 Directions

A Commercial List Judge may, at any time, give any directions for the conduct of the proceeding which the Judge thinks conducive to its effective, complete, prompt and economical determination.

2.05 No certificate of readiness

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

2.06 Removal from a Commercial List

A Commercial List Judge may, at any time, order that a proceeding in a Commercial List be removed from that List.

Note

See Rule 28A.01(3) of Chapter I (electronic filing in RedCrest).

2.07 Judgment in default and summary judgment

- (1) Judgment in default of appearance or pleading shall not be entered in a proceeding in a Commercial List that is managed by a Commercial List Judge unless a Commercial List Judge so orders.
- (2) Nothing in this Order shall prevent a party from applying under Order 22 or 23 of Chapter I or Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**.

Rule 2.07
substituted by
S.R. No.
19/2019 rule 4.

Order 3—Technology, Engineering and Construction List

3.01 Definitions

In this Order—

technology includes—

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

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

- (a) the design or carrying out of TEC works;
- (b) the supervision or inspection of the construction of TEC works;
- (c) the performance by an architect, designer, engineer, quantity surveyor or other expert of any other services in relation to the design or construction or the supervision or inspection of TEC works;
- (d) the manufacture or provision of any materials for inclusion in TEC works;

(e) the performance of anything produced, manufactured or constructed as a result of TEC works which involves or is likely to involve expert evidence of a technical nature;

(f) the sale or supply of anything produced, manufactured or constructed as a result of TEC works which involves or is likely to involve expert evidence of a technical nature—

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

Technology, Engineering and Construction List, TEC List or List means the list of technology, engineering and construction cases which are to be managed by a TEC List Judge;

TEC List Judge means a Judge of the Court nominated by the Chief Justice to be a TEC List Judge;

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

3.02 TEC List Judges to manage cases in List

- (1) Subject to paragraphs (2) and (3), the powers of the Court in relation to a proceeding in the List shall be exercised only by a TEC List Judge.
- (2) The powers of the Court in relation to a proceeding in the TEC List may be exercised by a Judge of the Court other than a TEC List Judge—
 - (a) if a TEC List Judge so requests; or
 - (b) if in special or urgent circumstances that other Judge of the Court thinks fit to exercise them.

- (3) Subject to Rules 1.11 and 1.12, an Associate Judge may exercise the powers of the Court in relation to a proceeding in the TEC List on a reference by or by leave of a TEC List Judge.

3.03 Entry into TEC List

- (1) At the option of the plaintiff, the originating process in a TEC case may be marked in the top left-hand corner with the words "TEC List" and, on the filing of an originating process so marked, the proceeding is taken to be entered in the List.

Note

See Order 28A of Chapter I.

- (2) Any party in a TEC case in which the originating process has not been so marked may apply to a TEC List Judge for an order entering the proceeding in the TEC List.
- (3) By leave of a TEC List Judge, a proceeding may be entered in the TEC List upon a reference from another Judge or an Associate Judge.

Note

See Order 28A of Chapter I.

- (4) A TEC List Judge may, on the Judge's own motion, direct that a proceeding be entered into the TEC List if satisfied that the proceeding should be heard and determined in the TEC List.

3.04 Directions

A TEC List Judge may, at any time, give any directions for the conduct of the proceeding which the Judge thinks conducive to its effective, complete, prompt and economical determination.

3.05 Removal from TEC List

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

Note

See Rule 28A.01(3) of Chapter I (electronic filing in RedCrest).

Order 4—Appeals from tribunals

Part 1—Introductory matters

4.01 Application

- (1) Subject to paragraphs (2) and (3), this Order applies to—
 - (a) an appeal to the Court from a tribunal, including under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998**; and
 - (b) an application for leave to appeal from a tribunal, including under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) This Order does not apply to a proceeding to which Order 7, 7A, 8, 12, 14, 15 or 23 applies, save to the extent provided by that Order.
- (3) This Order does not apply to an appeal, or an application for leave to appeal, under Part 10 of the **Vexatious Proceedings Act 2014**.

4.02 Definitions

In this Order—

order includes decision or determination;

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

Part 2—Appeal to Trial Division

4.03 Appeal to Court constituted by a Judge of the Court

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

4.04 Commencement of appeal or application for leave to appeal

Except as otherwise provided by any Act or Rule—

- (a) an appeal or an application for leave to appeal under this Part is commenced by filing a notice of appeal in the Court;
- (b) subject to Rule 4.08(9), the appeal or the application for leave to appeal shall be commenced within 28 days after the day of the order of the tribunal; and
- (c) the appeal or the application for leave to appeal shall not operate as a stay of proceedings unless the Court otherwise orders.

4.05 Extension of time

Except as otherwise provided by any Act or Rule, and unless the Court otherwise orders, if an extension of time is needed within which to appeal or apply for leave to appeal—

- (a) an application for that extension may be made to, and determined by, the Court in conjunction with the appeal or the application for leave to appeal, as the case may be; and
- (b) if granted, the extension may be granted retrospectively.

4.06 Notice of appeal

(1) A notice of appeal under this Part shall—

- (a) be signed by the appellant or the appellant's solicitor;
- (b) set out or state—
 - (i) whether an extension of time is needed;

- (ii) whether leave to appeal is required;
 - (iii) the order which is the subject of the appeal or proposed appeal;
 - (iv) whether the appeal or proposed appeal is from the whole or part only of the order, and, if so, what part;
 - (v) the question of law upon which the appeal or proposed appeal is brought;
 - (vi) concisely the grounds or proposed grounds of appeal;
 - (vii) the order sought in place of that from which the appeal or proposed appeal is brought; and
- (c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.
- (2) As soon as practicable after filing the notice of appeal, the appellant or applicant shall—
- (a) deliver a copy to the registrar or other proper officer of the tribunal; and
 - (b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal or application.
- (3) The Court may give leave to amend the grounds or proposed grounds of appeal or make any other order to ensure the proper determination of the appeal or application for leave to appeal.

4.07 Appellant to file affidavit

- (1) Within seven days after filing the notice of appeal, the appellant or applicant shall file an affidavit setting out the acts, facts, matters and circumstances relating to—
- (a) the order of the tribunal;

- (b) if an extension of time is needed, why an extension should be granted;
 - (c) if leave to appeal is required, why leave to appeal should be given; and
 - (d) the grounds or proposed grounds set out in the notice of appeal.
- (2) There shall be included as exhibits to the affidavit—
- (a) a copy of the order from which the appeal is or is proposed to be brought; and
 - (b) a copy of any reasons given for the order—
- or their absence as exhibits shall be accounted for in the affidavit.

4.08 Directions

- (1) Within seven days after filing the notice of appeal, the appellant or applicant shall apply on summons—
 - (a) for directions;
 - (b) if necessary, for an extension of time; and
 - (c) if necessary, for leave to appeal.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant or applicant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 4.07 and any exhibit.
- (4) The respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit not less than five days before the day for hearing named in the summons.

- (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, on its own motion or on application, bring the summons on for hearing.
- (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal or proposed appeal.
- (7) If an extension of time is needed or leave to appeal is required, the Court may, as appropriate—
 - (a) direct that the application for an extension of time or for leave to appeal be heard and determined by the Court which, if an extension of time or leave to appeal is granted, is to hear and determine the proposed appeal; or
 - (b) hear and determine the application for an extension of time or for leave to appeal.
- (8) The Court may dismiss the appeal or the application for an extension of time or for leave to appeal (as the case may be) if satisfied that—
 - (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal or proposed appeal may be brought;
 - (b) the appellant or applicant does not or would not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal or application is frivolous, vexatious or otherwise an abuse of the process of the Court.

- (9) If an extension of time is not required or is granted, and the Court gives leave to appeal, then, except as otherwise provided by any Act and unless the Court otherwise orders—
- (a) the appeal is thereupon taken to have been duly commenced by the filing of the notice of appeal;
 - (b) no further notice of appeal shall be required; and
 - (c) notwithstanding Rule 4.06, no further copy of the notice of appeal need be served.
- (10) The Court may, in a proper case, grant a stay of proceedings under the order of the tribunal.

Note

There are currently no Rules 4.09 to 4.13.

4.14 Expedition

- (1) If it is satisfied that the delay caused by proceeding in accordance with this Part would or might entail injustice, the Court may make an order under this Part without notice to any party on such terms as to costs or otherwise and subject to such undertaking, if any, as is thought fit.
- (2) The Court may set aside any order made under paragraph (1) on the application of any person affected.

Part 3—Application for leave to appeal and appeal to the Court of Appeal

4.15 Commencement of application for leave to appeal or appeal

Except as otherwise provided by any Act or Rule, an application for leave to appeal or an appeal to the Court of Appeal from a tribunal shall be

commenced in accordance with Order 64 of Chapter I.

4.16 Application of Order 64 of Chapter I

- (1) Except as otherwise provided by any Act and by this or any other Rule, Order 64 of Chapter I applies to an application for leave to appeal or an appeal under this Part.
- (2) Where the context permits, Order 64 of Chapter I applies as if in that Order a reference to an application or an appeal in respect of a decision of a court were a reference to an application or appeal in respect of a decision of a tribunal.

Order 5—Case stated by a tribunal

5.01 Application

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

5.02 Definitions

In this Order—

chairman means—

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

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

special case includes case stated;

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

5.03 Preparation of draft

- (1) A tribunal which intends to reserve a question of law may direct a party—
 - (a) to prepare a draft of the special case; and
 - (b) to deliver the draft to the other party within 21 days or such other time as the tribunal directs.

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

5.04 Approved or altered draft

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

5.05 Settling of the draft

- (1) If the draft is not returned within the time allowed or the parties cannot agree on the form of the draft within seven days of its return, the party who prepared the draft shall forward it to the chairman without delay.
- (2) On receiving the draft, the chairman may hear the parties or any of them or their counsel or solicitors as the chairman thinks fit and shall settle the draft and return it to the party who prepared the draft and that party shall prepare a sufficient number of copies of the settled draft.

5.06 Delivery to recording officer

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

5.07 Delivery of special case and certification of copies

The recording officer shall—

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

5.08 Reference to documents

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

5.09 Copies of documents

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

Order 6—Reference by a tribunal of a question of law

6.01 Application

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

6.02 Procedure on reference

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

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

Order 7—Victorian taxation appeals

Part 1—General

7.01 Definitions

In this Order—

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

objector means the maker of an objection;

the Commissioner means the maker of a decision upon an objection, other than VCAT;

the Tribunal means VCAT.

7.02 Application of this Order

- (1) Subject to paragraph (2), this Order applies to a proceeding in the Trial Division of the Court—
 - (a) following a decision of the Commissioner upon an objection when the objector requests that the objection be treated as an appeal to the Court;
 - (b) by way of appeal on a question of law (including the application for leave to appeal) from an order of the Tribunal upon an objection;
 - (c) by way of referral by the Tribunal of a question of law arising in the review by the Tribunal of a decision of the Commissioner on an objection.
- (2) This Order does not apply—
 - (a) to a proceeding in the Trial Division to which Order 8 applies; or
 - (b) to a proceeding in the Court of Appeal.

- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(b) or (c) is to be conducted in accordance with Order 4 or 6, as the case requires.

7.03 Procedure

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

7.04 Interlocutory applications in Trial Division

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

Part 2—Appeals from the Commissioner

7.05 Setting down

- (1) The Commissioner shall file in the Court the objection which an objector has requested be treated as an appeal to the Court.
- (2) When the objection is filed, the objection is set down as an appeal.

- (3) On the setting down of the appeal, the Prothonotary shall notify the objector in writing that the appeal has been set down.

7.06 Relevant documents

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

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

7.07 Affidavit and directions

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

- (a) file in the Court and serve on the Commissioner an affidavit setting out the acts, facts, matters and circumstances relating to—
 - (i) the assessment, order, decision or determination to which the objection was made;
 - (ii) the ground or grounds upon which the objector relies;
- (b) apply for directions.

Order 7A—Appeals under the Unclaimed Money Act 2008

Part 1—General

7A.01 Definitions

In this Order—

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

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

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

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

7A.02 Application

- (1) Subject to paragraph (2), this Order applies to a proceeding in the Trial Division of the Court—
 - (a) following a determination of an objection by the Registrar under section 57 of the Act when the objector requests, under section 59(2)(b) of the Act, that the objection be treated as an appeal to the Court;
 - (b) by way of appeal on a question of law (including the application for leave to appeal) from an order of VCAT upon an objection;
 - (c) by way of referral by VCAT of a question of law arising in the review by VCAT of a determination of an objection by the Registrar.
- (2) This Order does not apply—
 - (a) to a proceeding in the Trial Division to which Order 8 applies; or

(b) to a proceeding in the Court of Appeal.

- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(b) or (c) is to be conducted in accordance with Order 4 or 6, as the case requires.

7A.03 Procedure

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

7A.04 Interlocutory applications in Trial Division

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

Part 2—Appeals from the Registrar

7A.05 Setting down

- (1) The Registrar shall file in the Court the objection which an objector has requested be treated as an appeal to the Court.

- (2) When the objection is filed, the objection is set down as an appeal.
- (3) On the setting down of the appeal, the Prothonotary shall notify the objector in writing that the appeal has been set down.

7A.06 Relevant documents

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

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

7A.07 Affidavit and directions

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

- (a) file in the Court and serve on the Registrar an affidavit setting out the acts, facts, matters and circumstances relating to—
 - (i) the assessment, reassessment, decision or determination to which the objection was made;
 - (ii) the ground or grounds upon which the objector relies;
- (b) apply for directions.

Order 8—Valuation of land

Part 1—General

8.01 Definitions

In this Order—

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

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

8.02 Application of Order

- (1) This Order applies to any proceeding in the Trial Division of the Court—
 - (a) under Division 4 of Part III of the **Valuation of Land Act 1960**;
 - (b) under Part 10 of the **Land Acquisition and Compensation Act 1986** or to which the procedure under Part 10 of that Act applies;
 - (c) by way of appeal on a question of law (including the application for leave to appeal) from the land valuation list or the planning and environment list of the administrative division of VCAT;
 - (d) by way of referral from the land valuation list or the planning and environment list of the administrative division of VCAT of a question of law;
 - (e) which has been entered in the List by order of the Judge under Rule 8.03(2)—
and in respect of which there is no order in force under Rule 8.03(3).
- (2) This Order does not apply to a proceeding in the Court of Appeal.

- (3) A proceeding in the Court of Appeal which would otherwise be within paragraph (1)(c) or (d) is to be conducted in accordance with Order 4 or 6, as the case requires.

8.03 List

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

8.04 Judge in charge

- (1) A Judge of the Court nominated by the Chief Justice shall be in charge of the List.
- (2) The Judge shall have control of the proceedings in the List, and, subject to any directions of the Judge and to paragraph (3), all interlocutory applications in a proceeding in the List shall be made to the Judge.
- (3) The powers of the Judge in relation to a proceeding in the List may be exercised by another Judge of the Court—
- (a) if the Judge so requests; or

- (b) if in special circumstances that other Judge of the Court thinks fit to exercise them.

8.05 Directions

- (1) An applicant for directions under this Order shall comply with Rule 46.05(1) of Chapter I not later than seven days before the day for hearing named in the summons for directions.
- (2) The Judge may, at any time, whether on the hearing of a summons for directions or otherwise—
 - (a) direct that each party furnish to the other—
 - (i) the names of the valuers whose evidence that party proposes to use;
 - (ii) the amount of the valuation placed by each valuer on the subject land;
 - (iii) particulars of any comparable sales on which the party proposes to rely;
 - (b) give directions with respect to the filing and serving of affidavits; and
 - (c) give any other directions for the conduct of the proceeding which the Judge thinks conducive to its effective, complete, prompt and economical determination.
- (3) Unless the Judge otherwise orders, no material in respect of which there has been a failure to comply with a direction under paragraph (2) shall be adduced in evidence.

8.06 Application of Orders 4 and 6

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

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

Part 2—Valuation of Land Act 1960

8.07 Definitions

In this Part—

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

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

8.08 Application of this Part

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

8.09 Section 23(1) referral

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

8.10 Section 23(3) application

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

8.11 Rating authority to file documents

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

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

Part 3—Land Acquisition and Compensation Act 1986

8.12 Definitions

In this Part—

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

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

8.13 Application of this Part

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

8.14 Section 81(1)(c) application

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

8.15 Filing of notice of referral

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

Note

The form of this notice of referral is prescribed in regulations made under the **Land Acquisition and Compensation Act 1986**. See Form 16 in Schedule 2 to the Land Acquisition and Compensation Regulations 2010¹.

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

8.16 Directions

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

Order 9—Arbitration rules

Part 1—General

9.01 Definitions

(1) In this Order—

arbitration means an arbitration to which the Commercial Arbitration Act or the International Arbitration Act applies, as the case requires;

Commercial Arbitration Act means the **Commercial Arbitration Act 2011**;

International Arbitration Act means the International Arbitration Act 1974 of the Commonwealth;

Model Law means the UNCITRAL Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006, the English text of which is set out in Schedule 2 to the International Arbitration Act.

(2) Unless the contrary intention appears—

(a) expressions used in this Part have the same meaning as in the International Arbitration Act or the Commercial Arbitration Act, as the case requires;

(b) expressions used in Part 2 of this Order and in the Forms prescribed by that Part have the same meaning as in the International Arbitration Act; and

- (c) expressions used in Part 3 of this Order and in the Forms prescribed by that Part have the same meaning as in the Commercial Arbitration Act.

9.02 Documents not in English language

A party to a proceeding to which this Order applies who seeks to rely on a document that is not in the English language shall provide a certified English translation of the document—

- (a) to the Court; and
(b) to any other party to the proceeding.

Notes

- 1 Section 9 of the International Arbitration Act also deals with the translation of awards and arbitration agreements in proceedings to which Part II of the International Arbitration Act applies.
- 2 Section 35 of the Commercial Arbitration Act also deals with the translation of awards and arbitration agreements in proceedings to which the Commercial Arbitration Act applies.

Part 2—International commercial arbitration

9.03 Application for stay and referral to arbitration—foreign arbitration agreements

- (1) An application under section 7 of the International Arbitration Act to stay the whole or part of a proceeding and refer the parties to arbitration shall be in Form 2–9A.
- (2) The application shall be accompanied by—
 - (a) a copy of the arbitration agreement; and
 - (b) an affidavit stating the material facts on which the application for relief is based.

9.04 Application to enforce foreign award

- (1) An application under section 8(2) of the International Arbitration Act to enforce a foreign award shall be in Form 2–9B.
- (2) The application shall be accompanied by—
 - (a) the documents referred to in section 9 of the International Arbitration Act; and
 - (b) an affidavit stating—
 - (i) the extent to which the foreign award has not been complied with, at the date the application is made; and
 - (ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the foreign award or, if the person is a company, the last-known registered office of the company.

9.05 Application for referral to arbitration—article 8 of the Model Law

- (1) An application under article 8 of the Model Law to refer parties to arbitration shall be in Form 2–9C.
- (2) The application shall be accompanied by—
 - (a) a copy of the arbitration agreement; and
 - (b) an affidavit stating the material facts on which the application for relief is based.

9.06 Subpoenas

- (1) An application for the issue of a subpoena under section 23(3) of the International Arbitration Act shall be in Form 2–9D.

- (2) The application shall be accompanied by—
- (a) a draft subpoena in accordance with paragraph (3); and
 - (b) an affidavit stating the following—
 - (i) the names of the parties to the arbitration;
 - (ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;
 - (iii) the place where the arbitration is being conducted;
 - (iv) the nature of the arbitration;
 - (v) the terms of the permission given by the arbitral tribunal for the application;
 - (vi) the conduct money (if appropriate) to be paid to the addressee; and
 - (vii) the witness expenses payable to the addressee.
- (3) For the purposes of paragraph (2)(a), the draft subpoena shall be—
- (a) for a subpoena to attend for examination before an arbitral tribunal—in Form 2–9E;
 - (b) for a subpoena to produce to the arbitral tribunal the documents mentioned in the subpoena—in Form 2–9F; or
 - (c) for a subpoena to attend for examination and produce documents—in Form 2–9G.
- (4) The Court may—
- (a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and

- (b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.
- (5) An amount fixed under paragraph (4) may be in addition to any conduct money or witness expenses referred to in paragraph (2)(b).
- (6) A subpoena shall be—
 - (a) for a subpoena to attend for examination before an arbitral tribunal—in Form 2–9E;
 - (b) for a subpoena to produce to the arbitral tribunal the documents mentioned in the subpoena—in Form 2–9F; or
 - (c) for a subpoena to attend for examination and produce documents—in Form 2–9G.
- (7) A person served with a subpoena shall comply with the subpoena in accordance with its terms.
- (8) Order 42 of Chapter I applies so far as is practicable to a subpoena referred to in this Rule.

9.07 Application relating to evidence for arbitration

- (1) An application for an order under section 23A(3) of the International Arbitration Act shall be in Form 2–9H.
- (2) An application under paragraph (1) shall be accompanied by an affidavit stating—
 - (a) the name of the person against whom the order is sought;
 - (b) the order sought;
 - (c) the ground under section 23A(1) of the International Arbitration Act relied on;
 - (d) the terms of the permission given by the arbitral tribunal for the application; and
 - (e) the material facts relied on.

9.08 Application relating to disclosure of confidential information

- (1) An application under section 23F or 23G of the International Arbitration Act for an order prohibiting or allowing the disclosure of confidential information shall be in Form 2–9I.
- (2) An application under paragraph (1) shall be accompanied by an affidavit stating—
 - (a) the name of the person against whom the order is sought;
 - (b) the order sought;
 - (c) the material facts relied on;
 - (d) if the application is made under section 23F of the International Arbitration Act—the terms of the order of the arbitral tribunal allowing disclosure of the information and the date the order was made; and
 - (e) if the application is made under section 23G of the International Arbitration Act either—
 - (i) the date the arbitral tribunal's mandate was terminated; or
 - (ii) the date and the terms—
 - (A) of the request made to the arbitral tribunal for disclosure of the confidential information; and
 - (B) of the arbitral tribunal's refusal to make the order.

9.09 Application for relief under miscellaneous provisions of the Model Law

- (1) An application for relief under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 of the Model Law shall be in Form 2–9J.

- (2) The application shall be accompanied by an affidavit stating the material facts on which the application for relief is based.

9.10 Application to set aside award—Model Law

- (1) An application under article 34 of the Model Law to set aside an award shall be in Form 2–9K.
- (2) The application shall identify—
- (a) if the applicant relies on article 34(2)(a) of the Model Law—which subparagraph of article 34(2)(a) is relied upon;
 - (b) if the applicant relies on article 34(2)(b) of the Model Law—which subparagraph of article 34(2)(b) is relied upon; and
 - (c) brief grounds for seeking the order.
- (3) The application shall be accompanied by an affidavit—
- (a) exhibiting—
 - (i) a copy of the arbitration agreement; and
 - (ii) a copy of the award including the reasons of the arbitral tribunal for the award; and
 - (b) identifying—
 - (i) the detailed grounds for seeking the order;
 - (ii) the material facts relied on; and
 - (iii) the date on which the applicant received the award or, if a request was made under article 33 of the Model Law to the arbitral tribunal to correct the award, the date on which that request was disposed of by the arbitral tribunal.

- (4) The application and supporting affidavit shall be served on any person whose interest might be affected by the setting aside of the award.
- (5) Any application by a party to the arbitration under article 34(4) of the Model Law shall be made by summons in the proceeding commenced under paragraph (1).

9.11 Enforcement of award under Model Law

- (1) An application under article 35 of the Model Law to enforce an award shall be in Form 2–9L.
- (2) The application shall be accompanied by an affidavit—
 - (a) exhibiting the documents referred to in article 35(2) of the Model Law; and
 - (b) stating—
 - (i) the extent to which the award has not been complied with, at the date the application is made; and
 - (ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

9.12 Enforcement of Investment Convention award

- (1) An application under section 35(2) of the International Arbitration Act for leave to enforce an award to which Part IV of the Act applies shall be in Form 2–9M.
- (2) The application shall be accompanied by an affidavit stating—
 - (a) the extent to which the award has not been complied with, at the date the application is made; and

- (b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

Part 3—Domestic commercial arbitration

9.13 Application for referral to arbitration

- (1) An application under section 8 of the Commercial Arbitration Act to refer the parties to arbitration shall be in Form 2–9N.
- (2) The application must be accompanied by an affidavit—
 - (a) exhibiting a copy of the arbitration agreement; and
 - (b) stating the material facts on which the application for relief is based.

9.14 Subpoenas

- (1) An application for the issue of a subpoena under section 27A of the Commercial Arbitration Act shall be in Form 2–9O.
- (2) The application shall be accompanied by—
 - (a) a draft subpoena in accordance with paragraph (3); and
 - (b) an affidavit stating—
 - (i) the names of the parties to the arbitration;
 - (ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;
 - (iii) the place where the arbitration is being conducted;

- (iv) the nature of the arbitration;
 - (v) the terms of the permission given by the arbitral tribunal for the application;
 - (vi) the conduct money (if appropriate) to be paid to the addressee; and
 - (vii) the witness expenses payable to the addressee.
- (3) For the purposes of paragraph (2)(a), the draft subpoena shall be—
- (a) for a subpoena to attend for examination before an arbitral tribunal—in Form 2–9P;
 - (b) for a subpoena to produce to the arbitral tribunal the documents mentioned in the subpoena—in Form 2–9Q; or
 - (c) for a subpoena to attend for examination and produce documents—in Form 2–9R.
- (4) The Court may—
- (a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and
 - (b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.
- (5) An amount fixed under paragraph (4) may be in addition to any conduct money or witness expenses referred to in paragraph (2)(b).
- (6) A subpoena shall be—
- (a) for a subpoena to attend for examination before an arbitral tribunal—in Form 2–9P;
 - (b) for a subpoena to produce to the arbitral tribunal the documents mentioned in the subpoena—in Form 2–9Q; or

- (c) for a subpoena to attend for examination and produce documents—in Form 2–9R.
- (7) A person served with a subpoena shall comply with the subpoena in accordance with its terms.
- (8) Order 42 of Chapter I applies so far as is practicable to a subpoena referred to in this Rule.

9.15 Application relating to evidence for arbitration

- (1) An application for an order under section 27B of the Commercial Arbitration Act shall be in Form 2–9S.
- (2) An application under paragraph (1) shall be accompanied by an affidavit stating—
 - (a) the name of the person against whom the order is sought;
 - (b) the order sought;
 - (c) the ground under section 27B of the Commercial Arbitration Act relied on;
 - (d) the terms of the permission given by the arbitral tribunal for the application; and
 - (e) the material facts relied on.

9.16 Application relating to disclosure of confidential information

- (1) An application under section 27H or 27I of the Commercial Arbitration Act for an order prohibiting or allowing the disclosure of confidential information shall be in Form 2–9T.
- (2) An application under paragraph (1) shall be accompanied by an affidavit stating—
 - (a) the name of the person against whom the order is sought;
 - (b) the order sought;
 - (c) the material facts relied on;

- (d) if the application is made under section 27H of the Commercial Arbitration Act—the terms of the order of the arbitral tribunal allowing disclosure of the information and the date the order was made; and
- (e) if the application is made under section 27I of the Commercial Arbitration Act either—
 - (i) the date the arbitral tribunal's mandate was terminated; or
 - (ii) the date and terms—
 - (A) of the request made to the arbitral tribunal for disclosure of the confidential information; and
 - (B) of the arbitral tribunal's refusal to make the order.

9.17 Application for relief under miscellaneous provisions of Commercial Arbitration Act

- (1) An application for relief under section 11(3), 11(4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 of the Commercial Arbitration Act shall be in Form 2–9U.
- (2) The application shall be accompanied by an affidavit stating the material facts on which the application for relief is based.

9.18 Preliminary point of law

- (1) An application under section 27J of the Commercial Arbitration Act for leave to apply for determination of a question of law arising in the course of an arbitration and, if leave is granted, for the determination of the question of law, shall be in Form 2–9V.

- (2) The application shall be accompanied by an affidavit—
 - (a) exhibiting—
 - (i) a copy of the arbitration agreement; and
 - (ii) evidence of the consent of the arbitrator or the consent of all the other parties as required by section 27J(2) of the Commercial Arbitration Act; and
 - (b) identifying—
 - (i) the name and usual or last known place of residence or business of any person whose interest might be affected by the proposed determination of the question of law or, if the person is a company, the last known registered office of the company;
 - (ii) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises;
 - (iii) the facts on the basis of which the question of law is to be determined and the basis on which those facts are stated, including whether they are agreed, assumed, found by the arbitral tribunal or otherwise; and
 - (iv) the detailed grounds on which it is contended that leave should be granted.
- (3) The application and supporting affidavit shall be served on any person whose interest might be affected by determination of the question of law.
- (4) The Court may, if it thinks fit, hear and determine the question of law at the same time as the application for leave to apply for the determination of the question.

- (5) If the Court first hears and grants the application for leave, it may make such orders as it thinks fit for the hearing and determination of the question of law.

9.19 Application to set aside award

- (1) An application under section 34 of the Commercial Arbitration Act to set aside an award shall be in Form 2–9W.
- (2) The application shall identify—
- (a) if the applicant relies on section 34(2)(a) of the Commercial Arbitration Act—which subparagraph of section 34(2)(a) is relied upon;
 - (b) if the applicant relies on section 34(2)(b) of the Commercial Arbitration Act—which subparagraph of section 34(2)(b) is relied upon; and
 - (c) brief grounds for seeking the order.
- (3) The application shall be accompanied by an affidavit—
- (a) exhibiting—
 - (i) a copy of the arbitration agreement; and
 - (ii) a copy of the award including the reasons of the arbitral tribunal for the award; and
 - (b) identifying—
 - (i) the detailed grounds for seeking the order;
 - (ii) the material facts relied on; and
 - (iii) the date on which the applicant received the award or, if a request was made under section 33 of the Commercial Arbitration Act to the

arbitral tribunal to correct the award,
the date on which that request was
disposed of by the arbitral tribunal.

- (4) The application and supporting affidavit shall be served on any person whose interest might be affected by the setting aside of the award.
- (5) Any application by a party to the arbitration under section 34(4) of the Commercial Arbitration Act shall be made by interlocutory application in the proceeding commenced under paragraph (1).

9.20 Appeal

- (1) An application under section 34A of the Commercial Arbitration Act for leave to appeal on a question of law arising out of an award shall be in Form 2–9X.
- (2) The application shall state—
 - (a) the question of law to be determined; and
 - (b) the grounds on which it is alleged that leave to appeal should be granted.
- (3) The application shall be accompanied by an affidavit showing that, before the end of the appeal period referred to in section 34A(1) and (6) of the Commercial Arbitration Act, the parties agreed that an appeal may be made under section 34A of that Act.
- (4) The affidavit shall exhibit—
 - (a) a copy of the arbitration agreement; and
 - (b) a copy of the award, including the reasons of the arbitral tribunal for the award.

- (5) The application shall be accompanied by a submission setting out—
- (a) the name and usual or last known place of residence or business of any person whose interest might be affected by the proposed appeal or, if the person is a company, the last known registered office of the company;
 - (b) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises;
 - (c) when and how the arbitral tribunal was asked to determine the question of law and where in the award or the reasons, and in what way, the arbitral tribunal determined it;
 - (d) the relevant facts found by the arbitral tribunal on the basis of which the question of law is to be determined by the Court;
 - (e) the basis on which it is contended that the determination of the question of law will substantially affect the rights of one or more parties;
 - (f) the basis on which it is contended that—
 - (i) the decision of the arbitral tribunal on the question of law is obviously wrong;
or
 - (ii) the question of law is of general public importance and the decision of the arbitral tribunal is open to serious doubt;
 - (g) the basis on which it is contended that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in the circumstances for the Court to determine the question; and

- (h) a succinct statement of the argument in support of the application for leave and the appeal if leave is granted.
- (6) The application and the supporting material shall be served on any person whose interest might be affected by the proposed appeal.
- (7) Within 14 days after service on a party or within such further period as the Court may allow, that party shall file and serve any answering material, including a succinct statement of any argument in opposition to the application for leave and the appeal if leave is granted.
- (8) If it appears to the Court that an oral hearing of the application for leave to appeal is required, the Court may, if it thinks fit, hear and determine the appeal on the question of law at the same time as it hears the application for leave to appeal.
- (9) If the Court grants the application for leave before hearing the appeal, it may make such orders as it thinks fit for the hearing and determination of the appeal.
- (10) When an application for leave to appeal is brought or leave to appeal is granted, the Court may suspend or discharge any enforcement order made in respect of the award the subject of the proposed appeal.

9.21 Application to enforce award

- (1) An application under section 35 of the Commercial Arbitration Act to enforce an award shall be in Form 2–9Y.
- (2) The application shall be accompanied by—
 - (a) the documents referred to in section 35 of the Commercial Arbitration Act; and

- (b) an affidavit stating—
- (i) the extent to which the award has not been complied with, at the date the application is made; and
 - (ii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the domestic award or, if the person is a company, the last-known registered office of the company.

Order 10—Service and execution of process rules

10.01 Definitions

In this Order—

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

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

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

the Act means the Service and Execution of Process Act 1992 of the Commonwealth.

10.02 How application is made

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

10.03 Enforcement of judgment

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

10.04 Fees

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

part of Australia as are charged for the like enforcement of the process or judgment of the Victorian court, together with the fees set out in the Schedule to Rule 10.05.

10.05 Costs

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

Schedule

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

Order 11—Registration of judgments under Foreign Judgments Act 1991 of the Commonwealth

11.01 Definition

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

11.02 Application of Order

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

11.03 Application under section 6 by originating motion

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

11.04 Affidavit

- (1) An affidavit under Rule 11.03 shall state to the best of the information and belief of the deponent—
 - (a) that the plaintiff is entitled to enforce the judgment;
 - (b) that the judgment is final and conclusive between the parties;
 - (c) facts demonstrating that the Court is the appropriate court under section 6(1) of the Act;
 - (d) that at the date of the application the judgment has not been satisfied or, if the judgment has been satisfied in part, the

- amount in respect of which it remains unsatisfied;
- (e) that at the date of the application the judgment can be enforced by execution in the country of the original court;
 - (f) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 7 of the Act;
 - (g) the amount of interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application;
 - (h) if the sum payable under the judgment is expressed in a currency other than Australian currency and the judgment creditor has not stated that the judgment creditor wishes the judgment to be registered in that other currency, the amount which that sum represents in Australian currency calculated in accordance with section 6(11) to (11B) of the Act;
 - (i) if the judgment is in respect of different matters and only some of the provisions of the judgment could, if contained in separate judgments, have been registered, the provisions in respect of which it is sought to register the judgment;
 - (j) the full name, title, occupation and usual or last known place of residence or of business of the judgment creditor and of the judgment debtor.
- (2) The affidavit shall exhibit—
- (a) a copy of the judgment of the original court certified as such by the proper officer of the court and authenticated by its seal; and

- (b) if the judgment is not in the English language, a translation of the judgment certified by a notary public or authenticated by affidavit.
- (3) The affidavit shall be accompanied by such other evidence in respect of the matters referred to in paragraph (1)(e) and (g) as may be required having regard to the provisions of any regulations made under the Act extending the Act to the country of the original court.

11.05 Security for costs may be ordered

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

11.06 Order on application

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

11.07 Notice of registration

- (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor whether within the jurisdiction or out of the jurisdiction.
- (2) Unless the Court otherwise orders, service shall be personal service.

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

11.08 Application to set aside

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

11.09 Enforcement of judgment

A registered judgment may not be enforced until—

- (a) the period prescribed under Rule 11.06(1)(a), or any extended period, has expired;

- (b) the determination by the Court of any application to set aside the registration of the judgment;
- (c) there has been filed in the Court—
 - (i) an affidavit of service of the notice of registration;
 - (ii) a copy of the notice of registration; and
- (d) any order of the Court in relation to the judgment has been authenticated and filed.

11.10 Certified copy of Victorian judgment

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

11.11 Certificates

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

- (a) be sealed with the seal of the Court;
- (b) bear a certificate by the Prothonotary that—
 - (i) the copy is a true copy;
 - (ii) the copy is issued in accordance with section 15 of the Act;
- (c) be accompanied by a certificate by the Prothonotary stating—
 - (i) that the proceeding is at an end except for enforcement of the judgment;
 - (ii) the claim or claims in respect of which the judgment was given;

- (iii) the grounds upon which the judgment was based;
- (iv) the rate at which the judgment carries interest;
- (v) such other matters as the Prothonotary considers necessary or desirable.

11.12 Associate Judge

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

Order 12—Jury service

Part 1—Appeals

12.01 Definitions

In this Part—

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

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

12.02 Application of Part

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

12.03 Lodgment of appeal under section 10

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

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

12.04 Papers for Judge of the Court

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

12.05 Judge of the Court to consider papers

- (1) If the appellant has expressed the wish to have the appeal determined without any attendance by or on behalf of the appellant, the Judge of the Court after examining the papers may—
 - (a) determine the appeal on the papers; or
 - (b) set a date, time and place for hearing the appeal.
- (2) In any other case, the Judge of the Court after examining the papers may—
 - (a) allow the appeal on the papers; or
 - (b) set a date, time and place for hearing the appeal.
- (3) The Juries Commissioner shall without delay notify the appellant of the Judge's determination under this Rule.

12.06 Hearing of appeal

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

- (a) shall hear the appellant;
- (b) may permit the Juries Commissioner to take part in the appeal; and

(c) shall conduct the appeal in such manner as the interests of justice require.

12.07 If appellant does not appear

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

Part 2—Absent jurors

12.08 Application of Part

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

12.09 Juries Commissioner

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

12.10 Procedure

- (1) The application shall—
 - (a) be made by originating motion in Form 2–12A; and
 - (b) be supported by an affidavit in Form 2–12B.
- (2) The originating motion and the affidavit in support shall be served personally on the respondent, unless the Court otherwise orders.

Order 13—Cross-vesting of jurisdiction rules

13.01 Application

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

13.02 Definitions

In this Order—

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

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

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

13.03 Heading of documents

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

13.04 Application by Attorney-General

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

13.05 Removal of proceeding

If an order is made for the removal of a proceeding from a court or tribunal to the Court under section 8 of the Act, the Court may give any

directions that could have been given by the court or tribunal in which the proceeding was pending.

13.06 Notice

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

13.07 Procedure after transfer

- (1) When a proceeding is transferred by the Court under a cross-vesting law, the Prothonotary shall send to the proper officer of the court to which the proceeding is transferred all documents filed and all orders made in the proceeding.
- (2) When a proceeding is transferred to the Court under a cross-vesting law, the Prothonotary shall give it a number and title.

- (3) As soon as practicable after a proceeding is transferred to the Court under a cross-vesting law, the party by whom the proceeding was commenced shall apply for directions.

13.08 Conduct of proceeding

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

13.09 Directions

The Court may—

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

13.10 Exercise of powers of the Court

- (1) Subject to paragraph (2), the power of the Court under a cross-vesting law and this Order shall be exercised by a Judge of the Court.
- (2) An Associate Judge shall have the same power and authority as under Chapter I.

Order 14—Admission to the Australian legal profession, senior counsel and professional practice

Part 1—Admission to practise

14.01 Definitions

In this Part—

mutual recognition legislation means—

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

the Act means the **Legal Profession Uniform Law Application Act 2014**;

Victorian Legal Admissions Board has the same meaning as it has in the Act;

Victorian Legal Services Board has the same meaning as it has in the Act.

Note

There is currently no Rule 14.02.

14.03 Appeals under Division 3 of Part 2.2 of the Legal Profession Uniform Law (Victoria)

An appeal under section 26 or section 27 of the Legal Profession Uniform Law (Victoria) shall be brought in accordance with Order 4 which, so far as applicable to an appeal to the Trial Division, shall apply—

- (a) subject to section 28 of the Legal Profession Uniform Law (Victoria); and
- (b) with any necessary modification.

14.04 Oath or affirmation of office

The oath or affirmation of office under section 16(1)(c) of the Legal Profession Uniform Law (Victoria) may be in Form 2-14.

14.05 Application for admission

- (1) An application for admission under section 16 of the Legal Profession Uniform Law (Victoria) shall be heard and determined by a Judge or such Judges of the Court, sitting in banc, as the Chief Justice may direct.
- (2) Unless these Rules otherwise provide or the Chief Justice otherwise directs, a motion for admission may be made only on the days appointed in each year by the Court for motions for admission.
- (3) Any application to the Court under the mutual recognition legislation may be heard by a Judge of the Court and paragraph (2) does not apply.

14.06 Applicants to appear in person

- (1) An applicant for admission (other than an applicant under the mutual recognition legislation) shall appear in person in Court.
- (2) An applicant shall produce to the Court the compliance certificate issued under section 19 of the Legal Profession Uniform Law (Victoria) on which the applicant relies.

14.07 Objections

Any person desiring to object under section 16(3) of the Legal Profession Uniform Law (Victoria) to the admission of a particular person may do so before a Judge not less than 14 days before the day appointed for the applicant's admission.

Part 2—Senior counsel

14.08 Qualification

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

14.09 Application

- (1) A person who is qualified to be so appointed may apply in writing to the Chief Justice for appointment as Senior Counsel.
- (2) Such applications shall be made at such time each year and in such manner as the Chief Justice from time to time directs.
- (3) An applicant shall provide with the application such information as the Chief Justice requires.
- (4) An application under this Rule and all information provided to the Chief Justice relating to the application are confidential and are not open to inspection by any other person except at the direction of the Chief Justice.

14.10 Appointment

- (1) Appointment as Senior Counsel shall—
 - (a) be in writing, signed by the Chief Justice and sealed with the seal of the Court; and
 - (b) be announced in such manner and form as the Chief Justice determines.

- (2) A person so appointed shall have and may exercise in Court such precedence as the Chief Justice directs at the time of the appointment.
- (3) The appointment shall be entered on the Roll kept by the Prothonotary for the purpose.

Part 3—Professional practice

Note

There are currently no Rules 14.11 and 14.12.

14.13 Removal from Supreme Court roll

- (1) If VCAT makes an order under section 302(1)(f) of the Legal Profession Uniform Law (Victoria) recommending that the name of a lawyer be removed from the Supreme Court roll, the Victorian Commissioner (within the meaning of the **Legal Profession Uniform Law Application Act 2014**) shall forthwith apply to the Court by originating motion for the Court to determine whether the name of the lawyer should be removed from the Supreme Court roll.
- (2) The originating motion shall name the Victorian Commissioner as plaintiff and the lawyer as defendant.
- (3) The plaintiff shall file an affidavit in support setting out the acts, facts, matters and circumstances which led to the making of the order and exhibiting—
 - (a) a copy of the order certified as correct by the registrar of VCAT; and
 - (b) any reasons given by VCAT for the making of the order.
- (4) The plaintiff shall serve the originating motion and a copy of the affidavit on the defendant as soon as is practicable.

- (5) Within seven days after filing the originating motion, the plaintiff shall apply on summons to an Associate Judge for directions.
- (6) The Associate Judge shall refer the application under paragraph (1) to a Judge of the Court for hearing and determination.

Order 15—Public notaries

15.01 Definitions

In this Order—

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

Victorian Legal Admissions Board has the same meaning as it has in the **Legal Profession Uniform Law Application Act 2014**;

Victorian Legal Services Board has the same meaning as it has in the **Legal Profession Uniform Law Application Act 2014**.

15.02 Application for certificate of eligibility

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

15.03 Certificate of eligibility

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

15.04 Application for appointment as public notary

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

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

15.05 Notice of application for appointment

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

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

15.06 Oath or affirmation of office

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

15.07 Notification after appointment

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

15.08 Appeal from Victorian Legal Admissions Board

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

- (a) subject to section 7 of the Act; and
- (b) with any necessary modification.

15.09 Roll of public notaries

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

Order 16—Family provision

16.01 Definitions

In this Order—

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

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

Registrar means the Registrar of Probates.

16.02 Application of Order

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

16.03 Mode of application

- (1) An application under Part IV—
 - (a) shall be made by originating motion; and
 - (b) in addition to complying with Rule 27.02(2) of Chapter I, shall be entitled "In the matter of the estate of [*name of deceased*], deceased".
- (2) If the application is in respect of the estate of a person who died after 20 July 1998 but before 1 January 2015, the affidavit in support of the application shall, amongst other things, state the acts, facts, matters and circumstances on which the plaintiff relies to establish that the person on whose behalf the application is made is a person for whom the deceased had responsibility to make provision.

Note

20 July 1998 was the date that Part 7 of the **Wills Act 1997** (now repealed) commenced. 1 January 2015 is the date that Part 2 of the **Justice Legislation Amendment (Succession and Surrogacy) Act 2014** (now repealed) commenced.

- (3) If the application is for a family provision order in respect of the estate of a person who died on or after 1 January 2015, the affidavit in support of the application shall, amongst other things, state the circumstances relied on to establish—
- (a) that the person making the application, or on whose behalf the application is made, is an *eligible person* within the meaning of the **Administration and Probate Act 1958**;
 - (b) in the case of an eligible person referred to in paragraph (f) or (g) of the definition of *eligible person*, that, or the degree to which, the eligible person is not capable, by reasonable means, of providing adequately for the eligible person's proper maintenance and support;
 - (c) in the case of an eligible person referred to in paragraphs (h) to (k) of the definition of *eligible person*, that the eligible person was wholly or partly dependent on the deceased for the eligible person's proper maintenance and support;
 - (d) that, at the time of death, the deceased had a moral duty to provide for the eligible person's proper maintenance and support; and
 - (e) that the distribution of the deceased's estate fails to make adequate provision for the proper maintenance and support of the eligible person, whether by—
 - (i) the deceased's will (if any);
 - (ii) the operation of Division 6 of Part I of the **Administration and Probate Act 1958** as in force immediately before its repeal or Part 1A of that Act, as the case requires; or

- (iii) both the will and the operation of Division 6 of Part I of that Act as in force immediately before its repeal or Part 1A of that Act, as the case requires.

16.04 Parties to application

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

Note

There is currently no Rule 16.05.

16.06 Summons for directions

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

16.07 Directions

On the application for directions the Court shall—

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

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

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

16.08 Failure to comply with directions

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

16.09 Production of probate

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

16.10 Procedure after order for plaintiff

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

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

Order 17—Court authorised wills

17.01 Definition

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

17.02 Application of Order

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

17.03 Minors

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

17.04 Jurisdiction of Associate Judge under section 20

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

17.05 Want of testamentary capacity

- (1) An application under section 21(2) of the Act for an order under section 21(1) of the Act shall be made by originating motion supported by an affidavit.

- (2) The affidavit shall state the acts, facts, matters and circumstances relied on to satisfy the Court that—
- (a) the person on whose behalf the will is to be made or revoked does not have testamentary capacity;
 - (b) the proposed will or revocation reflects what the intentions of the person would be likely to be, or what the intentions of the person might reasonably be expected to be, if the person had testamentary capacity;
 - (c) it is reasonable in all the circumstances for the Court, by order, to authorise the making of the will, or the revocation of the will, for the person.
- (3) Without limiting paragraph (2), the affidavit shall—
- (a) describe the general nature of the application to be made for an order under section 21(1) of the Act and give the reasons for making that application;
 - (b) give a reasonable estimate, formed from any evidence available to the plaintiff (the nature of which shall be stated), of the size and character of the estate of the person on whose behalf the will is to be made or revoked;
 - (c) exhibit the proposed will for which the plaintiff is seeking the Court's approval or a copy of the will which the plaintiff is seeking to have revoked, as the case may be;
 - (d) set out any evidence available to the plaintiff of each of the matters referred to in paragraphs (d), (e), (f), (g), (h), (i), (j) and (k) of section 21A of the Act if such matter is relevant to the application for an order under section 21(1) of the Act or, if not

relevant, state why such matter is not relevant; and

- (e) set out any other evidence relevant to the application.
- (4) The affidavit shall state whether the application is made upon notice and, if so, to whom notice has been given or is proposed to be given.
- (5) On the hearing of the application, where revocation is sought, the original will shall be produced to the Court or its absence shall be explained by affidavit.

Note

There is currently no Rule 17.06.

17.07 Jurisdiction of Associate Judge under section 21

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

Order 18—Workers compensation

18.01 Definitions

In this Order—

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

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

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

18.02 Application of Order

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

18.03 Employer may join in proceeding

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

18.04 When further payments made

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

18.05 If payments are disputed

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

18.06 If payments are not disputed

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

18.07 Other party may seek reduction

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

18.08 When further payments made

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

18.09 If payments are disputed

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

18.10 If payments are not disputed

If a notice under Rule 18.09 has not been filed—

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

Order 19—Wards of Court

19.01 Application of Order

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

19.02 Application

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

19.03 Notice by defendant

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

19.04 Evidence by affidavit

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

19.05 Minor ceases to be ward of Court

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

Order 20—Court of Disputed Returns

Part 1—Interpretation

20.01 Definitions

In this Order—

Court means the Court of Disputed Returns;

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

20.02 Application of Order

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

Part 2—Petitions

20.03 Notice of petition

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

20.04 Summons for directions

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

20.05 Procedure on hearing

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

Part 3—References of questions

20.06 Summons for directions

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

20.07 Parliamentary papers to be evidence

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

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

20.08 Procedure on hearing

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

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Note

There is currently no Order 21.

Order 22—Family Violence Protection Act 2008

22.01 Application of this Order

This Order applies to appeals to the Trial Division under Subdivision 1 of Division 9 of Part 4 of the **Family Violence Protection Act 2008** from—

- (a) the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder; or
- (b) the Children's Court constituted by—
 - (i) the President of that Court; or
 - (ii) the Chief Magistrate who is a dual commission holder.

22.02 Application to set aside order striking out appeal for failure to appear

An application under section 118A(3) of the **Family Violence Protection Act 2008** shall be in Form 2-22A.

Order 23—Charter of Human Rights and Responsibilities Act 2006

23.01 Application

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

23.02 Definitions

In this Order—

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

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

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

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

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

23.03 Originating motion

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

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

23.04 Summons for directions

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

23.05 Service

- (1) The plaintiff shall serve the originating motion and the summons for directions on each defendant—

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

23.06 Directions

At the directions hearing the Court may—

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

23.07 Dismissal for non-attendance or non-compliance

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

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

Form 2-1A—Notice of address for service

Rules 1.10(b) and 19.03

[heading as in originating process]

NOTICE OF ADDRESS FOR SERVICE

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

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

Dated:

[signed]

**Form 2–9A—Interlocutory application for
stay and referral to arbitration—foreign
arbitration agreement**

Rule 9.03

[heading as in relevant proceeding]

**INTERLOCUTORY APPLICATION FOR STAY
AND REFERRAL TO ARBITRATION—FOREIGN
ARBITRATION AGREEMENT**

(Section 7 of the International Arbitration Act 1974 of the Commonwealth)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE *[role of party]*: *[name]* of *[address]*.

The *[role of party]* *[name]*, being a party to an arbitration agreement, applies for an order under section 7 of the International Arbitration Act 1974 of the Commonwealth to stay the whole/part *[delete whichever is inapplicable]* of this proceeding and to refer the parties to arbitration and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the hearing of the application, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

HEARING

The application will be heard before in Court No....., Supreme Court of Victoria, *[insert address]*, Melbourne on *[insert date]* at *[insert time]* or so soon afterwards as the business of the Court allows.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2-9A—Interlocutory application for stay and referral to arbitration—
foreign arbitration agreement

[If applicable] The Court has ordered that the time for serving this application be abridged to [Court to insert date].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 7 of the International Arbitration Act 1974 of the Commonwealth staying the whole/part *[delete whichever is inapplicable]* of this proceeding and referring *[identify parties and dispute to be referred]* to arbitration;
2. *[State briefly but specifically any other orders sought]*.

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. a copy of the arbitration agreement; and
2. an affidavit stating the material facts on which the application for relief is based.

SERVICE ON THE OTHER PARTIES

[Select one of these three options and delete the others]

*It is intended to serve this application on all other parties.

*It is intended to serve this application on the following other parties:

[insert name of each party on whom application is to be served].

*It is not intended to serve this application on any party.

Date:

.....
Signed by *[name]*
*[insert capacity: e.g. applicant,
lawyer for the applicant]*

*Delete if inapplicable.

**Form 2-9B—Originating application to
enforce foreign award**

Rule 9.04

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION TO ENFORCE
FOREIGN AWARD**

*(Section 8(2) of the International Arbitration Act 1974 of the
Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*.

The applicant *[name of applicant]*, being a party to an arbitration agreement, applies for an order under section 8(2) of the International Arbitration Act 1974 of the Commonwealth to enforce a foreign award and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2-1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 8(2) of the International Arbitration Act 1974 of the Commonwealth that [*state details of award and how it is sought to be enforced*];
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. the documents referred to in section 9 of the International Arbitration Act 1974 of the Commonwealth; and
2. an affidavit stating—
 - (a) the extent to which the foreign award has not been complied with at the date this application is made; and
 - (b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the foreign award or, if the person is a company, the last-known registered office of the company.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9B—Originating application to enforce foreign award

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application on *the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9C—Interlocutory application
for referral to arbitration under
Article 8 of the Model Law**

Rule 9.05

[heading as in relevant proceeding]

**INTERLOCUTORY APPLICATION FOR REFERRAL TO
ARBITRATION UNDER ARTICLE 8 OF THE MODEL LAW**

(International Arbitration Act 1974 of the Commonwealth)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*.

The applicant *[name of applicant]*, being a party to an arbitration agreement, applies for an order under article 8 of the Model Law to refer parties to arbitration and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the hearing of the application, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, *[insert address]*, Melbourne on *[insert date]* at *[insert time]* or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to *[Court to insert date]*.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9C—Interlocutory application for referral to arbitration under
Article 8 of the Model Law

FILED:

Prothonotary

ORDERS SOUGHT:

The applicant seeks—

1. an order under article 8 of the Model Law that [*identify parties and dispute to be referred*] to arbitration;
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application must be accompanied by—

1. a copy of the arbitration agreement; and
2. an affidavit stating the material facts on which the application for relief is based.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9D—Originating application for
issue of subpoena**

Rule 9.06

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

ORIGINATING APPLICATION FOR ISSUE OF SUBPOENA

*(Section 23(3) of the International Arbitration Act 1974
of the Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: THE RESPONDENT [*name*] of [*address*]

The applicant [*name*], being a party to an arbitration agreement, applies for the issue of a subpoena under section 23(3) of the International Arbitration Act 1974 of the Commonwealth and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may proceed in your absence and without further notice.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. the issue of a subpoena under section 23(3) of the International Arbitration Act 1974 of the Commonwealth to [*identify person to whom subpoena is sought and type of subpoena*];
2. [*State briefly but specifically any other relief sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. a draft subpoena in accordance with *Form 2-9E/
*Form 2-9F/*Form 2-9G;
2. an affidavit stating—
 - (a) the names of the parties to the arbitration;
 - (b) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;
 - (c) the place where the arbitration is being conducted;
 - (d) the nature of the arbitration;
 - (e) the terms of the permission given by the arbitral tribunal for the application;
 - (f) the conduct money (if appropriate) to be paid to the addressee; and
 - (g) the witness expenses payable to the addressee.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9D—Originating application for issue of subpoena

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2-9E—Subpoena to attend
for examination**

Rule 9.06(3)(a), (6)(a)
IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

SUBPOENA TO ATTEND FOR EXAMINATION

*(Section 23(3) of the International Arbitration Act 1974
of the Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name] of [address]

You are ordered to attend for examination.

See below for details.

**Failure to comply with this subpoena without lawful excuse
is a contempt of court and may result in your arrest.**

Please read Notes 1 to 8 at the end of this subpoena.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9E—Subpoena to attend for examination

The last date for service of this subpoena is [*date*]. (See Note 1).

FILED:

Prothonotary

Issued at the request of [*role of party*], [*name*], whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

Date, time and place at which you must attend for examination, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: [*Name(s) of arbitrator(s) constituting arbitral tribunal*] at [*address*].

You must continue to attend from day to day unless excused by the arbitral tribunal or the Court or until the hearing of the matter is completed.

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 for examination 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 date your attendance is required.

Applications in relation to subpoena

5. 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 any claim you may have for privilege, public interest immunity or confidentiality.

Loss or expense of compliance

6. 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

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Form 2-9F—Subpoena to produce documents

Rule 9.06(3)(b), (6)(b)
IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

BETWEEN

S CI No.

AND

Applicant

Respondent

SUBPOENA TO PRODUCE DOCUMENTS

*(Section 23(3) of the International Arbitration Act 1974 of the
Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name] of [address]

**You are ordered to produce this subpoena or a copy of it
and the documents or things specified in the schedule of
documents.**

See below for details.

**Failure to comply with this subpoena without lawful excuse
is a contempt of court and may result in your arrest.**

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9F—Subpoena to produce documents

Please read Notes 1 to 15 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 1).

FILED:

Prothonotary

Issued at the request of [*role of party*], [*name*], whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

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 of documents 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 of documents below to the arbitral tribunal at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See Notes 5 to 11).

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: [*Name(s) of arbitrator(s) constituting arbitral tribunal*] at [*address*].

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted—

[*Name*] at [*address*].

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows—
[*List the documents or things. Attach list if insufficient space*].

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 produce the subpoena (or a copy of it) and the document or thing 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 date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If 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 arbitral tribunal—
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified—at any of those addresses—so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

Objection to inspection of the document or thing produced

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 arbitral tribunal in writing of your objection and of the grounds of your objection.
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 arbitral tribunal may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the arbitral tribunal, produce a list of the documents or things produced.

Production of copy instead of original

9. 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.
- 9A. The copy of a document may be:
 - (a) a photocopy; or
 - (b) in an electronic form that the issuing party has indicated will be acceptable (and otherwise in PDF format on a CD-ROM).

Return or destruction of documents or copies

10. You may, at the time of production, inform the arbitral tribunal that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the arbitral tribunal, the arbitral tribunal may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. 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 any claim you may have for privilege, public interest immunity or confidentiality.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9F—Subpoena to produce documents

Loss or expense of compliance

13. 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

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

**Form 2–9G—Subpoena to attend for
examination and produce documents**

Rule 9.06(3)(c), (6)(c)

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**SUBPOENA TO ATTEND FOR EXAMINATION AND
PRODUCE DOCUMENTS**

*(Section 23 of the International Arbitration Act 1974
of the Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name] of [address]

**You are ordered to attend for examination and to produce
this subpoena or a copy of it and the documents or things
specified in the schedule of documents.**

See below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 15 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 1).

FILED:

Prothonotary

Issued at the request of [*role of party*], [*name*], whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

In so far as you are required by this subpoena to attend for examination, you must attend as follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: [*Name(s) of arbitrator(s) constituting arbitral tribunal*] at [*address*].

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.

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 of documents 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 of documents below to the arbitral tribunal at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See Notes 5 to 11).

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2–9G—Subpoena to attend for examination and produce documents

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: *[Name(s) of arbitrator(s) constituting arbitral tribunal]* at *[address]*.

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted—

[Name] at *[address]*.

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows—

[List the documents or things. Attach list if insufficient space].

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 for examination 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 date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

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 that part of the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to the arbitral tribunal—
- (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified—at any of those addresses—
- so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

Objection to inspection of the document or thing produced

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 arbitral tribunal in writing of your objection and of the grounds of your objection.
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 arbitral tribunal may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the arbitral tribunal, produce a list of the documents or things produced.

Production of copy instead of original

9. 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.
- 9A. The copy of a document may be—
- (a) a photocopy; or
 - (b) in an electronic form that the issuing party has indicated will be acceptable (and otherwise in PDF format on a CD-ROM).

Return or destruction of documents or copies

10. You may, at the time of production, inform the arbitral tribunal that any document or copy of a document produced need not be returned and may be destroyed.

11. If you have so informed the arbitral tribunal, the arbitral tribunal may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. 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 any claim you may have for privilege, public interest immunity or confidentiality.

Loss or expense of compliance

13. 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

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Form 2–9H—Originating application for order to give evidence or produce documents

Rule 9.07

IN THE SUPREME COURT

OF VICTORIA

AT

COMMERCIAL COURT

ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

ORIGINATING APPLICATION FOR ORDER TO GIVE EVIDENCE OR PRODUCE DOCUMENTS

*(Section 23A of the International Arbitration Act 1974 of the
Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name]*, being a party to an arbitration agreement, applies for an order under section 23A(3) of the International Arbitration Act 1974 of the Commonwealth that *[identify person against whom order is sought]* *attend before the Court for examination/*produce certain documents to the Court/*do certain things and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2-9H—Originating application for
order to give evidence or produce documents

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2-1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 23A(3) of the International Arbitration Act 1974 of the Commonwealth that [*identify person against whom order is sought*]*attend before the Court for examination/*produce the following documents to the Court [*specify*]/*do the following things [*specify*];
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating—

1. the name of the person against whom the order is sought;
2. the order sought;
3. the ground under section 23A(1) of the International Arbitration Act 1974 of the Commonwealth relied on;
4. the terms of the permission given by the arbitral tribunal for the application; and
5. the material facts relied on.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2–9H—Originating application for
order to give evidence or produce documents

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2-9I—Originating application
to prohibit or allow disclosure of
confidential information**

Rule 9.08

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION TO *PROHIBIT/*ALLOW
DISCLOSURE OF CONFIDENTIAL INFORMATION**

*(*Section 23F/*Section 23G of the International Arbitration Act 1974 of
the Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: [name] of [address]

The applicant [name], being a party to an arbitration agreement, applies for an order under section *23F/*23G of the International Arbitration Act 1974 of the Commonwealth *prohibiting/*allowing the disclosure of confidential information and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2–9I—Originating application to prohibit or allow disclosure of
confidential information

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [insert address], Melbourne on [insert date] at [insert time] or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to [Court to insert date].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section *23F/*23G of the International Arbitration Act 1974 of the Commonwealth that the disclosure of confidential information [insert details of the confidential information] be *prohibited/*allowed *absolutely/*on the following terms. [insert any terms sought];
2. [State briefly but specifically any other relief sought].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating—

1. the name of the person against whom the order is sought;
2. the order sought;
3. the material facts relied on; and
- *4. [For an application under section 23F] the terms of the order of the arbitral tribunal allowing disclosure of the information and the date the order was made.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9I—Originating application to prohibit or allow disclosure of
confidential information

- *4. [For an application under section 23G]—
- *the date the arbitral tribunal's mandate was terminated.
 - *the date and terms—
 - (a) of the request made to the arbitral tribunal for disclosure of the confidential information; and
 - (b) of the arbitral tribunal's refusal to make the order.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business]

SERVICE ON THE RESPONDENT

[Select one of these three options and delete the others]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[insert name of each respondent on whom application is to be served].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [name]
[insert capacity: e.g. applicant,
lawyer for the applicant]

*Delete if inapplicable.

**Form 2–9J—Originating application
for relief under certain miscellaneous
provisions of the Model Law**

Rule 9.09

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR RELIEF
UNDER CERTAIN MISCELLANEOUS PROVISIONS
OF THE MODEL LAW**

(International Arbitration Act 1974 of the Commonwealth)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name]*, being a party to an arbitration agreement, applies for an order under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J, or 27 *[delete whichever is inapplicable]* of the Model Law that *[specify details of order sought]* and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [insert address], Melbourne on [insert date] at [insert time] or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to [Court to insert date].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J, or 27 [delete whichever is inapplicable] of the Model Law that [insert details of the specific order sought];
2. [State briefly but specifically any other orders sought].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating the material facts on which the application for relief is based.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business]

SERVICE ON THE RESPONDENT

[Select one of these three options and delete the others]

*It is intended to serve this application on *the respondent/*all respondents.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2-9J—Originating application for relief under certain miscellaneous provisions of the Model Law

*It is intended to serve this application on the following respondents:

[insert name of each respondent on whom application is to be served].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by *[name]*
*[insert capacity: e.g. applicant,
lawyer for the applicant]*

*Delete if inapplicable.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2–9K—Originating application to
set aside award under Article 34 of the Model Law

**Form 2–9K—Originating application to
set aside award under Article 34 of the
Model Law**

Rule 9.10

IN THE SUPREME COURT

OF VICTORIA

AT

COMMERCIAL COURT

ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION TO SET ASIDE AWARD
UNDER ARTICLE 34 OF THE MODEL LAW**

(International Arbitration Act 1974 of the Commonwealth)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*.

The applicant, *[name]*, being a party to an arbitration agreement, applies for an order under article 34 of the Model Law to set aside an award and for the other relief set out in this application. The applicant relies on *[identify subparagraphs of article 34(2)(a) or (b) of the Model Law relied on]*.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2-9K—Originating application to
set aside award under Article 34 of the Model Law

In brief, the grounds relied on are:

[*set out the grounds briefly*].

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under article 34(2) of the Model Law setting aside the award [*identify award*];
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by an affidavit—

1. exhibiting—
 - (a) a copy of the arbitration agreement; and
 - (b) a copy of the award, including the reasons of the arbitral tribunal for the award; and
2. identifying—
 - (a) the detailed grounds for seeking the order;
 - (b) the material facts relied on; and
 - (c) the date on which the applicant received the award or, if a request was made under article 33 of the Model Law to the arbitral tribunal to correct the award, the date on which that request was disposed of by the arbitral tribunal.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2-9K—Originating application to
set aside award under Article 34 of the Model Law

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9L—Originating application
to enforce award under Article 35 of the
Model Law**

Rule 9.11

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION TO ENFORCE AWARD
UNDER ARTICLE 35 OF THE MODEL LAW**

(International Arbitration Act 1974 of the Commonwealth)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: [*name*], [*address*]

The applicant [*name*], being a party to an arbitration agreement, applies for an order under article 35 of the Model Law to enforce an award and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9L—Originating application
to enforce award under Article 35 of the Model Law

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2-1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under article 35 of the Model Law enforcing an award [*insert details of the award and how it is sought to be enforced*];
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit—

1. exhibiting the documents referred to in article 35(2) of the Model Law; and
2. stating—
 - (a) the extent to which the award has not been complied with at the date the application is made; and
 - (b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9L—Originating application
to enforce award under Article 35 of the Model Law

Email:

The applicant's address is *[if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business]*

SERVICE ON THE RESPONDENT

[Select one of these three options and delete the others]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[insert name of each respondent on whom application is to be served].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by *[name]*
*[insert capacity: e.g. applicant,
lawyer for the applicant]*

*Delete if inapplicable.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2–9M—Originating application for leave to enforce award to which
Part IV of the International Arbitration Act 1974 of the Commonwealth
applies

**Form 2–9M—Originating application
for leave to enforce award to which Part IV
of the International Arbitration Act 1974
of the Commonwealth applies**

Rule 9.12

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR LEAVE TO
ENFORCE AWARD TO WHICH PART IV OF THE
INTERNATIONAL ARBITRATION ACT 1974
OF THE COMMONWEALTH APPLIES**

*(Section 35(2) of the International Arbitration Act 1974
of the Commonwealth)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2–9M—Originating application for leave to enforce award to which
Part IV of the International Arbitration Act 1974 of the Commonwealth
applies

TO THE RESPONDENT: *[name]*, *[address]*

The applicant *[name]*, applies for leave under section 35(2) of the International Arbitration Act 1974 of the Commonwealth to enforce an award to which Part IV of that Act applies and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may proceed in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No....., Supreme Court of Victoria, *[insert address]*, Melbourne on *[insert date]* at *[insert time]* or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to *[Court to insert date]*.

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 35(2) of the International Arbitration Act 1974 of the Commonwealth granting leave to enforce an award to which Part IV of that Act applies *[insert details of the award and how it is sought to be enforced]*;
2. *[State briefly but specifically any other orders sought]*.

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating—

1. the extent to which the award has not been complied with at the date the application is made; and
2. the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2-9M—Originating application for leave to enforce award to which
Part IV of the International Arbitration Act 1974 of the Commonwealth
applies

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9N—Interlocutory application for
referral to arbitration**

Rule 9.13

[heading as in relevant proceeding]

**INTERLOCUTORY APPLICATION FOR
REFERRAL TO ARBITRATION**

(Section 8 of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE *[role of party]*: *[name]*, *[address]*

The *[role of party]* *[name of party]*, being a party to an arbitration agreement, applies for an order under section 8 of the **Commercial Arbitration Act 2011** to refer the parties to arbitration and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the hearing of the application, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, *[insert address]*, Melbourne on *[insert date]* at *[insert time]* or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to *[Court to insert date]*.

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 8 of the **Commercial Arbitration Act 2011** referring [*identify parties and dispute sought to be referred*] to arbitration;
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by an affidavit—

1. exhibiting a copy of the arbitration agreement; and
2. stating the material facts on which the application for relief is based.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

Form 2–90—Originating application for issue of subpoena

Rule 9.14

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

ORIGINATING APPLICATION FOR ISSUE OF SUBPOENA

(Section 27A of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: THE RESPONDENT

[address of respondent]:

The applicant [*name*], being a party to an arbitration agreement, applies for the issue of a subpoena under section 27A of the **Commercial Arbitration Act 2011** and for the other relief set out in this application.

ACTION REQUIRED

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9O—Originating application for issue of subpoena

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may proceed in your absence and without further notice.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. the issue of a subpoena under section 27A of the **Commercial Arbitration Act 2011** to [*identify person to whom subpoena is sought and type of subpoena*];
2. [*State briefly but specifically any other relief sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. a draft subpoena in accordance with *Form 2-9P/
*Form 2-9Q/*Form 2-9R;
2. an affidavit stating—
 - (a) the names of the parties to the arbitration;
 - (b) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;
 - (c) the place where the arbitration is being conducted;
 - (d) the nature of the arbitration;
 - (e) the terms of the permission given by the arbitral tribunal for the application;
 - (f) the conduct money (if appropriate) to be paid to the addressee; and
 - (g) the witness expenses payable to the addressee.

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9O—Originating application for issue of subpoena

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[insert name of each respondent on whom application is to be served].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by *[name]*
*[insert capacity: e.g. applicant,
lawyer for the applicant]*

*Delete if inapplicable.

**Form 2-9P—Subpoena to attend
for examination**

Rule 9.14(3)(a)

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

SUBPOENA TO ATTEND FOR EXAMINATION

(Section 27A of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name], [address]

You are ordered to attend for examination.

See below for details.

**Failure to comply with this subpoena without lawful excuse
is a contempt of court and may result in your arrest.**

Please read Notes 1 to 8 at the end of this subpoena.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9P—Subpoena to attend for examination

The last date for service of this subpoena is [*date*]. (See Note 1).

FILED:

Prothonotary

Issued at the request of [*role of party*], [*name*], whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

Date, time and place at which you must attend for examination, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: [*Name(s) of arbitrator(s) constituting arbitral tribunal*] at [*address*].

You must continue to attend from day to day unless excused by the arbitral tribunal or the Court or until the hearing of the matter is completed.

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 for examination 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 date your attendance is required.

Applications in relation to subpoena

5. 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 any claim you may have for privilege, public interest immunity or confidentiality.

Loss or expense of compliance

6. 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

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Form 2–9Q—Subpoena to produce documents

Rule 9.14(3)(b)

IN THE SUPREME COURT

OF VICTORIA

AT

COMMERCIAL COURT

ARBITRATION LIST

BETWEEN

S CI No.

AND

Applicant

Respondent

SUBPOENA TO PRODUCE DOCUMENTS

(Section 27A of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name], [address]

**You are ordered to produce this subpoena or a copy of it
and the documents or things specified in the schedule of
documents.**

See below for details.

**Failure to comply with this subpoena without lawful excuse
is a contempt of court and may result in your arrest.**

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2–9Q—Subpoena to produce documents

Please read Notes 1 to 15 at the end of this subpoena.

The last date for service of this subpoena is *[date]*. (See Note 1).

FILED:

Prothonotary

Issued at the request of *[role of party]*, *[name]*, whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

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 of documents 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 of documents below to the arbitral tribunal at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See Notes 5 to 11).

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: *[Name(s) of arbitrator(s) constituting arbitral tribunal]* at *[address]*.

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted—

[Name] at *[address]*.

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows—

[List the documents or things. Attach list if insufficient space].

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 for examination 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 date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. If 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 arbitral tribunal—
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified—at any of those addresses—so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

Objection to inspection of the document or thing produced

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 arbitral tribunal in writing of your objection and of the grounds of your objection.

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 arbitral tribunal may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the arbitral tribunal, produce a list of the documents or things produced.

Production of copy instead of original

9. 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.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party has indicated will be acceptable (and otherwise in PDF format on a CD-ROM).

Return or destruction of documents or copies

10. You may, at the time of production, inform the arbitral tribunal that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the arbitral tribunal, the arbitral tribunal may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. 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 any claim you may have for privilege, public interest immunity or confidentiality.

Loss or expense of compliance

13. 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

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

S.R. No. 57/2018

Form 2-9Q—Subpoena to produce documents

15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

**Form 2–9R—Subpoena to attend for
examination and produce documents**

Rule 9.14(3)(c)

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

BETWEEN

AND

S CI No.

Applicant

Respondent

**SUBPOENA TO ATTEND FOR EXAMINATION AND
PRODUCE DOCUMENTS**

(Section 27A of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO: [name], [address]

**You are ordered to attend for examination and to produce
this subpoena or a copy of it and the documents or things
specified in the schedule of documents.**

See below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

Please read Notes 1 to 15 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 1).

FILED:

Prothonotary

Issued at the request of [*role of party*], [*name*], whose address for service is:

Place:

Email:

DETAILS OF SUBPOENA

In so far as you are required by this subpoena to attend for examination, you must attend as follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: [*Name(s) of arbitrator(s) constituting arbitral tribunal*] at [*address*].

You must continue to attend from day to day unless excused by the arbitral tribunal or the Court or until the hearing of the matter is completed.

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 of documents 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 of documents below to the arbitral tribunal at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (See Notes 5 to 11).

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9R—Subpoena to attend for examination and produce documents

Place: *[Name(s) of arbitrator(s) constituting arbitral tribunal]* at *[address]*.

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted—

[Name] at *[address]*.

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows—

[List the documents or things. Attach list if insufficient space].

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a company

3. If the subpoena is addressed to a company, the company 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 for examination 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 date your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

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 that part of the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to the arbitral tribunal—
 - (a) at the address specified in the subpoena for the purpose; or

(b) if more than one address is specified—at any of those addresses—so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

Objection to inspection of the document or thing produced

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 arbitral tribunal in writing of your objection and of the grounds of your objection.
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 arbitral tribunal may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the arbitral tribunal, produce a list of the documents or things produced.

Production of copy instead of original

9. 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.
- 9A. The copy of a document may be—
 - (a) a photocopy; or
 - (b) in an electronic form that the issuing party has indicated will be acceptable (and otherwise in PDF format on a CD-ROM).

Return or destruction of documents or copies

10. You may, at the time of production, inform the arbitral tribunal that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the arbitral tribunal, the arbitral tribunal may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. 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

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2–9R—Subpoena to attend for examination and produce documents

- (b) for an order with respect to any claim you may have for privilege, public interest immunity or confidentiality.

Loss or expense of compliance

13. 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

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

**Form 2–9S—Originating application for
order to give evidence or produce documents**

Rule 9.15

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR ORDER TO GIVE
EVIDENCE OR PRODUCE DOCUMENTS**

(Section 27B of the Commercial Arbitration 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name]*, being a party to an arbitration agreement, applies for an order under section 27B of the **Commercial Arbitration Act 2011** that *[identify person against whom order sought]* *attend before the Court for examination/*produce certain documents to the Court/*do certain things and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2–9S—Originating application for order to give evidence or produce documents

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 27B of the **Commercial Arbitration Act 2011** that [*identify person against whom order sought*] *attend before the Court for examination/*produce the following documents to the Court [*specify*]/*do the following things [*specify*];
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating—

1. the name of the person against whom the order is sought;
2. the order sought;
3. the ground under section 27B(1) of the **Commercial Arbitration Act 2011** relied on;
4. the terms of the permission given by the arbitral tribunal for the application; and
5. the material facts relied on.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9T—Originating application
to prohibit or allow disclosure of
confidential information**

Rule 9.16

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION TO *PROHIBIT/*ALLOW
DISCLOSURE OF CONFIDENTIAL INFORMATION**

*(*Section 27H/*Section 27I of the Commercial Arbitration Act 2011)*

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: [*name*] of [*address*]

The applicant [*name*], being a party to an arbitration agreement, applies for an order under section *27H/*27I of the **Commercial Arbitration Act 2011** *prohibiting/*allowing the disclosure of confidential information and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [insert address], Melbourne on [insert date] at [insert time] or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to [Court to insert date].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section *27H/*27I of the **Commercial Arbitration Act 2011** that the disclosure of confidential information [insert details of the confidential information] be *prohibited/*allowed *absolutely/*on the following terms [insert any terms sought];
2. [State briefly but specifically any other relief sought].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating—

1. the name of the person against whom the order is sought;
2. the order sought;
3. the material facts relied on; and
- *4. [For an application under section 27H] the terms of the order of the arbitral tribunal allowing disclosure of the information and the date the order was made.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9T—Originating application to prohibit or allow disclosure of
confidential information

*4. [For an application under section 27I]—

*the date the arbitral tribunal's mandate was terminated.

*the date and terms—

(a) of the request made to the arbitral tribunal for disclosure of the confidential information; and

(b) of the arbitral tribunal's refusal to make the order.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9U—Originating application for
order under certain miscellaneous provisions
of the Commercial Arbitration Act 2011**

Rule 9.17

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR ORDER UNDER
CERTAIN MISCELLANEOUS PROVISIONS OF THE
COMMERCIAL ARBITRATION ACT 2011**

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT:

The applicant [*name*], being a party to an arbitration agreement, applies for an order under section 11(3), 11(4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 of the **Commercial Arbitration Act 2011** [*delete whichever is inapplicable*] that [*specify details of the order sought*] and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2-9U—Originating application for order under certain miscellaneous provisions of the Commercial Arbitration Act 2011

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2-1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [insert address], Melbourne on [insert date] at [insert time] or so soon afterwards as the business of the Court allows.

[If applicable] The Court has ordered that the time for serving this application be abridged to [Court to insert date].

FILED:

Prothonotary

ORDER SOUGHT

The applicant seeks—

1. an order under section 11(3), 11(4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 of the **Commercial Arbitration Act 2011** [delete whichever is inapplicable] that [specify details of order sought];
2. [State briefly but specifically any other relief sought].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit stating the material facts on which the claim for relief is based.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business]

SERVICE ON THE RESPONDENT

[Select one of these three options and delete the others]

*It is intended to serve this application *on the respondent/*all respondents.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018

Form 2-9U—Originating application for order under certain miscellaneous provisions of the Commercial Arbitration Act 2011

*It is intended to serve this application on the following respondents:

[insert name of each respondent on whom application is to be served].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by *[name]*
*[insert capacity: e.g. applicant,
lawyer for the applicant]*

*Delete if inapplicable.

**Form 2–9V—Originating application for
determination of a question of law**

Rule 9.18

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR DETERMINATION
OF A QUESTION OF LAW**

(Section 27J of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name]*, being a party to an arbitration agreement, applies under section 27J of the **Commercial Arbitration Act 2011** for leave to apply for the determination of a question of law arising in the course of an arbitration and, if leave is granted, for determination of that question of law and for the other relief set out in this application.

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2–1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

Arbitration subject of application to determine question of law

[*identify the arbitration to which the question relates*]

Question of law

[*set out succinctly the question of law*]

ORDERS SOUGHT

The applicant seeks—

1. an order under section 27J of the **Commercial Arbitration Act 2011** granting leave to apply for the determination of a question of law arising in the course of an arbitration and, if leave is granted, for determination of that question of law;
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by an affidavit—

1. exhibiting a copy of the arbitration agreement and evidence of the consent of all other parties to the determination of the question of law under section 27J of the **Commercial Arbitration Act 2011**; and

2. identifying—

- (a) the name and usual or last known place of residence or business of any person whose interest might be affected by the proposed determination of the question of law or, when that person is a company, its last known registered office or address for service in the arbitration;
- (b) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises;
- (c) the facts on the basis of which the question of law is to be determined and the basis on which those facts are stated, including whether they are agreed, assumed, found by the arbitral tribunal or otherwise; and
- (d) the detailed grounds on which it is contended that leave should be granted.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9W—Originating application to
set aside award**

Rule 9.19

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

ORIGINATING APPLICATION TO SET ASIDE AWARD

(Section 34 of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*.

The applicant *[name]*, being a party to an arbitration agreement, applies for an order under section 34 of the **Commercial Arbitration Act 2011** to set aside an award and for the other relief set out in this application. The applicant relies on *[identify subparagraphs of section 34(2)(a) or (b) of the Act relied on]*.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9W—Originating application to set aside award

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

HEARING

The application will be heard before in Court No....., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

Award subject of application to set aside

[*identify the award*]

ORDERS SOUGHT

The applicant seeks—

1. an order under section 34 of the **Commercial Arbitration Act 2011** setting aside the award;
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by an affidavit—

1. exhibiting a copy of the arbitration agreement and a copy of the award, including the reasons of the arbitral tribunal for the award; and
2. identifying—
 - (a) the detailed grounds for seeking the order;
 - (b) the material facts relied on; and
 - (c) the date on which the applicant received the award or, if a request was made under section 33 of the Act to the arbitral tribunal to correct the award, the date on which that request was disposed of by the arbitral tribunal.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9W—Originating application to set aside award

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9X—Originating application for
leave to appeal against award**

Rule 9.20

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

**ORIGINATING APPLICATION FOR LEAVE TO APPEAL
AGAINST AWARD**

(Section 34A of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name]*, being a party to an arbitration agreement, applies under section 34A of the **Commercial Arbitration Act 2011** for leave to appeal on a question of law arising out of an award and for the other relief set out in this application.

ACTION REQUIRED

You must file a notice of address for service (Form 2–1A) before taking any other step in the proceeding.

In accordance with section 34A(5) of the **Commercial Arbitration Act 2011**, the Court will determine the application for leave to appeal without a hearing unless it appears to the Court that a hearing is required.

Set out below are the details of this application and of the accompanying material relied on by the applicant. If you wish to oppose any of the orders or relief sought by the applicant, you must, within 14 days after service of this application on you or within such further time as the Court may allow, file and serve any answering material, including a succinct statement of any argument in opposition to the application for leave and the appeal if leave is granted.

FILED:

Prothonotary

A: Question of law to be determined

[set out succinctly the question of law to be determined].

B: Grounds on which it is alleged leave to appeal should be granted

[set out grounds in numbered paragraphs].

ORDERS SOUGHT

The applicant seeks—

1. an order under section 34A of the **Commercial Arbitration Act 2011** granting leave to appeal on a question of law arising out of the award referred to above;
2. if leave to appeal is granted, an order that the appeal be allowed and *[set out the substantive orders sought on the proposed appeal]*;
3. *[State briefly but specifically any other orders sought].*

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. an affidavit—
 - (a) showing that, before the end of the appeal period referred to in section 34A(1) and (6) of the **Commercial Arbitration Act 2011**, the parties agreed that an appeal may be made under section 34A of that Act; and

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9X—Originating application for leave to appeal against award

- (b) exhibiting a copy of the arbitration agreement and a copy of the award, including the reasons of the arbitral tribunal for the award; and
2. a submission setting out the matters referred to in Rule 9.20(5) of Chapter II of the Rules of the Supreme Court.

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant, lawyer for the applicant*]

*Delete if inapplicable.

**Form 2–9Y—Originating application
to enforce award**

Rule 9.21

IN THE SUPREME COURT
OF VICTORIA
AT
COMMERCIAL COURT
ARBITRATION LIST

S CI No.

BETWEEN

Applicant

AND

Respondent

ORIGINATING APPLICATION TO ENFORCE AWARD

(Section 35 of the Commercial Arbitration Act 2011)

Date of Document:

Filed on behalf of:

Prepared by:

Lawyer Code:

DX:

Tel:

Email:

Ref:

TO THE RESPONDENT: *[name]* of *[address]*

The applicant *[name of applicant]*, being a party to an arbitration agreement, applies for an order under section 35 of the **Commercial Arbitration Act 2011** to enforce an award and for the other relief set out in this application.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9Y—Originating application to enforce award

ACTION REQUIRED

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence and without further notice.

You must file a notice of address for service (Form 2-1A) before attending Court or taking any other steps in the proceeding.

HEARING

The application will be heard before in Court No., Supreme Court of Victoria, [*insert address*], Melbourne on [*insert date*] at [*insert time*] or so soon afterwards as the business of the Court allows.

[*If applicable*] The Court has ordered that the time for serving this application be abridged to [*Court to insert date*].

FILED:

Prothonotary

ORDERS SOUGHT

The applicant seeks—

1. an order under section 35 of the **Commercial Arbitration Act 2011** that the following award [*specify*] be enforced;
2. [*State briefly but specifically any other orders sought*].

ACCOMPANYING DOCUMENTS

This application is accompanied by—

1. the documents referred to in section 35 of the **Commercial Arbitration Act 2011**; and
2. an affidavit stating—
 - (a) the extent to which the award has not been complied with at the date the application is made; and
 - (b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-9Y—Originating application to enforce award

APPLICANT'S ADDRESS

The applicant's address for service is:

Place:

Email:

The applicant's address is [*if the applicant is an individual, place of residence or business; if the applicant is a company, principal place of business*]

SERVICE ON THE RESPONDENT

[*Select one of these three options and delete the others*]

*It is intended to serve this application *on the respondent/*all respondents.

*It is intended to serve this application on the following respondents:

[*insert name of each respondent on whom application is to be served*].

*It is not intended to serve this application on *the respondent/*any respondent.

Date:

.....
Signed by [*name*]
[*insert capacity: e.g. applicant,
lawyer for the applicant*]

*Delete if inapplicable.

Form 2–12A—Originating motion

Rule 12.10(1)(a)

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

The Juries Commissioner

Applicant

and

[*Name of person summoned*]

Respondent

ORIGINATING MOTION

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

FILED:

Prothonotary

The address for service of the applicant is—

TO THE RESPONDENT [*name and address*]

Form 2–12B—Affidavit in support of originating motion to deal with absent juror

Rule 12.10(1)(b)

[heading as in originating motion]

AFFIDAVIT IN SUPPORT OF ORIGINATING MOTION TO DEAL WITH ABSENT JUROR

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

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

OR

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

Sworn, etc.

*Delete if inapplicable.

Form 2–14—Oath of office and affirmation of office

Rule 14.04

OATH OF OFFICE

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

AFFIRMATION OF OFFICE

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

Form 2–15A—Application for certificate of eligibility

Rule 15.02

IN THE SUPREME COURT OF VICTORIA

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

and

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

APPLICATION FOR CERTIFICATE OF ELIGIBILITY

TO: The Victorian Legal Admissions Board

[insert address]

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

Date:

Signed:

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

MY DATE OF BIRTH is:

MY BUSINESS TELEPHONE NUMBER is:

AS REQUIRED, I SUPPLY THE FOLLOWING INFORMATION:

1. I am an Australian lawyer and am on the Supreme Court roll or on a Supreme Court roll as defined in the Legal Profession Uniform Law (Victoria).
2. I am **a/**the principal of a law practice (as defined in the Legal Profession Uniform Law (Victoria)), namely *[insert name]* and I carry on practice at the office of that law practice at *[address where applicant most often works]* [**The law practice also has offices in [identify location of other offices, if any] .*].
3. I have held for a period of *[number]* years an Australian practising certificate authorising me to engage in legal practice as a principal within the meaning of the Legal Profession Uniform Law (Victoria) [**and previous corresponding enactments]* and a certificate of standing issued by the Law Institute of Victoria is annexed.
4. I have completed a course of study related to notarial practice approved by the Victorian Legal Admissions Board, namely the course *[identify the course of study undertaken and completed]*, and

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-15A—Application for certificate of eligibility

a certificate from the [*name of institution*] that I have completed that course is annexed hereto.

5. If a certificate of eligibility is granted to me and I apply to be appointed as a public notary under the **Public Notaries Act 2001**, I wish to comply with Rule 15.06 of Chapter II of the Rules of the Supreme Court by *taking an oath/*making an affirmation.
6. [*Subject to paragraph 7,] I have never been suspended from practice or found guilty of professional misconduct or unsatisfactory professional conduct in this or any other jurisdiction and to the best of my knowledge and belief no complaint against me to any designated local regulatory authority as defined in the Legal Profession Uniform Law (Victoria) is pending either in Victoria or elsewhere.
- *7. I bring to the notice of the Board the facts set out in the document which is exhibited to my affidavit and I ask the Board to consider whether those facts adversely affect my application.

*Delete if inapplicable.

AFFIDAVIT OF VERIFICATION

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

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

*Sworn/*Affirmed, etc.

*Delete if inapplicable.

Form 2–15B—Certificate of eligibility

Rule 15.03

[heading as in Form 2–15A]

CERTIFICATE OF ELIGIBILITY

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

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

[or]

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

*dispensed with *[or]*

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

THE VICTORIAN LEGAL ADMISSIONS BOARD CERTIFIES THAT

[full name, address and occupation]

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

Dated:

Signed, for the Victorian Legal Admissions Board,
Members:

*Delete if inapplicable.

Form 2–15C—Affidavit in support of application for appointment

Rule 15.04

[heading as in Form 2–15A]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR APPOINTMENT

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

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

Sworn/Affirmed, etc.

**Delete if inapplicable.*

**Form 2–15D—Notice of intention to apply
for appointment as a public notary**

Rule 15.05

[heading as in Form 2–15A]

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

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

I am **a/**the principal of a law practice within the meaning of the Legal Profession Uniform Law (Victoria), namely *[insert name of law practice]* and I carry on practice at *[address]*.

Dated:

[Signed]

**Delete if inapplicable.*

Form 2–15E—Oath of office and affirmation of office—public notary

Rule 15.06

OATH OF OFFICE

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

AFFIRMATION OF OFFICE

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

Form 2–15F—Notification of particulars and specimen seal

Rule 15.07

[heading as in Form 2–15A]

NOTIFICATION OF PARTICULARS AND SPECIMEN SEAL

TO: the Prothonotary

AND TO: the Victorian Legal Services Board

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

My particulars are as follows:

Name:

Address:

Date of birth:

Firm Name:

Telephone No:

Facsimile No:

Email:

DX:

Dated:

Signed:

SPECIMEN
IMPRINT OF SEAL:

**Form 2–18A—Notice by employer
seeking judgment**

Rule 18.03(1)

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B. Plaintiff

and

C.D. Defendant

NOTICE BY EMPLOYER SEEKING JUDGMENT

TO THE PLAINTIFF AND

TO THE DEFENDANT

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

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

Dated:

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

FILED:

[*Schedule of payments to be attached*]

Form 2-18B—Notice of further payments

Rule 18.04

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

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

NOTICE OF FURTHER PAYMENTS

TO THE PLAINTIFF AND

TO THE DEFENDANT

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

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of further payments to be attached]

Form 2–18C—Notice of dispute

Rule 18.05(1)

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

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

NOTICE OF DISPUTE

TO THE DEFENDANT AND

TO THE EMPLOYER

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

Dated:

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

FILED:

Form 2–18D—Notice to reduce payments

Rule 18.07(1)

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

NOTICE TO REDUCE PAYMENTS

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

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

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

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of payments to be attached]

Form 2-18E—Notice of further payments

Rule 18.08

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

NOTICE OF FURTHER PAYMENTS

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

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

Dated:

[Signed by party or party's solicitor]

FILED:

[Schedule of further payments to be attached]

Form 2–18F—Notice to dispute

Rule 18.09(1)

IN THE SUPREME COURT

OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

NOTICE TO DISPUTE

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

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

Dated:

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

FILED:

Form 2–19A—Originating motion

Rule 19.02(1)

[heading as in Form 5A of Chapter I]

ORIGINATING MOTION

(WARDSHIP APPLICATION)

TO THE DEFENDANT

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

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

IF YOU INTEND TO DEFEND the proceeding—

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

FILED:

Prothonotary

Page 2

1. This originating motion was filed—

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

2. The address of the plaintiff is—

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

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

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-19A—Originating motion

4. The address of the defendant is—

*Delete if inapplicable.

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2-22A—Application to set aside order striking out appeal for failure to
appear

Reasons for application

The application is made on the grounds that the failure to appear was not due to fault or neglect on the applicant's part.

The reasons are: [*give details*]

Date:

[*Signature of Applicant/
Applicant's legal practitioner*]

The filing of this application does not stay the original order.

LISTING OF APPLICATION

This application is listed for hearing before the Supreme Court at [*place*] at [*time*] on [*date*].

Date:

Prothonotary

*Delete if inapplicable.

Form 2–23A—Originating motion

Rule 23.03(1) and (4)

IN THE SUPREME COURT OF VICTORIA

AT MELBOURNE

COMMON LAW DIVISION

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

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

A.B. Plaintiff(s)

and

C.D. Defendant(s)

ORIGINATING MOTION

TO: the Defendant(s)

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

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

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

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

FILED: [*date*]

PROTHONOTARY

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

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Form 2–23A—Originating motion

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

Form 2–23B—Summons for directions

Rule 23.04

[heading as in Form 2–23A]

SUMMONS FOR DIRECTIONS

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

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

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

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

FILED: *[date]*.

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

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Schedule 1—Revoked statutory rules

Schedule 1—Revoked statutory rules

Rule 1.04

<i>S.R. No.</i>	<i>Title</i>
94/2008	Chapter II of the Rules of the Supreme Court, the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008
42/2009	Supreme Court (Chapter II Amendment No. 2) Rules 2009
208/2014	Supreme Court (Chapters II and III Family Provision and Other Matters Amendment) Rules 2014
142/2015	Supreme Court (Chapter II Legal Profession Amendments) Rules 2015
14/2016	Supreme Court (Appeals to the Court of Appeal and Other Amendments) Rules 2016
15/2017	Supreme Court (E-Filing Amendments) Rules 2017
97/2017	Supreme Court (Chapters I and II Amendment) Rules 2017

Dated: 17 May 2018

ANNE FERGUSON, *C.J.*

CHRISTOPHER MAXWELL, P.

PAMELA TATE, J.A.

R. S. OSBORN, J.A.

SIMON P. WHELAN, J.A.

J. G. SANTAMARIA, J.A.

DAVID F. R. BEACH, J.A.

STEPHEN KAYE, J.A.

S. G. E. McLEISH, J.A.

KIM HARGRAVE, J.A.

KEVIN H. BELL, J.

ANTHONY CAVANOUGH, J.

TERRY FORREST, J.

KARIN EMERTON, J.

CLYDE CROFT, J.
M. L. SIFRIS, J.
PETER ALMOND, J.
JOHN R. DIXON, J.
C. MACAULAY, J.
KATE McMILLAN, J.
GREG GARDE, J.
JAMES D. ELLIOTT, J.
T. J. GINNANE, J.
MELANIE SLOSS, J.
M. J. CROUCHER, J.
MICHAEL McDONALD, J.
RITA ZAMMIT, J.
P. J. RIORDAN, J.
JANE A. DIXON, J.
A. J. KEOGH, J.
MICHELLE QUIGLEY, J.
J. R. CHAMPION, J.
M. N. CONNOCK, J.
MELINDA RICHARDS, J

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Supreme Court (Miscellaneous Civil Proceedings) Rules 2018, S.R. No. 57/2018 were made on 17 May 2018 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986 and came into operation on 23 July 2018: rule 1.03.

The Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 will sunset 10 years after the day of making on 17 May 2028 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
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1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018
S.R. No. 57/2018
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 by statutory rules, subordinate instruments and Acts.

Supreme Court (Chapters II and III Miscellaneous Amendments) Rules 2019,
S.R. No. 19/2019

<i>Date of Making:</i>	21.3.19
<i>Date of Commencement:</i>	Rule 4 on 25.3.19; rule 3

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ Note to Rule 8.15(1): S.R. No. 44/2010.