

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Court Procedures Rules 2006

Subordinate Law SL2006-

(in 3 volumes)

Volume 2

Contents

Chapter 2, part 2.18 to chapter 4

EXPOSURE DRAFT

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Court Procedures Rules 2006

Subordinate Law SL2006-

We, members of the rule-making committee, make the following rules of court under the *Court Procedures Act 2004*, section 7.

Dated 2006.

Chief Justice

Chief Magistrate

President of the Court of Appeal

Magistrate

Judge

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Court Procedures Rules 2006

Subordinate Law SL2006-

made under the

Court Procedures Act 2004

Outline contents

	Page
Chapter 1 Preliminary	1
Chapter 2 Civil proceedings generally	9
Part 2.1 Introductory provisions—ch 2	9
Part 2.2 Starting civil proceedings	12

	Page
Division 2.2.1	How civil proceedings are started 12
Division 2.2.2	Originating claims 23
Division 2.2.3	Originating applications 29
Division 2.2.4	Rules about originating process 34
Part 2.3	Notice of intention to respond and defence 39
Division 2.3.1	Notice of intention to respond and defence—general 39
Division 2.3.2	Notice of intention to respond and defence—proceedings in Supreme Court for possession of land 51
Part 2.4	Parties and proceedings 54
Division 2.4.1	Including causes of action 54
Division 2.4.2	Including and substituting parties 56
Division 2.4.3	Changing parties 64
Division 2.4.4	Included or changed parties—future conduct of proceedings 69
Division 2.4.5	Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1 72
Division 2.4.6	Representation—trustees and personal representatives 74
Division 2.4.7	Representation—numerous concurrent interests 78
Division 2.4.8	Multiple proceedings 80
Division 2.4.9	People with a legal disability 82
Division 2.4.10	Partnerships 87
Division 2.4.11	Business names 89
Part 2.5	Third-party and similar proceedings 92
Part 2.6	Pleadings 108
Division 2.6.1	Application—pt 2.6 108
Division 2.6.2	Rules of pleading 109

EXPOSURE DRAFT

	Page
Division 2.6.3	Pleadings—general 120
Division 2.6.4	Particulars 122
Division 2.6.5	Answering pleadings 125
Division 2.6.6	Special defences 130
Division 2.6.7	Counterclaims 132
Division 2.6.8	Progress of pleading 140
Division 2.6.9	Admissions 143
Part 2.7	Amendment 146
Part 2.8	Disclosure 155
Division 2.8.1	Interpretation—pt 2.8 155
Division 2.8.2	Disclosure of documents 157
Division 2.8.3	Production and inspection 166
Division 2.8.4	Interrogatories 170
Division 2.8.5	Who may verify list of documents or answers to interrogatories? 177
Division 2.8.6	Preliminary discovery 179
Division 2.8.7	Non-party production 185
Division 2.8.8	Discovery—other provisions 190
Part 2.9	Preservation of rights and property 195
Division 2.9.1	Interpretation—pt 2.9 195
Division 2.9.2	Interim preservation, distribution and payment 195
Division 2.9.3	Inspection, detention, custody and preservation of property 199
Division 2.9.4	Injunctions and similar orders 203
Subdivision 2.9.4.1	Injunctions and similar orders—generally 203
Subdivision 2.9.4.2	Freezing orders 208

EXPOSURE DRAFT

	Page
Subdivision 2.9.4.3 Search orders	214
Division 2.9.5 Receivers	220
Division 2.9.6 Sales of land by court order	226
Part 2.10 Payment into court	229
Part 2.11 Resolving proceedings early	244
Division 2.11.1 Uncontested debts and liquidated demands	244
Division 2.11.2 Default by plaintiff	247
Division 2.11.3 Default by defendant	248
Division 2.11.4 Default by defendant—partial defence	264
Division 2.11.5 Summary judgment	268
Division 2.11.6 Discontinuance and withdrawal	274
Division 2.11.7 Mediation and neutral evaluation	279
Part 2.12 Expert evidence	284
Division 2.12.1 Expert evidence generally	284
Division 2.12.2 Multiple expert witnesses for same issue	286
Division 2.12.3 Appointment of medical expert for Civil Law (Wrongs) Act	290
Division 2.12.4 Expert reports	297
Part 2.13 Pre-trial procedures	301
Part 2.14 Court supervision	320
Division 2.14.1 Directions	320
Division 2.14.2 Failure to comply with rules or order	325
Part 2.15 Trial	329
Division 2.15.1 Interpretation—pt 2.15	329

EXPOSURE DRAFT

	Page
Division 2.15.2	Proceedings at trial 329
Division 2.15.3	Separate decisions on questions 333
Division 2.15.4	Assessors and court-appointed referees 335
Division 2.15.5	Assessment of damages 341
Part 2.16	Judgments and other orders 344
Part 2.17	Costs 360
Division 2.17.1	Costs generally 360
Division 2.17.2	Entitlement to costs 366
Division 2.17.3	Costs of party in proceeding 378
Division 2.17.4	Costs—registrar’s powers and discretion 383
Division 2.17.5	Procedure for assessing costs 384
Division 2.17.6	Procedure on costs assessment 394
Division 2.17.7	Reconsideration and review of costs assessment 398
Division 2.17.8	Security for costs 402
Division 2.17.9	Miscellaneous—pt 2.17 406
Part 2.18	Enforcement 407
Division 2.18.1	Enforcement—general 407
Division 2.18.2	Enforcement orders—general 425
Division 2.18.3	Enforcement of money orders—enforcement hearings 433
Division 2.18.4	Enforcement of money orders—instalment orders 448
Division 2.18.5	Enforcement of money orders—seizure and sale orders 462
Division 2.18.6	Enforcement of money orders—debt redirection orders generally 492
Division 2.18.7	Enforcement of money orders—regular redirections from financial institutions 505

EXPOSURE DRAFT

	Page	
Division 2.18.8	Enforcement of money orders—earnings redirection orders	513
Division 2.18.9	Enforcement of money orders—charging orders	529
Division 2.18.10	Enforcement of money orders—amounts in court and stop orders	535
Division 2.18.11	Enforcement of money orders—receivers	537
Division 2.18.12	Enforcement of non-money orders—general	540
Division 2.18.13	Enforcement of non-money orders—orders for delivery of possession of land	548
Division 2.18.14	Enforcement of non-money orders—orders for seizure and delivery of goods	550
Division 2.18.15	Enforcement of non-money orders—orders for seizure and detention of property	552
Division 2.18.16	Enforcement—contempt	553
Division 2.18.17	Enforcement—arrest warrants for absconding defendants	559
Part 2.19	Interpleader proceedings	569
Division 2.19.1	Stakeholder’s interpleader	569
Division 2.19.2	Enforcement officer’s interpleader	570
Division 2.19.3	Interpleader orders	574
Part 2.20	Trusts, estates, accounts and inquiries	579
Division 2.20.1	Trusts and estates	579
Division 2.20.2	Taking of accounts	581
Division 2.20.3	Making of inquiries	589
Part 2.21	Representation by solicitors	591
Part 2.22	Miscellaneous—ch 2	599

EXPOSURE DRAFT

	Page
Chapter 3	Particular civil proceedings 604
Part 3.1	Administration and probate 604
Division 3.1.1	Administration and probate—general 604
Division 3.1.2	Application for grant of representation 605
Division 3.1.3	Application for reseal of foreign grant 615
Division 3.1.4	Validity and form of wills 618
Division 3.1.5	Small estates 623
Division 3.1.6	Administration bonds 625
Division 3.1.7	Administration by public trustee 631
Division 3.1.8	Caveats 635
Division 3.1.9	Revocation of grant 640
Division 3.1.10	Contested probate proceedings 642
Division 3.1.11	Executors, administrators and trustees—accounts and commission 646
Division 3.1.12	Miscellaneous 656
Part 3.2	Adoption 662
Division 3.2.1	Adoption—general 662
Division 3.2.2	Adoption orders 663
Division 3.2.3	Orders for dispensing with consent to adoption 669
Division 3.2.4	Amendment of adoption order 671
Division 3.2.5	Discharge of interim orders and adoption orders 673
Division 3.2.6	Access to identifying information 674
Division 3.2.7	Adoption proceedings—general procedures 675
Part 3.3	Commercial arbitration 676
Part 3.4	Corporations Act and ASIC Act 684

EXPOSURE DRAFT

		Page
Part 3.5	Cross-vesting	685
Part 3.6	Electoral matters	692
Division 3.6.1	Electoral matters—general	692
Division 3.6.2	Disputed elections	694
Division 3.6.3	Questions referred by Legislative Assembly	700
Division 3.6.4	Electoral matters—general procedure	700
Part 3.7	Foreign and interstate confiscation orders— registration	701
Division 3.7.1	Foreign confiscation orders—registration	701
Division 3.7.2	Interstate confiscation orders—registration	704
Part 3.8	Foreign judgments—reciprocal enforcement	707
Part 3.9	Habeas corpus	715
Part 3.10	Judicial review	719
Part 3.11	Legal profession	734
Division 3.11.1	Legal profession—general	734
Division 3.11.2	Admission of local lawyers	735
Part 3.12	Small Claims Court	742
Division 3.12.1	Small Claims Court—preliminary	742
Division 3.12.2	Small Claims Court—starting proceeding	743
Division 3.12.3	Small Claims Court—admission of liability	750
Division 3.12.4	Small Claims Court—no response to claim	752
Division 3.12.5	Small Claims Court—disputed claim	754
Division 3.12.6	Small Claims Court—conferences	755

EXPOSURE DRAFT

	Page
Division 3.12.7	Small Claims Court—inquiries 760
Division 3.12.8	Small Claims Court—transfer of proceedings between courts 763
Division 3.12.9	Small Claims Court—general provisions 765
Division 3.12.10	Small Claims Court—orders 770
Part 3.13	Workers compensation 777
Division 3.13.1	Workers compensation proceedings—general 777
Division 3.13.2	Workers compensation—applications for arbitration 780
Division 3.13.3	Workers compensation—parties for arbitration 786
Division 3.13.4	Workers compensation—representation in arbitrations 789
Division 3.13.5	Workers compensation—listing procedure for arbitrations 790
Division 3.13.6	Workers compensation—medical reports for arbitrations 792
Division 3.13.7	Workers compensation—medical referees for arbitrations 796
Division 3.13.8	Workers compensation—case management meeting for arbitrations 799
Division 3.13.9	Workers compensation—conduct of arbitration 803
Division 3.13.10	Workers compensation—submission to award and payments into court 806
Division 3.13.11	Workers compensation—awards 812
Division 3.13.12	Workers compensation—registered agreements 814
Division 3.13.13	Workers compensation—costs 816
Division 3.13.14	Workers compensation—appeals 817
Chapter 4	Criminal proceedings 819

EXPOSURE DRAFT

		Page
Part 4.1	Criminal proceedings—general	819
Division 4.1.1	Criminal proceedings—application of ch 2	819
Division 4.1.2	Criminal proceedings—service	820
Division 4.1.3	Enforcement	823
Part 4.2	Magistrates Court criminal proceedings	826
Division 4.2.1	Magistrates Court criminal proceedings—preliminary	826
Division 4.2.2	Magistrates Court criminal proceedings—setting aside orders	826
Division 4.2.3	Magistrates Court criminal proceedings—witnesses	831
Part 4.3	Supreme Court criminal proceedings	833
Division 4.3.1	Supreme Court criminal proceedings—preliminary	833
Division 4.3.2	Supreme Court criminal proceedings—representation	834
Division 4.3.3	Supreme Court criminal proceedings—bail	839
Division 4.3.4	Supreme Court criminal proceedings—pre-trial procedure	843
Division 4.3.5	Supreme Court criminal proceedings—pre-trial applications	848
Division 4.3.6	Supreme Court criminal proceedings—other provisions	851
Chapter 5	Appellate proceedings	857
Part 5.1	Appeals to court other than Court of Appeal	857
Part 5.2	Appeals to Court of Appeal from Supreme Court	885
Division 5.2.1	Interpretation—pt 5.2	885
Division 5.2.2	Leave to appeal to Court of Appeal from interlocutory judgments of Supreme Court	885

EXPOSURE DRAFT

	Page	
Division 5.2.3	Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court	888
Division 5.2.4	Appeals to Court of Appeal from Supreme Court generally	891
Division 5.2.5	Appeals to Court of Appeal against convictions and sentences	915
Subdivision 5.2.5.1	Appeals to Court of Appeal against convictions and sentences—interpretation	915
Subdivision 5.2.5.2	Leave to appeal to Court of Appeal out of time against convictions and sentences—convicted person	917
Subdivision 5.2.5.3	Leave to appeal to Court of Appeal out of time against sentence—director of public prosecutions	920
Subdivision 5.2.5.4	Additional rules for appeals to Court of Appeal against convictions and sentences	921
Division 5.2.6	Written cases	929
Division 5.2.7	Miscellaneous—pt 5.2	936
Part 5.3	Orders to review certain decisions of Magistrates Court by Supreme Court	943
Part 5.4	Reference appeals	946
Division 5.4.1	Reference appeals to Supreme Court	946
Division 5.4.2	Reference appeals to Court of Appeal following acquittals on indictment	946
Part 5.5	Cases stated	951
Division 5.5.1	Questions referred to Supreme Court	951
Division 5.5.2	Cases stated and questions reserved to Court of Appeal	955
Chapter 6	General rules for all proceedings	958

EXPOSURE DRAFT

	Page
Part 6.1	Introductory provisions—ch 6 958
Part 6.2	Applications in proceedings 959
Part 6.3	Documents 968
Division 6.3.1	General provisions about documents for filing 968
Division 6.3.2	Filing documents 974
Division 6.3.3	Rejecting filed documents 980
Part 6.4	Master 984
Part 6.5	Registrar 987
Part 6.6	Registry 997
Part 6.7	Time 1001
Part 6.8	Service 1003
Division 6.8.1	Service—preliminary 1003
Division 6.8.2	Personal service 1004
Division 6.8.3	Service—Magistrates Court 1004
Division 6.8.4	Ordinary service 1008
Division 6.8.5	Service—particular cases 1009
Division 6.8.6	Time of service 1018
Division 6.8.7	Service—other 1019
Division 6.8.8	Service of subpoenas and notices instead of subpoenas— general 1028
Division 6.8.9	Service outside Australia—general 1030
Division 6.8.10	Service of subpoenas in New Zealand 1050
Division 6.8.11	Service of foreign legal process in the ACT 1057

EXPOSURE DRAFT

		Page
Part 6.9	Subpoenas	1060
Part 6.10	Evidence	1074
Division 6.10.1	General—pt 6.10	1074
Division 6.10.2	Affidavits	1078
Division 6.10.3	Exchange of correspondence before making application in proceeding	1090
Division 6.10.4	Notices under Commonwealth Evidence Act	1094
Division 6.10.5	Exhibits, documents and things	1096
Division 6.10.6	Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link	1103
Division 6.10.7	Taking evidence from New Zealand by video link or telephone	1105
Division 6.10.8	Taking evidence otherwise than at trial	1107
Division 6.10.9	Taking evidence for Australian and foreign courts and tribunals	1125
Part 6.11	Miscellaneous—ch 6	1134
Chapter 7	Transitional	1137
Schedule 1	Expert witness code of conduct	1138
Schedule 2	Interest rates	1141
Part 2.1	Interest up to judgment	1141
Part 2.2	Interest after judgment	1144
Schedule 3	Costs amount—debts and liquidated demands	1146

EXPOSURE DRAFT

Outline contents

		Page
Part 3.1	Claim for debt or liquidated demand	1146
Part 3.2	Default judgment	1147
Schedule 4	Scale of costs	1148
Part 4.1	Scale of costs—general	1148
Part 4.2	Scale of costs—items	1154
Schedule 5	Jurisdiction exercisable by registrar	1169
Part 5.1	Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar	1169
Part 5.2	Jurisdiction related to Corporations Act exercisable by Supreme Court registrar	1177
Part 5.3	Jurisdiction related to ASIC Act exercisable by Supreme Court registrar	1194
Schedule 6	Corporations Rules	1195
Part 6.1	Preliminary—sch 6, pt 6.1	1195
Part 6.2	Proceedings generally	1200
Part 6.3	Compromises and arrangements in relation to Part 5.1 bodies	1210
Part 6.4	Receivers and other controllers of corporation property (Corporations Act, pt 5.2)	1213
Part 6.5	Winding-up proceedings (including oppression proceedings where winding-up is sought)	1214
Part 6.6	Provisional liquidators (Corporations Act, pt 5.4B)	1219
Part 6.7	Liquidators	1221
Part 6.8	Special managers (Corporations Act, pt 5.4B)	1229

EXPOSURE DRAFT

		Page
Part 6.9	Remuneration of office-holders	1231
Part 6.10	Winding-up generally	1243
Part 6.11	Examinations and orders (Corporations Act, pt 5.9, divs 1 and 2)	1245
Part 6.12	Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C 6D and 7) and securities (Corporations Act, ch 7)	1252
Part 6.13		1254
Part 6.14	Powers of courts (Corporations Act, pt 9.5)	1255
Part 6.15	Proceedings under ASIC Act	1257
Part 6.16		1258
Dictionary		1260

EXPOSURE DRAFT

Contents

Page

Chapter 1 Preliminary

1	Name of rules	1
2	Commencement	1
3	Overview of rules	1
4	Application of rules	3
5	References to <i>court, judicial officer</i> etc	3
6	Dispensing with rules	5
7	Dictionary	7
8	Notes	7

Chapter 2 Civil proceedings generally

Part 2.1 Introductory provisions—ch 2

20	Meaning of <i>plaintiff</i> and <i>defendant</i>	9
21	Purpose of ch 2 etc	10
22	Application—ch 2	11

Part 2.2 Starting civil proceedings

Division 2.2.1 How civil proceedings are started

30	Who may start and carry on a proceeding	12
31	Kinds of originating processes	14
32	When civil proceeding starts	14
33	When originating claim must be used	15
34	When originating application must be used	15
35	When originating application may be used	16
36	When originating application taken to be used	18

EXPOSURE DRAFT

	Page	
37	When oral originating application may be made in Supreme Court	19
38	Proceeding incorrectly started by originating claim	20
39	Proceeding incorrectly started by originating application	21
40	Setting aside originating process etc	22
Division 2.2.2 Originating claims		
50	Originating claim—content etc	23
51	Originating claim—additional matters for claims for debt and liquidated demands	25
52	Originating claim—statement of claim for motor vehicle death and personal injury claims	25
53	Originating claim—statement of claim for employment death and personal injury claims	27
54	Originating claim—filing and service	28
Division 2.2.3 Originating applications		
60	Originating application—content etc	29
61	Originating application—filing and service	30
62	When originating application must be served	32
63	What happens if originating application not served in time	33
64	Originating application—filing and service of supporting affidavits	34
Division 2.2.4 Rules about originating process		
70	Originating process to be sealed	34
71	Numbering etc of proceedings	34
72	Originating process—solicitor's statement about filing	35
73	Defendant taken to be served by filing notice of intention to respond or defence	36
74	Originating process—duration and renewal	36
75	When proceeding struck out	37
76	Reinstating struck out proceeding	38

EXPOSURE DRAFT

Part 2.3	Notice of intention to respond and defence	
Division 2.3.1	Notice of intention to respond and defence—general	
100	No step without notice of intention to respond or defence	39
101	Notice of intention to respond or defence—details to be included	40
102	Notice of intention to respond or defence—filing and service	41
103	Notice of intention to respond or defence—late filing or service	43
104	Ground of defence arising after defence filed etc	43
105	Defence—reliance on defence not disclosed	44
106	Defendant may submit to judgment by notice of intention to respond	44
107	Notice of intention to respond or defence—several defendants with same solicitor	46
108	Notice of intention to respond or defence—person sued under partnership name	47
109	Notice of intention to respond or defence—incorrectly served as partner	48
110	Notice of intention to respond or defence—person sued under business name	49
111	Conditional notice of intention to respond	50
Division 2.3.2	Notice of intention to respond and defence—proceedings in Supreme Court for possession of land	
150	Application—div 2.3.2	51
151	Proceeding for possession of land—leave to file defence etc	51
152	Proceeding for possession of land—filing defence etc	52
153	Proceeding for possession of land—service of defence etc	53
Part 2.4	Parties and proceedings	
Division 2.4.1	Including causes of action	
200	Including causes of action	54
201	Joint and separate claims	54
202	Including causes of action inconveniently etc	55

EXPOSURE DRAFT

	Page
Division 2.4.2 Including and substituting parties	
210 Necessary parties	56
211 Including parties—common issues of law or fact	57
212 Including parties—defendants may be sued jointly, severally, or in alternative	58
213 Including parties—joint entitlement	58
214 Including parties—joint or several liability	59
215 Including parties—plaintiff in doubt about defendant etc	59
216 Including defendants—identical interest in relief unnecessary	59
217 Including parties inconveniently etc	60
218 Including parties—parties incorrectly included or not included	61
219 Counterclaim or set-off when co-plaintiff wrongly included	61
220 Court may include party if proper or necessary	62
221 Plaintiffs may be included or substituted	62
222 Inclusion or substitution as plaintiff requires agreement	63
223 Including parties—procedure	63
224 Including parties—inclusion to recover costs	64
Division 2.4.3 Changing parties	
230 Removing parties	64
231 Party becomes bankrupt, dies or becomes person with mental disability	65
232 Amending or setting aside order for new party made on death etc of party	67
233 Failure to proceed after death of party	68
Division 2.4.4 Included or changed parties—future conduct of proceedings	
240 Application—div 2.4.4	69
241 Included or substituted defendant—filing and service of amended originating process	69
242 Included or substituted parties—date proceeding taken to start	70
243 Included or substituted parties—effect of action previously taken in proceeding	70

EXPOSURE DRAFT

	Page	
244	Included or changed parties—other orders about future conduct of proceeding	71
Division 2.4.5 Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1		
250	One proceeding for benefit of members of deceased person's family	72
251	Orders in proceedings for compensation to relatives in death claims	72
Division 2.4.6 Representation—trustees and personal representatives		
255	Application—div 2.4.6	74
256	Representation—by trustees and personal representatives	74
257	Representation—trustees and personal representatives must be parties	75
258	Representation—beneficiaries and claimants	75
259	Representation—proceeding about administration of deceased person's estate or trust property	76
260	Representation—orders bind represented people in estate or trust proceeding	77
261	Representation—interests of deceased person's estate	77
Division 2.4.7 Representation—numerous concurrent interests		
265	Application—div 2.4.7	78
266	Representation—numerous concurrent interests	79
267	Orders in div 2.4.7 proceeding bind represented people	79
Division 2.4.8 Multiple proceedings		
270	Consolidation etc of proceedings	80
Division 2.4.9 People with a legal disability		
275	Person with legal disability—litigation guardian to start proceeding etc	82
276	Who may be litigation guardian	83
277	Litigation guardian—liability for costs	84
278	Becoming a litigation guardian	84
279	Person with legal disability—effect of no notice of intention to respond or defence	85
280	Litigation guardian—appointment and removal by court	86

EXPOSURE DRAFT

	Page
281	Litigation guardian—accounts 87
Division 2.4.10 Partnerships	
285	Meaning of <i>partnership proceeding</i> —div 2.4.10 87
286	Proceeding in partnership name 88
287	Disclosure of partners' names 88
Division 2.4.11 Business names	
290	Proceeding in registered business name 89
291	Proceeding in business name if unregistered etc 89
292	Business names—amendment about parties 90
Part 2.5 Third-party and similar proceedings	
300	Purpose—pt 2.5 92
301	When a third-party proceeding starts 92
302	Third-party proceeding—when available 92
303	Third-party notice—content etc 93
304	Third-party notice—additional matters for claims for debt and liquidated demands 95
305	Third-party notice—statement of claim for certain personal injury claims 95
306	Third-party notice—filing 96
307	Third-party notice—sealing 97
308	Third-party notice—service 97
309	Third-party notice—effect of service on third party 98
310	Third-party notice—setting aside 98
311	Third-party notice—notice of intention to respond and defence 99
312	Service of pleadings after filing of third-party notice 99
313	Counterclaim by third party 99
314	Third-party notice—default by third party 100
315	Third parties—disclosure 101
316	Third-party notice—hearing 101

EXPOSURE DRAFT

	Page	
317	Third party—extent bound by judgment between plaintiff and defendant	102
318	Third-party notice—judgment between defendant and third party	103
319	Notice claiming contribution or indemnity against another defendant	103
320	Notice claiming contribution or indemnity—filing and service etc	105
321	Contribution under Civil Law (Wrongs) Act, s 21	106
322	Third-party notice—fourth and subsequent parties	106
Part 2.6	Pleadings	
Division 2.6.1	Application—pt 2.6	
400	Application—pt 2.6	108
Division 2.6.2	Rules of pleading	
405	Pleadings—formal requirements	109
406	Pleadings—statements in	110
407	Pleadings—matters to be specifically pleaded	110
408	Pleadings—money claims short form	113
409	Pleadings—certain facts need not be pleaded	115
410	Pleadings—technical objections	115
411	Pleadings—references to spoken words and documents	115
412	Pleadings—conditions precedent	116
413	Pleadings—matters arising after start of proceeding	116
414	Pleadings—inconsistent allegations etc	117
415	Pleadings—notice pleaded as a fact	117
416	Pleadings—implied contracts or relations	118
417	Pleadings—kind of damages etc	118
418	Pleadings—amount of unliquidated damages	119
419	Pleadings—other relief	119
Division 2.6.3	Pleadings—general	
425	Pleadings—striking out	120
426	Pleadings—trial without	121

EXPOSURE DRAFT

	Page
Division 2.6.4 Particulars	
430 Pleadings—all necessary particulars must be included	122
431 Pleadings—use of ‘Scott schedule’	122
432 Pleadings—negligence and breach of statutory duty	123
433 Pleadings—how particulars must be given	124
434 Pleadings—application for better particulars	124
435 Pleadings—failure to comply with better particulars order	125
Division 2.6.5 Answering pleadings	
440 Pleadings—answering	125
441 Pleadings—denials and non-admissions	126
442 Pleadings—defence to debt and liquidated demand claims	127
443 Pleadings—defence to motor vehicle and employment personal injuries claims	127
444 Pleadings—defence to proceeding on bill of exchange etc	128
445 Pleadings—denial of representative capacity or partnership constitution	128
446 Pleadings—denial of contract	129
447 Pleadings—allegations admitted unless denied etc	129
448 Pleadings—unreasonable denials and non-admissions	130
449 Pleadings—confession of defence	130
Division 2.6.6 Special defences	
455 Pleadings—defence of tender	130
456 Pleadings—defence of set-off	131
Division 2.6.7 Counterclaims	
460 Counterclaim—cause of action arising after start of proceeding	132
461 Counterclaim—against plaintiff	132
462 Counterclaim—against additional party	133
463 Counterclaim—abandonment of excess in Magistrates Court	135
464 Counterclaim—pleading	135
465 Counterclaim—plaintiff may rely on previous pleadings	136
466 Counterclaim—answer to	136

EXPOSURE DRAFT

	Page	
467	Counterclaim—defence arising after answer	136
468	Counterclaim—effect of no answer	137
469	Counterclaim—response to answer	137
470	Counterclaim—conduct and pleading	138
471	Counterclaim—order for separate hearing	139
472	Counterclaim—after judgment etc in original proceeding	139
473	Counterclaim—judgment for balance	140
474	Counterclaim—stay of claim	140
Division 2.6.8 Progress of pleading		
480	Pleadings—reply to defence	140
481	Pleadings—after reply	141
482	Pleadings—joinder of issue	142
483	Pleadings—close	142
Division 2.6.9 Admissions		
490	Admissions—voluntary admission	143
491	Admissions—notice to admit facts or documents	143
492	Admissions—withdrawal	144
493	Admissions—orders on	144
Part 2.7 Amendment		
500	Application—pt 2.7	146
501	Amendment—when must be made	146
502	Amendment—of documents	146
503	Amendment—after limitation period	147
504	Amendment—of originating process	149
505	Amendment—of pleadings before close of pleadings	149
506	Amendment—of pleadings disallowed	149
507	Amendment—of pleadings after close of pleadings	150
508	Amendment—when leave to amend ceases to have effect	150
509	Amendment—procedure	150
510	Amendment—person required to make	152

EXPOSURE DRAFT

	Page
511	152
512	153
513	153
514	154
515	154
Part 2.8	Disclosure
Division 2.8.1	Interpretation—pt 2.8
600	155
601	156
Division 2.8.2	Disclosure of documents
605	157
606	159
607	161
608	162
609	164
610	165
611	165
Division 2.8.3	Production and inspection
620	166
621	168
622	169
623	170
Division 2.8.4	Interrogatories
630	170
631	171
632	172
633	174
634	175
635	176

EXPOSURE DRAFT

	Page
636	Tendering of answers to interrogatories in evidence 176
Division 2.8.5 Who may verify list of documents or answers to interrogatories?	
640	Answers by governments, corporations etc 177
641	Party cannot swear affidavit personally 178
Division 2.8.6 Preliminary discovery	
650	Discovery to identify potential defendant 179
651	Discovery to identify right to claim relief 182
652	Order under div 2.8.6—privilege 184
653	Order under div 2.8.6—costs 184
Division 2.8.7 Non-party production	
660	Notice for non-party production—issue 185
661	Notice for non-party production—service 186
662	Notice for non-party production—inspection by other parties 186
663	Notice for non-party production—application to set aside 187
664	Notice for non-party production—privilege or objection 187
665	Notice for non-party production—failure to produce documents 188
666	Notice for non-party production—copying produced documents 189
667	Notice for non-party production—costs 189
Division 2.8.8 Discovery—other provisions	
670	Contravention of pt 2.8 order—contempt of court 190
671	Contravention of pt 2.8 order—other action 191
672	Solicitor to notify party of certain matters about pt 2.8 191
673	Improper use of disclosed document 192
674	Failure to disclose document 193
675	Discovery by electronic means—practice notes 194
Part 2.9 Preservation of rights and property	
Division 2.9.1 Interpretation—pt 2.9	
700	Meaning of <i>usual undertaking as to damages</i> —pt 2.9 195

EXPOSURE DRAFT

	Page
Division 2.9.2 Interim preservation, distribution and payment	
705 Application—div 2.9.2	195
706 Urgent orders before start of proceeding	196
707 Interim distribution	197
708 Interim income	198
709 Payment before finding out everyone interested	198
Division 2.9.3 Inspection, detention, custody and preservation of property	
715 Inspection, detention, custody and preservation of property—orders etc	199
716 Disposal of property other than land	201
717 Order for inspection, detention, custody or preservation affecting non-party	202
718 Application for order for inspection, detention, custody or preservation	202
719 Division 2.9.3—other jurisdiction of court not affected	203
Division 2.9.4 Injunctions and similar orders	
Subdivision 2.9.4.1 Injunctions and similar orders—generally	
725 Meaning of <i>division 2.9.4 order</i>	203
726 Definitions—div 2.9.4	203
727 Division 2.9.4—other jurisdiction of court not affected	204
728 Division 2.9.4 order—procedure	204
729 Division 2.9.4 order without notice etc	205
730 Division 2.9.4 order without trial	206
731 Division 2.9.4 order—expedited trial	206
732 Division 2.9.4 order—damages and undertaking as to damages	207
733 Division 2.9.4 order—other undertakings and security to perform undertaking	207
Subdivision 2.9.4.2 Freezing orders	
740 Definitions—sdiv 2.9.4.2	208
741 Freezing orders—general	209

EXPOSURE DRAFT

	Page
742 Ancillary orders	211
743 Freezing orders—order against enforcement debtor or prospective enforcement debtor or third party	211
744 Freezing orders—service outside Australia of application for freezing order or ancillary order	214
745 Freezing orders—costs	214
Subdivision 2.9.4.3 Search orders	
750 Definitions—sdiv 2.9.4.3	214
751 Search orders—general	215
752 Search orders—requirements for making order	217
753 Search orders—terms of order	218
754 Search orders—independent solicitors	219
755 Search orders—costs	219
Division 2.9.5 Receivers	
765 Application—div 2.9.5	220
766 Receiver—agreement to act as etc	220
767 Receiver—application for order appointing etc	220
768 Receiver—address for service	221
769 Receiver—security	221
770 Receiver—remuneration	222
771 Receiver—accounts	222
772 Receiver—default	223
773 Receiver—powers	224
774 Receiver—duty in relation to property	225
775 Receiver—liability	225
776 Receiver—death of	225
Division 2.9.6 Sales of land by court order	
780 Meaning of <i>land</i> —div 2.9.6	226
781 Application—div 2.9.6	226
782 Sale of land—order	226
783 Sale of land—conduct of sale	227

EXPOSURE DRAFT

	Page	
784	Sale of land—certificate of sale result	228
785	Mortgage, exchange or partition	228
Part 2.10 Payment into court		
1000	Payment into court—amount	229
1001	Payment into court—costs	230
1002	Payment into court—bond	231
1003	Payment into court—security	232
1004	Payment into court—interest up to date of payment	232
1005	Payment into court—defendant who has counterclaimed	233
1006	Payment into court—acceptance by plaintiff	233
1007	Payment into court—costs on acceptance by plaintiff	236
1008	Payment into court—effect on counterclaim of acceptance by plaintiff	237
1009	Payment into court—payment out of remaining amount	237
1010	Payment into court—defendant to counterclaim	238
1011	Payment into court—nondisclosure	238
1012	Payment into court—in discharge of lien	239
1013	Payment into court—payment of amount paid into court under order	240
1014	Payment into court—amount paid into court under order under div 2.11.5	240
1015	Payment into court—amount recovered by person with legal disability	240
1016	Person with legal disability—approval of settlement etc	241
1017	Person with legal disability—orders about recovered amounts etc	242
Part 2.11 Resolving proceedings early		
Division 2.11.1 Uncontested debts and liquidated demands		
1100	Meaning of <i>prescribed costs amount</i> —div 2.11.1	244
1101	Application—div 2.11.1	244
1102	Stay of debt etc proceeding on payment of amount sought	244
1103	Assessment of costs for stayed debt etc proceeding	245

EXPOSURE DRAFT

	Page
1104 Judgment on acknowledgment of debt or liquidated demand	245
Division 2.11.2 Default by plaintiff	
1110 Default by plaintiff—dismissal of proceeding	247
Division 2.11.3 Default by defendant	
1115 Definitions—div 2.11.3	248
1116 Application—div 2.11.3	249
1117 When is a defendant <i>in default</i> —generally	250
1118 Default judgment—generally	253
1119 Default judgment—relevant affidavits	254
1120 Default judgment—debt or liquidated demand	255
1121 Default judgment for debt or liquidated demand—assessment of costs	256
1122 Default judgment—unliquidated damages	257
1123 Default judgment—detention of goods	258
1124 Default judgment—recovery of possession of land	259
1125 Default judgment—mixed claims	261
1126 Default judgment—other claims	262
1127 Default judgment—costs only	262
1128 Default judgment—setting aside etc	263
Division 2.11.4 Default by defendant—partial defence	
1135 Definitions—div 2.11.4	264
1136 Application—div 2.11.4	264
1137 When is a defendant <i>in default</i> —partial defence	264
1138 Default judgment—partial defence	266
1139 Default judgment—application of div 2.11.3	267
Division 2.11.5 Summary judgment	
1145 Application—div 2.11.5	268
1146 Summary judgment—for plaintiff	268
1147 Summary judgment—for defendant	270
1148 Claims not disposed of by summary disposal	270

EXPOSURE DRAFT

	Page	
1149	Evidence in summary judgment proceedings	271
1150	Summary judgment applications—filing and service	271
1151	Summary judgment applications—directions etc	272
1152	Summary judgment applications—costs	273
1153	Summary judgment—stay of enforcement	273
1154	Summary judgment—relief from forfeiture	273
1155	Summary judgment—setting aside	274
Division 2.11.6 Discontinuance and withdrawal		
1160	Discontinuance or withdrawal by plaintiff	274
1161	Discontinuance or withdrawal of counterclaim by defendant	275
1162	Withdrawal of notice of intention to respond	276
1163	Costs of discontinuance or withdrawal	276
1164	Withdrawal of defence or further pleading	276
1165	Notice of discontinuance or withdrawal	277
1166	Discontinuance or withdrawal by party representing someone else etc	277
1167	Discontinuance or withdrawal—subsequent proceeding	278
1168	Consolidated proceedings and counterclaims	278
1169	Stay pending payment of costs	278
Division 2.11.7 Mediation and neutral evaluation		
1175	Purpose—div 2.11.7	279
1176	Definitions—div 2.11.7	279
1177	Mediation—appointment of mediator	280
1178	Neutral evaluation—appointment of evaluator	280
1179	Mediation or neutral evaluation—referral by court	280
1180	Mediation or neutral evaluation—duty of parties to take part	281
1181	Mediation or neutral evaluation—costs	281
1182	Mediation or neutral evaluation—agreements and arrangements arising from sessions	281
1183	Neutral evaluation—privilege	282
1184	Evaluators—secrecy	283

EXPOSURE DRAFT

	Page
1185 Evaluators—protection from liability	283
Part 2.12 Expert evidence	
Division 2.12.1 Expert evidence generally	
1200 Meaning of <i>code of conduct</i> —pt 2.12	284
1201 Meaning of <i>expert</i> , <i>expert witness</i> and <i>expert report</i>	284
1202 Expert witnesses to agree to be bound by code of conduct	285
1203 Expert witness—immunity	286
Division 2.12.2 Multiple expert witnesses for same issue	
1210 Application—div 2.12.2	286
1211 Court may direct experts to meet etc	286
Division 2.12.3 Appointment of medical expert for Civil Law (Wrongs) Act	
1220 Definitions—div 2.12.3	290
1221 Application for appointment of expert—Wrongs Act, s 86	290
1222 Accompanying affidavit for appointment of expert—Wrongs Act, s 86 application	291
1223 Response by other parties—Wrongs Act, s 86 application	292
1224 Selection of expert etc by court—Wrongs Act, s 86 application	293
1225 Appointed experts to be briefed etc	294
1226 Request by appointed expert for directions	295
1227 Appointed expert to report	296
1228 Expert report to be admitted in evidence	296
1229 Attendance of appointed expert	296
Division 2.12.4 Expert reports	
1240 Application—div 2.12.4	297
1241 Service of expert reports	297
1242 Supplementary expert reports	298
1243 Expert evidence to be covered by expert report	299
1244 Expert reports admissible as evidence of opinion etc	299
1245 Requiring attendance of expert for cross-examination etc	300

EXPOSURE DRAFT

	Page
1246 Tender of expert report	300
Part 2.13 Pre-trial procedures	
1300 Definitions—pt 2.13	301
1301 Application—pt 2.13	301
1302 Pre-trial procedures—classification of proceeding	301
1303 Directions hearing—category C proceedings	302
1304 Statement of particulars before trial—personal injury claims	304
1305 Statement of particulars before trial—compensation to relatives in death claims	308
1306 Certificate of readiness for trial—generally	309
1307 Certificate of readiness for trial—default judgment	311
1308 Directions hearing—category A, category B and category D proceedings	312
1309 Listing hearing	314
1310 Special fixture	316
1311 Expedited trial	317
1312 Court book	318
1313 Directions hearings and listing hearings—costs	319
Part 2.14 Court supervision	
Division 2.14.1 Directions	
1400 Directions—application	320
1401 Directions generally	320
1402 Proceeding already being managed by court	324
1403 Decision in proceeding	324
1404 Failure to comply with direction etc	324
Division 2.14.2 Failure to comply with rules or order	
1450 Effect of failure to comply with rules	325
1451 Application because of failure to comply with rules	326
1452 Failure to comply with order to take step	327

EXPOSURE DRAFT

	Page
Part 2.15	Trial
Division 2.15.1	Interpretation—pt 2.15
1500	Meaning of <i>question</i> —pt 2.15 329
Division 2.15.2	Proceedings at trial
1505	Trial—defendant or plaintiff not appearing 329
1506	Trial—adjournment etc 330
1507	Trial—third-party proceeding 330
1508	Order of evidence and addresses 331
1509	View by court 332
1510	Associate etc to record hearing times 332
1511	Associate to enter findings etc 333
Division 2.15.3	Separate decisions on questions
1520	Application—div 2.15.3 333
1521	Separate decisions on questions—order 334
1522	Separate decisions on questions—directions 335
1523	Separate decisions on questions—decision 335
Division 2.15.4	Assessors and court-appointed referees
1530	Assessors 335
1531	Referee—referral of question etc to 336
1532	Referee—appointment 337
1533	Referee—amendment of order referring question etc 337
1534	Referee—conduct under reference 338
1535	Referee—submission of question to court 339
1536	Referee—report 339
1537	Referee—proceeding on report 340
1538	Assessor and referee—remuneration 341
Division 2.15.5	Assessment of damages
1545	Application—div 2.15.5 341
1546	Assessment of damages 341

EXPOSURE DRAFT

	Page	
1547	Assessment of damages—use of affidavit evidence	342
1548	Partial judgment for damages to be assessed	342
1549	Damages to time of assessment	343
Part 2.16	Judgments and other orders	
1600	Orders—required by nature of case	344
1601	Judgment book	344
1602	Judgments—several claims	345
1603	Orders—set off between enforceable money orders	345
1604	Judgments—detention of goods	346
1605	Orders—making and effect	347
1606	Orders—filing	348
1607	Orders—certified duplicate	349
1608	Orders—reasons	350
1609	Orders—reservation of decision	350
1610	Orders—time for compliance	351
1611	Orders—by consent	352
1612	Orders—by consent in proceeding	352
1613	Orders—setting aside etc	353
1614	Order dismissing proceeding—effect	354
1615	Orders—joint liability	355
1616	Interest up to judgment	356
1617	Interest after judgment	358
1618	Judgment for interest only	359
Part 2.17	Costs	
Division 2.17.1	Costs generally	
1700	Definitions—pt 2.17	360
1701	Costs—general provisions	361
1702	Costs—agreement about costs	361
1703	Costs—order against non-party	362

EXPOSURE DRAFT

	Page
1704	Costs—failure to comply with subpoena etc 363
1705	Costs—for issue or part of proceeding 364
1706	Costs—if unnecessary to continue proceeding 364
1707	Costs—proceeding removed to another court 365
1708	Costs—in account 365
Division 2.17.2 Entitlement to costs	
1720	Costs—entitlement to recover 366
1721	Costs—general rule 367
1722	Costs—solicitors’ costs generally 367
1723	Costs— <i>relevant amount</i> for Magistrates Court proceedings 368
1724	Solicitors’ costs—separate judgments against defendants in Magistrates Court 370
1725	Solicitors’ costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction 371
1726	Costs—amendment of documents 373
1727	Costs—party not interested in application 373
1728	Costs—for application reserved 374
1729	Costs—extending or shortening time 374
1730	Costs—inquiry to find person entitled to property 374
1731	Costs—assessment of receiver’s costs 375
1732	Costs—trustee 375
1733	Costs—solicitor appointed litigation guardian 375
1734	Costs—assessment costs 376
1735	Costs—counsel’s advice and settling documents 376
1736	Costs—evidence 376
1737	Costs—solicitor advocate 377
1738	Costs—retainer for counsel 377
1739	Costs—counsel’s fees for applications 378
Division 2.17.3 Costs of party in proceeding	
1750	Application—div 2.17.3 378
1751	Costs—assessed on party and party basis 378

EXPOSURE DRAFT

	Page	
1752	Costs—assessed on solicitor and client etc basis	379
1753	Costs—legal practitioner’s delay etc	380
1754	Costs—disallowance of costs for vexatious document etc	381
Division 2.17.4 Costs—registrar’s powers and discretion		
1760	Costs—registrar’s general powers	383
1761	Costs—registrar’s discretion in assessing	384
Division 2.17.5 Procedure for assessing costs		
1800	Costs—when bill of costs to be filed etc	384
1801	Costs—if costs out of fund bill to be sent to clients	385
1802	Costs—content of bill of costs	386
1803	Costs—failure to file and serve bill of costs	387
1804	Costs—payment of disbursements	387
1805	Costs—professional charges and disbursements	388
1806	Costs—amendment and withdrawal of bill of costs	388
1807	Costs—notice of objection to bill of costs	389
1808	Costs—assessment must be limited	390
1809	Costs—default assessment if no objection to bill of costs	390
1810	Costs—setting aside default assessment	391
1811	Costs—offer to settle	392
1812	Costs—acceptance of offer to settle	393
1813	Costs—rejection of offer to settle	393
Division 2.17.6 Procedure on costs assessment		
1830	Costs—attendance of parties at assessment	394
1831	Costs—notice of adjournment of assessment	395
1832	Costs—delay before registrar etc	395
1833	Costs—set off of costs	395
1834	Costs—bill of costs reduced by 15% or more	396
1835	Costs—registrar’s certificate of assessment	396
1836	Costs—interim certificates of assessment	397

EXPOSURE DRAFT

	Page
Division 2.17.7 Reconsideration and review of costs assessment	
1850 Application—div 2.17.7	398
1851 Costs—application for reconsideration	398
1852 Costs—procedure for reconsideration	398
1853 Costs—reply to objection on reconsideration	399
1854 Costs—reconsideration of registrar’s assessment	400
1855 Costs—review by court	400
Division 2.17.8 Security for costs	
1900 Security for costs—application and order	402
1901 Security for costs—when court may make order	402
1902 Security for costs—discretionary factors	403
1903 Security for costs—way security given	404
1904 Security for costs—effect of order	405
1905 Security for costs—setting aside or amending order	405
1906 Security for costs—finalising security	405
Division 2.17.9 Miscellaneous—pt 2.17	
1920 Liquidator, guardian or manager—accounts	406
Part 2.18 Enforcement	
Division 2.18.1 Enforcement—general	
2000 Definitions—pt 2.18	407
2001 Enforcement orders generally	412
2002 Enforcement—enforcement application is application in original proceeding	414
2003 Enforcement—by or against non-party	415
2004 Enforcement—amount recoverable	415
2005 Enforcement—separate enforcement for costs	415
2006 Enforcement—order in partnership name	416
2007 Enforcement—against property of partnership	417
2008 Enforcement—against property of business	417

EXPOSURE DRAFT

	Page	
2009	Enforcement—enforcement of Supreme Court order in Magistrates Court	417
2010	Enforcement—enforcement of Magistrates Court order in Supreme Court	418
2011	Enforcement—demand for compliance unnecessary	419
2012	Enforcement—when leave required	420
2013	Enforcement—stay	422
2014	Enforcement—conditional orders	423
2015	Enforcement—service of order and related information	424
Division 2.18.2 Enforcement orders—general		
2050	Enforcement orders—content and issue	425
2051	Enforcement orders—application to set aside	427
2052	Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers	428
2053	Enforcement orders—return by enforcement officer	430
2054	Enforcement orders—priority	430
2055	Enforcement orders—payment under order	431
2056	Enforcement orders—orders about enforcement	431
2057	Enforcement orders—consecutive and concurrent orders	432
2058	Enforcement orders—deceased enforcement debtor	432
Division 2.18.3 Enforcement of money orders—enforcement hearings		
2100	Enforcement hearing—application by enforcement creditor	433
2101	Enforcement hearing—otherwise than on enforcement creditor's application	435
2102	Enforcement hearing—limit on number of applications	435
2103	Enforcement hearing—order for hearing etc	436
2104	Enforcement hearing—who may be directed to attend by enforcement hearing subpoena	437
2105	Enforcement hearing—service of enforcement hearing subpoena	438
2106	Enforcement hearing—statement of enforcement debtor's financial position	438
2107	Enforcement hearing—subpoena to other person	440

EXPOSURE DRAFT

	Page	
2108	Enforcement hearing—meeting of parties	440
2109	Enforcement hearing—examination	441
2110	Enforcement hearing—enforcement hearing warrant issue	443
2111	Enforcement hearing—enforcement hearing warrant contents etc	445
2112	Enforcement hearing—orders	446
Division 2.18.4 Enforcement of money orders—instalment orders		
2150	Instalment order—making	448
2151	Instalment order—application by enforcement debtor	449
2152	Instalment order—when application by enforcement debtor requires leave	450
2153	Instalment order—application by enforcement creditor	451
2154	Instalment order—relevant considerations	453
2155	Instalment order—stay of enforcement	454
2156	Instalment order—content and issue	454
2157	Instalment order—instalment order agreement	455
2158	Instalment order—service	456
2159	Instalment order—no other enforcement while in force	457
2160	Instalment order—amending, suspending or setting aside	457
2161	Instalment order—ceasing to have effect other than for nonpayment	459
2162	Instalment order—ceasing to have effect for nonpayment	460
2163	Instalment order—record of payments	460
Division 2.18.5 Enforcement of money orders—seizure and sale orders		
2200	Seizure and sale order—making	462
2201	Seizure and sale order—application	462
2202	Seizure and sale order—additional exempt property	464
2203	Seizure and sale order—entry, search and seizure powers if no consent	464
2204	Seizure and sale order—assistance to enforcement debtor	466
2205	Seizure and sale order—notice of order	467
2206	Seizure and sale order—notice of property seized	469
2207	Seizure and sale order—removal etc of seized property	470

EXPOSURE DRAFT

	Page	
2208	Seizure and sale order—application for instalment order stays sale of seized property	470
2209	Seizure and sale order—property seized not abandoned	471
2210	Seizure and sale order—seizure of real property	471
2211	Seizure and sale order—enforcement debtor not to deal with real property	472
2212	Seizure and sale order—order of seizing and selling property	472
2213	Seizure and sale order—payment before sale	473
2214	Seizure and sale order—suspension etc of enforcement	474
2215	Seizure and sale order—agreements to withdraw and re-enter	474
2216	Seizure and sale order—nature of sale	475
2217	Seizure and sale order—setting reasonable amount	477
2218	Seizure and sale order—additional provisions relating to land	478
2219	Seizure and sale order—power of entry for auction of land	480
2220	Seizure and sale order—sale at best price obtainable	481
2221	Seizure and sale order—advertisement of sale	481
2222	Seizure and sale order—postponement of sale	483
2223	Seizure and sale order—amounts received	483
2224	Seizure and sale order—terms about payment	484
2225	Seizure and sale order—securities held by enforcement officer	485
2226	Seizure and sale order—personal property subject to conditional bill of sale	485
2227	Seizure and sale order—effect of sale of property	486
2228	Seizure and sale order—effect of ending of order on completion of sale etc	486
2229	Seizure and sale order—appropriation of payments towards order debt	487
2230	Seizure and sale order—documents giving effect to sale	487
2231	Seizure and sale order—payment to enforcement debtor	488
2232	Seizure and sale order—purchase by enforcement officer or auctioneer prohibited	489
2233	Seizure and sale order—account etc	490

EXPOSURE DRAFT

	Page	
2234	Seizure and sale order—report by enforcement officer	490
2235	Seizure and sale order—order for disposal and return of property to enforcement debtor	491
Division 2.18.6 Enforcement of money orders—debt redirection orders generally		
2300	Application—div 2.18.6	492
2301	Debt redirection order—making	493
2302	Debt redirection order—application	493
2303	Debt redirection order—relevant considerations	495
2304	Debt redirection order—joint funds	496
2305	Debt redirection order—partnership debts	496
2306	Debt redirection order—account with financial institution	497
2307	Debt redirection order—claim by someone else	498
2308	Debt redirection order—when debt redirected	499
2309	Debt redirection order—notice by third person to enforcement creditor	499
2310	Debt redirection order—payments by third person	500
2311	Debt redirection order—third person disputes liability	500
2312	Debt redirection order—discharge of third person	501
2313	Debt redirection order—payment to enforcement debtor despite redirection	502
2314	Debt redirection order—amending, suspending or setting aside	502
2315	Debt redirection order—procedure if order not complied with	504
Division 2.18.7 Enforcement of money orders—regular redirections from financial institutions		
2330	Application—div 2.18.7	505
2331	Regular redirection order—application of div 2.18.6	506
2332	Regular redirection order—making	506
2333	Regular redirection order—content	507
2334	Regular redirection order—service and coming into force	507
2335	Regular redirection order—financial institution to make payments etc	508
2336	Regular redirection order—enforcement debtor not to defeat order	509

EXPOSURE DRAFT

	Page	
2337	Regular redirection order—no other enforcement while in force	509
2338	Regular redirection order—ceasing to have effect	510
2339	Regular redirection order—return of excess	511
2340	Regular redirection order—record of payments	511
Division 2.18.8 Enforcement of money orders—earnings redirection orders		
2350	Earnings redirection order—making	513
2351	Earnings redirection order—application	513
2352	Earnings redirection order—relevant considerations	515
2353	Earnings redirection order—limit	516
2354	Earnings redirection order—information about enforcement debtor's earnings	516
2355	Earnings redirection order—content	517
2356	Earnings redirection order—service and coming into force	517
2357	Earnings redirection order—person served not employer	518
2358	Earnings redirection order—employer to make payments etc	519
2359	Earnings redirection order—no other enforcement while in force	520
2360	Earnings redirection order—amending, suspending or setting aside	520
2361	Earnings redirection order—ceasing to have effect	522
2362	Earnings redirection order—return of excess	523
2363	Earnings redirection order—record of payments	523
2364	Earnings redirection order—2 or more orders in force	525
2365	Earnings redirection order—person served ceasing to be employer	525
2366	Earnings redirection order—enforcement debtor changes or ceases employment	526
2367	Earnings redirection order—directions	526
2368	Earnings redirection order—employment protection	527
2369	Earnings redirection order—procedure if order not complied with	528
Division 2.18.9 Enforcement of money orders—charging orders		
2400	Application—div 2.18.9	529
2401	Charging order—making	529

EXPOSURE DRAFT

	Page	
2402	Charging order—application	530
2403	Charging order—effect	532
2404	Charging order—enforcement debtor dealing with charged property	532
2405	Charging order—issuer etc dealing with charged property	533
2406	Charging order—application to enforce charge	534
2407	Charging order—procedure against partnership property for partner's separate order debt	534
Division 2.18.10 Enforcement of money orders—amounts in court and stop orders		
2420	Enforcement orders—amounts in court	535
2421	Enforcement orders—stop orders	536
Division 2.18.11 Enforcement of money orders—receivers		
2430	Application—div 2.17.11	537
2431	Receiver—appointment	537
2432	Receiver—application for appointment	537
2433	Receiver—relevant considerations for appointment	539
2434	Receiver—powers	539
2435	Receiver—general provisions apply	539
Division 2.18.12 Enforcement of non-money orders—general		
2440	Enforcement—orders for possession of land	540
2441	Enforcement—orders for return of goods etc	541
2442	Enforcement—orders to do or not do an act	541
2443	Enforcement—undertakings	543
2444	Enforcement—failure of individual to comply with subpoena etc	544
2445	Enforcement—failure of corporation to comply with subpoena etc	546
2446	Enforcement by contempt or seizing and detaining property—preconditions	547
Division 2.18.13 Enforcement of non-money orders—orders for delivery of possession of land		
2450	Application—div 2.18.13	548
2451	Order for delivery of possession of land—making	548

EXPOSURE DRAFT

	Page
2452 Orders for delivery of possession of land—preconditions	549
Division 2.18.14 Enforcement of non-money orders—orders for seizure and delivery of goods	
2460 Order for seizure and delivery of goods—making	550
Division 2.18.15 Enforcement of non-money orders—orders for seizure and detention of property	
2470 Order for seizure and detention of property—making	552
2471 Order for seizure and detention of property—preconditions	552
2472 Order for seizure and detention of property—against officer of corporation	552
2473 Order for seizure and detention of property—return of seized property	553
Division 2.18.16 Enforcement—contempt	
2500 Contempt—application of div 2.18.16	553
2501 Contempt—applications generally	553
2502 Contempt—application by registrar	554
2503 Contempt—arrest warrant if respondent likely to abscond etc	555
2504 Contempt in face or hearing of court—alternative procedure	555
2505 Contempt—arrest warrant	557
2506 Contempt—punishment	557
2507 Contempt—costs	558
2508 Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt	558
Division 2.18.17 Enforcement—arrest warrants for absconding defendants	
2550 Application—div 2.18.17	559
2551 Meaning of <i>plaintiff</i> and <i>defendant</i> —div 2.18.17	560
2552 Arrest warrant for defendant—application	560
2553 Arrest warrant for defendant—issue	560
2554 Arrest warrant for defendant—enforcement	561
2555 Arrest warrant for defendant—costs of enforcement	562
2556 Arrest warrant for defendant—service of warrant and claim	563

EXPOSURE DRAFT

	Page	
2557	Arrest warrant for defendant—record of enforcement	563
2558	Arrest warrant for defendant—procedure after arrest	563
2559	Arrest warrant for defendant—release of defendant	564
2560	Arrest warrant for defendant—court powers	564
2561	Arrest warrant for defendant—failure to comply with conditions	566
2562	Arrest warrant for defendant—review	567
2563	Arrest warrant for defendant—restriction on further applications	568
2564	Arrest warrant for defendant—costs	568
Part 2.19	Interpleader proceedings	
Division 2.19.1	Stakeholder’s interpleader	
2600	Interpleader—application by stakeholder	569
Division 2.19.2	Enforcement officer’s interpleader	
2605	Interpleader—notice of claim to enforcement officer	570
2606	Interpleader—failure to give notice of claim	571
2607	Interpleader—notice to enforcement creditor	572
2608	Interpleader—admission of claim	572
2609	Interpleader—enforcement officer’s interpleader application	573
2610	Interpleader—enforcement debtor’s rights not affected	574
Division 2.19.3	Interpleader orders	
2620	Interpleader—orders	574
2621	Interpleader—summary disposal of proceeding	576
2622	Interpleader—adverse claims	576
2623	Interpleader—default by claimant	576
2624	Interpleader—neutrality of applicant	577
2625	Interpleader order—2 or more proceedings	577
2626	Interpleader—trial	578
2627	Interpleader—disposal of amounts in court	578

EXPOSURE DRAFT

	Page
Part 2.20	Trusts, estates, accounts and inquiries
Division 2.20.1	Trusts and estates
2700	Trusts and estates—decision without order for administration 579
2701	Trusts and estates—application not to affect powers 579
2702	Trusts and estates—conduct of sale 580
Division 2.20.2	Taking of accounts
2720	Meaning of <i>accounting party</i> —div 2.20.2 581
2721	Account—order for account 581
2722	Account—orders 582
2723	Accounts—service of order etc 583
2724	Accounts—form and verification 584
2725	Accounts—filing and service 584
2726	Accounts—challenging account 585
2727	Accounts—witness 585
2728	Accounts—allowances 585
2729	Accounts—delay 585
2730	Accounts—powers exercisable on taking account 586
2731	Accounts—class interests 586
2732	Accounts—reference to judicial officer 587
2733	Accounts—certificate about taking of account 588
2734	Accounts—further consideration 589
Division 2.20.3	Making of inquiries
2740	Inquiries—procedure for inquiries 589
2741	Inquiries—orders 589
Part 2.21	Representation by solicitors
2800	Power to act by solicitor 591
2801	Appointment of solicitor 591
2802	Change between acting personally and acting by solicitor 591
2803	Change of solicitor 592

EXPOSURE DRAFT

	Page	
2804	Removal of solicitor by court	593
2805	Solicitor removed from roll etc	594
2806	Application for leave to withdraw as solicitor	594
2807	Leave to withdraw as solicitor	595
2808	Effect of removal of, or leave to withdraw as, solicitor	597
2809	Withdrawal of solicitor's agent	597
2810	Solicitor not to act for adverse parties	598
Part 2.22	Miscellaneous—ch 2	
2900	Declaratory order	599
2901	Copies of documents from registrar	599
2902	Searches of registers etc	600
2903	Inspection of registry files	600
Chapter 3	Particular civil proceedings	
Part 3.1	Administration and probate	
Division 3.1.1	Administration and probate—general	
3000	Definitions—pt 3.1	604
3001	Terms used in Administration and Probate Act	604
3002	Application—pt 3.1	605
Division 3.1.2	Application for grant of representation	
3005	Grant of representation—application	605
3006	Grant of representation—notice of intention to apply to be published in newspaper	606
3007	Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin	607
3008	Grant of representation—notice of intention of creditor to apply to be served on domestic partner and next of kin	608
3009	Grant of representation—when notice of intention to apply to be served on public trustee	609

EXPOSURE DRAFT

	Page
3010	610
3011	614
Division 3.1.3 Application for reseal of foreign grant	
3020	615
3021	616
3022	616
3023	617
Division 3.1.4 Validity and form of wills	
3030	618
3031	619
3032	620
3033	621
3034	622
3035	623
Division 3.1.5 Small estates	
3040	623
3041	624
3042	624
Division 3.1.6 Administration bonds	
3050	625
3051	626
3052	627
3053	628
3054	628
3055	629
3056	630
3057	630
3058	631

EXPOSURE DRAFT

	Page
Division 3.1.7 Administration by public trustee	
3060 Administration by public trustee—application	631
3061 Administration by public trustee—renunciation of probate by executors	632
3062 Administration by public trustee—renunciation of letters of administration by entitled people	632
3063 Administration by public trustee—service of documents on public trustee	633
3064 Administration by public trustee—order under Administration and Probate Act, s 95	633
3065 Administration by public trustee—notification by public trustee	634
3066 Administration by public trustee—bill of costs	634
Division 3.1.8 Caveats	
3070 Definitions—div 3.1.8	635
3071 Caveat—filing	635
3072 Caveat—period of operation	636
3073 Caveat—procedure	636
3074 Caveat—setting aside	638
3075 Caveat—withdrawal if no pending proceeding for grant of representation etc	639
3076 Caveat—leave to withdraw	639
3077 Caveat—effect if filed on day of grant	640
Division 3.1.9 Revocation of grant	
3080 Revocation of grant—application	640
3081 Revocation of grant—orders	641
3082 Revocation of grant—return of original grant	641
Division 3.1.10 Contested probate proceedings	
3090 Definitions—div 3.1.10	642
3091 Contested probate proceedings—starting proceedings	643
3092 Contested probate proceedings—originating claim	643
3093 Contested probate proceedings—affidavit of scripts	644

EXPOSURE DRAFT

	Page
3094	Contested probate proceedings—notice to people with beneficial interests 645
3095	Contested probate proceedings—notice of intention to intervene 645
3096	Contested probate proceedings—grant of representation to be filed 646
Division 3.1.11 Executors, administrators and trustees—accounts and commission	
3100	Estate accounts—order requiring examination and passing of accounts 646
3101	Estate accounts—compliance with order for examination and passing of accounts 647
3102	Estate accounts—application for commission 648
3103	Estate accounts—notice of filing of accounts etc 648
3104	Estate accounts—appearance of interested person at examination 650
3105	Estate accounts—examination 651
3106	Estate accounts—conduct of examination 651
3107	Estate accounts—application for passing accounts etc 653
3108	Estate accounts—passing of accounts etc 653
3109	Estate accounts—amended or further accounts 654
3110	Estate accounts—renewal of objection in subsequent proceeding 654
3111	Estate accounts—evidence in subsequent proceeding 655
3112	Estate accounts—general practice to apply 655
3113	Estate accounts—combined executors' and trustees' account 655
3114	Trustees—allowance of commission in proceeding 656
Division 3.1.12 Miscellaneous	
3120	Failure of executor to prove will—Administration and Probate Act, s 25 656
3121	Failure by executor, administrator or trustee to comply with beneficiary's request etc 657
3122	Grant of administration—grant to child 658
3123	Election and assignment of guardians 659
3124	Order about administration of real estate—Administration and Probate Act, s 51 659

EXPOSURE DRAFT

	Page	
3125	Assessment of costs—Administration and Probate Act, s 71	660
3126	Administration and probate book	660
3127	Proved wills to be kept by court	661
Part 3.2	Adoption	
Division 3.2.1	Adoption—general	
3150	Definitions—pt 3.2	662
3151	Terms used in Adoption Act	663
3152	Application—pt 3.2	663
Division 3.2.2	Adoption orders	
3155	References to <i>applicants</i> —div 3.2.2	663
3156	Adoption order—application	664
3157	Adoption order—supporting affidavit for application	664
3158	Adoption order—documents accompanying application	666
3159	Adoption order—service of application on chief executive	668
3160	Adoption order—notice of intention to oppose	669
Division 3.2.3	Orders for dispensing with consent to adoption	
3170	Dispensing order—application	669
3171	Dispensing order—service of application	670
3172	Dispensing order—notice of intention to oppose	671
Division 3.2.4	Amendment of adoption order	
3180	Amendment order—application	671
3181	Amendment order—service of application	672
3182	Amendment order—notice of intention to oppose	672
Division 3.2.5	Discharge of interim orders and adoption orders	
3190	Discharging order—application	673
3191	Discharging order—service of application	673
3192	Discharging order—notice of intention to oppose	673

EXPOSURE DRAFT

	Page
Division 3.2.6 Access to identifying information	
3200	Order for access to identifying information—application 674
3201	Order for access to identifying information—service of application 674
3202	Order for access to identifying information—notice of intention to oppose 675
Division 3.2.7 Adoption proceedings—general procedures	
3210	Adoption proceedings—service of applications 675
Part 3.3 Commercial arbitration	
3250	Meaning of <i>Commercial Arbitration Act</i> —pt 3.3 676
3251	Terms defined in Commercial Arbitration Act 676
3252	Commercial arbitration—application 677
3253	Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 38 (4) (b) 677
3254	Commercial arbitration—appeal under Commercial Arbitration Act, s 38 678
3255	Commercial arbitration—application under Commercial Arbitration Act, s 39 679
3256	Commercial arbitration—application for order under Commercial Arbitration Act, s 42 (1) or s 43 679
3257	Commercial arbitration—payment into court 680
3258	Commercial arbitration—examination of witnesses 681
3259	Commercial arbitration—decision to refuse application for order in application in proceeding 681
3260	Commercial arbitration—application for leave to enforce award 682
3261	Commercial arbitration—evidence of award for purposes of enforcement 682
3262	Commercial arbitration—endorsement and service of order for enforcement 683
Part 3.4 Corporations Act and ASIC Act	
3270	Rules for proceedings under Corporations Act or ASIC Act 684

EXPOSURE DRAFT

	Page	
Part 3.5	Cross-vesting	
3300	Definitions—pt 3.5	685
3301	Terms used in Cross-vesting Act	685
3302	Application—pt 3.5	686
3303	Cross-vesting—application for transfer or removal of proceedings	686
3304	Cross-vesting—application by Attorney-General	686
3305	Cross-vesting—removal of proceedings	687
3306	Cross-vesting—relying on jurisdiction under cross-vesting laws	687
3307	Cross-vesting—service	688
3308	Cross-vesting—directions	688
3309	Cross-vesting—procedure following transfer of proceeding from court	689
3310	Cross-vesting—procedure following transfer of proceeding to court	690
3311	Cross-vesting—application of another jurisdiction’s written law	690
3312	Cross-vesting—application of another jurisdiction’s rules of evidence and procedure	691
Part 3.6	Electoral matters	
Division 3.6.1	Electoral matters—general	
3350	Definitions—pt 3.6	692
3351	Terms used in Electoral Act	692
3352	Application—pt 3.6	693
3353	Election application etc originating application	693
Division 3.6.2	Disputed elections	
3355	Disputed election—deposit as security for costs	694
3356	Disputed election—public notice of election application	694
3357	Disputed election—parties to proceeding	695
3358	Disputed election—particulars of contested ballot papers	695
3359	Disputed election—countercharges	696
3360	Disputed election—voting in Antarctica	697
3361	Disputed election—time of trial etc	698

EXPOSURE DRAFT

	Page	
3362	Disputed election—substitution of applicant	698
3363	Disputed election—withdrawal of respondent	699
3364	Disputed election—substitution of respondent	699
3365	Disputed election—inspection of list of applications	699
Division 3.6.3 Questions referred by Legislative Assembly		
3400	Question referred—parties to proceeding	700
Division 3.6.4 Electoral matters—general procedure		
3405	Electoral matters—better particulars	700
Part 3.7 Foreign and interstate confiscation orders— registration		
Division 3.7.1 Foreign confiscation orders—registration		
3450	Definitions—div 3.7.1	701
3451	Application—div 3.7.1	701
3452	Foreign confiscation orders—register	702
3453	Foreign confiscation orders—registration	702
3454	Foreign confiscation orders—proceedings for registration	702
3455	Foreign confiscation orders—when registration cancelled	704
Division 3.7.2 Interstate confiscation orders—registration		
3460	Definitions—div 3.7.2	704
3461	Interstate confiscation orders—register	704
3462	Interstate confiscation orders—registration	705
3463	Interstate confiscation orders—proceedings for registration	705
3464	Interstate confiscation orders—when registration cancelled	706
3465	Interstate confiscation orders—filing of amendments etc	706
Part 3.8 Foreign judgments—reciprocal enforcement		
3470	Definitions—pt 3.8	707
3471	Terms used in Foreign Judgments Act	707
3472	Application—pt 3.8	707

EXPOSURE DRAFT

	Page	
3473	Foreign judgment—application for registration	707
3474	Foreign judgment—evidence in support of application for registration	708
3475	Foreign judgment—security for costs of application for registration	710
3476	Foreign judgment—order for registration	710
3477	Foreign judgment—register	710
3478	Foreign judgment—registration	711
3479	Foreign judgment—notice of registration	711
3480	Notice of registration—affidavit of service to be filed	712
3481	Registration of judgment—application to set aside	712
3482	Foreign judgment—enforcement	712
3483	Australian judgment—certificate for foreign registration	713
Part 3.9	Habeas corpus	
3500	Definitions—pt 3.9	715
3501	Application—pt 3.9	715
3502	Habeas corpus—application and service	715
3503	Habeas corpus—parties	716
3504	Habeas corpus—procedure on application etc	716
3505	Habeas corpus—return of writ	718
Part 3.10	Judicial review	
3550	Definitions—pt 3.10	719
3551	Terms defined in Judicial Review Act	720
3552	Application—pt 3.10	721
3553	Judicial review—prerogative writs abolished	721
3554	Judicial review—relief previously granted by prerogative writ	721
3555	Judicial review—other jurisdiction not excluded	722
3556	Judicial review—application	722
3557	Judicial review—time for starting proceeding	724
3558	Judicial review—declaration or injunction	724
3559	Judicial review—other prerogative relief etc	725
3560	Judicial review—additional orders	726

EXPOSURE DRAFT

	Page
3561	Judicial review—application for statutory order of review and prerogative relief etc 727
3562	Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review 727
3563	Judicial review—filing and serving statements 728
3564	Judicial review—setting directions hearing 729
3565	Judicial review—directions hearing 729
3566	Judicial review directions hearings—costs 731
3567	Judicial review—directions to be sought at directions hearing 731
3568	Judicial review—power of the court to stay or dismiss applications in certain circumstances 732
3569	Judicial review—additional requirements for certiorari order 733
3570	Judicial review—no proceeding in relation to things done under mandamus order 733
Part 3.11	Legal profession
Division 3.11.1	Legal profession—general
3600	Definitions—pt 3.11 734
3601	Terms used in Legal Profession Act 734
3602	Application—pt 3.11 735
Division 3.11.2	Admission of local lawyers
3605	Admission—approved academic qualifications (Legal Profession Act, s 21 (5)) 735
3606	Admission—approved practical legal training requirements (Legal Profession Act, s 21 (5)) 736
3607	Admission—evidence of completion of courses 736
3608	Admission—application for admission 737
3609	Admission—when application must be made 738
3610	Admission—hearing days 739
3611	Admission—compliance certificate (Legal Profession Act, s 30 (2)) 739
3612	Admission—objection by bar council or law society council 739
3613	Admission—appearance by bar council or law society council 740

EXPOSURE DRAFT

	Page
3614 Admission—applicant's duty of frankness	740
3615 Admission—entry on local roll	741
Part 3.12 Small Claims Court	
Division 3.12.1 Small Claims Court—preliminary	
3700 Definitions—pt 3.12	742
3701 Application—pt 3.12	742
3702 Small Claims Court—application of ch 2 generally	743
Division 3.12.2 Small Claims Court—starting proceeding	
3705 Small Claims Court—assistance to members of public	743
3706 Small Claims Court—who may start and carry on a proceeding	744
3707 Small Claims Court—originating application etc	745
3708 Small Claims Court—single application for each matter	746
3709 Small Claims Court—claim for interest	746
3710 Small Claims Court—service of originating application etc	747
3711 Small Claims Court—response to originating application	748
3712 Small Claims Court—counterclaim and set-off	748
3713 Small Claims Court—response to nuisance application or trespass application	749
3714 Small Claims Court—amendment	750
Division 3.12.3 Small Claims Court—admission of liability	
3720 Application of div 3.12.3—common boundary applications	750
3721 Small Claims Court—admission of liability	750
3722 Small Claims Court—payment into court	751
Division 3.12.4 Small Claims Court—no response to claim	
3725 Small Claims Court—default judgment	752
3726 Small Claims Court—striking out application	754
Division 3.12.5 Small Claims Court—disputed claim	
3730 Small Claims Court—disputed claim	754

EXPOSURE DRAFT

	Page
Division 3.12.6 Small Claims Court—conferences	
3740 Application—div 3.12.6	755
3741 Small Claims Court conference—setting conference date	756
3742 Small Claims Court conference—changing time or place of	756
3743 Small Claims Court conference—representation	756
3744 Small Claims Court conference—who may attend	757
3745 Small Claims Court conference—failure to attend	757
3746 Small Claims Court conference—procedure	759
Division 3.12.7 Small Claims Court—inquiries	
3750 Application—div 3.12.7	760
3751 Small Claims Court inquiry—constitution	760
3752 Small Claims Court inquiry—changing time or place of	760
3753 Small Claims Court inquiry—representation	761
3754 Small Claims Court inquiry—failure to attend	761
3755 Small Claims Court inquiry—procedure	762
3756 Small Claims Court inquiry—investigators	762
Division 3.12.8 Small Claims Court—transfer of proceedings between courts	
3760 Application of div 3.12.8—common boundary applications	763
3761 Small Claims Court—transfer of proceedings from Magistrates Court	763
3762 Small Claims Court—transfer of proceeding to Magistrates Court	764
Division 3.12.9 Small Claims Court—general provisions	
3770 Small Claims Court—applications in proceedings	765
3771 Small Claims Court—discontinuance of proceeding	766
3772 Small Claims Court—dismissal for abuse of process	766
3773 Small Claims Court—restoration of proceeding	767
3774 Small Claims Court—costs	769
Division 3.12.10 Small Claims Court—orders	
3780 Small Claims Court order—consent judgment	770
3781 Small Claims Court order—counterclaim or set-off	771

EXPOSURE DRAFT

	Page	
3782	Small Claims Court order—to perform work etc	771
3783	Small Claims Court order—payment on condition work performed etc	772
3784	Small Claims Court order—detention of goods	773
3785	Small Claims Court order—nuisance application	774
3786	Small Claims Court order—trespass application	774
3787	Small Claims Court order—debt declaration	774
3788	Small Claims Court order—joint liability	774
3789	Small Claims Court order—notice	776
3790	Small Claims Court order—payment of amount	776
3791	Small Claims Court order—other orders	776
Part 3.13	Workers compensation	
Division 3.13.1	Workers compensation proceedings—general	
3880	Definitions—pt 3.13	777
3881	Terms used in Workers Compensation Act	778
3882	Application—pt 3.13	778
3883	Workers compensation proceedings—application of ch 2 generally	779
Division 3.13.2	Workers compensation—applications for arbitration	
3885	Application for arbitration—Commercial Arbitration Act not apply	780
3886	Application for arbitration—by worker	780
3887	Application for arbitration—by dependant or estate of deceased worker	781
3888	Application for arbitration—by employer or insurer	781
3889	Application for arbitration—when application may be filed	782
3890	Application for arbitration—injury notice and medical evidence	782
3891	Application for arbitration—copies	783
3892	Application for arbitration—service on respondent	783
3893	Application for arbitration—service on insurer	783
3894	Application for arbitration—answer by respondent or third-party respondent	784

EXPOSURE DRAFT

	Page	
3895	Application for arbitration—liability and particulars subject to answer	785
3896	Application for arbitration—service of answer	785
Division 3.13.3 Workers compensation—parties for arbitration		
3900	Arbitration—necessary parties	786
3901	Arbitration—including other parties	787
3902	Arbitration—person may apply to be included as party	788
3903	Arbitration—party may apply to be removed as party	788
3904	Arbitration—employer not respondent in certain applications by dependant or personal representative	788
Division 3.13.4 Workers compensation—representation in arbitrations		
3910	Arbitration—party may be represented	789
Division 3.13.5 Workers compensation—listing procedure for arbitrations		
3915	Arbitration listing procedure—certificate of readiness	790
3916	Arbitration listing procedure—certificate of readiness not signed	791
Division 3.13.6 Workers compensation—medical reports for arbitrations		
3920	Arbitration—service of medical reports	792
3921	Arbitration—all medical reports to be served	793
3922	Arbitration—doctor’s evidence to be covered by medical report	794
3923	Arbitration—medical reports admissible as evidence of opinion etc	794
3924	Arbitration—requiring attendance of doctor for cross-examination etc	794
3925	Arbitration—tender of medical reports	795
Division 3.13.7 Workers compensation—medical referees for arbitrations		
3930	Arbitration—party may apply for medical referee etc	796
3931	Arbitration—number of medical referees	796
3932	Arbitration—notice of request to medical referee	797
3933	Arbitration—assessment of worker by medical referee	797
3934	Arbitration—medical referee to review medical evidence etc	797
3935	Arbitration—medical referee’s report	798
3936	Arbitration—medical referee’s report to be given to parties	799
3937	Arbitration—court may decide claim without medical referee report	799

EXPOSURE DRAFT

	Page
Division 3.13.8 Workers compensation—case management meeting for arbitrations	
3945 Arbitration—case management generally	799
3946 Arbitration—time of case management meeting	800
3947 Arbitration—attendance at case management meeting	800
3948 Arbitration—parties must make genuine effort to settle at case management meeting	801
3949 Arbitration—settling of claim at case management meeting	801
3950 Arbitration—settling of claim unlikely at case management meeting	802
3951 Arbitration—record of terms of settlement at case management meeting	802
Division 3.13.9 Workers compensation—conduct of arbitration	
3955 Conduct of arbitration—date	803
3956 Conduct of arbitration—burden of proof on party asserting fact	803
3957 Conduct of arbitration—directions about third-party respondents	803
3958 Conduct of arbitration—directions and orders if remedy against employer and stranger	804
3959 Conduct of arbitration—procedure if no provision made	806
Division 3.13.10 Workers compensation—submission to award and payments into court	
3965 Arbitration—payment into court generally	806
3966 Arbitration—admission of liability to claim by worker	806
3967 Arbitration—admission of liability to claim for deceased worker	807
3968 Arbitration—denial and submission to award or payment by employer	807
3969 Arbitration—acceptance of payment by worker	808
3970 Arbitration—acceptance of payment for deceased worker	809
3971 Arbitration—payment on worker’s acceptance	809
3972 Arbitration—payment on dependant’s etc acceptance	810
3973 Arbitration—no prompt acceptance of submission or payment	811
3974 Arbitration—award not greater than submission or payment	811

EXPOSURE DRAFT

	Page
Division 3.13.11 Workers compensation—awards	
3980 Arbitration—award	812
3981 Arbitration—setting aside or amending award	813
Division 3.13.12 Workers compensation—registered agreements	
3985 Registered agreement—application for registration	814
3986 Registered agreement—application for amendment or cancellation	816
Division 3.13.13 Workers compensation—costs	
3990 Workers compensation costs—generally	816
3991 Workers compensation costs—claim against arbitration award	817
Division 3.13.14 Workers compensation—appeals	
3995 Appeal—order of Supreme Court	817
Chapter 4 Criminal proceedings	
Part 4.1 Criminal proceedings—general	
Division 4.1.1 Criminal proceedings—application of ch 2	
4000 Criminal proceedings—application of ch 2 generally	819
Division 4.1.2 Criminal proceedings—service	
4005 Meaning of <i>accused person</i> for div 4.1.2—bail applications	820
4006 Criminal proceedings—application of pt 6.7 (Service)	820
4007 Criminal proceedings—service on accused person by filing if no address for service	821
4008 Criminal proceedings—service if no-one found at accused person’s address for service	821
4009 Criminal proceedings—service of documents when unrepresented accused person in custody	822
Division 4.1.3 Enforcement	
4020 Enforcement of fines	823
4021 Enforcement—failure of individual to comply with subpoena etc	823

EXPOSURE DRAFT

	Page
4022 Enforcement—failure of corporation to comply with subpoena etc	824
Part 4.2 Magistrates Court criminal proceedings	
Division 4.2.1 Magistrates Court criminal proceedings—preliminary	
4300 Meaning of <i>accused person</i> —pt 4.2	826
4301 Application—pt 4.2	826
Division 4.2.2 Magistrates Court criminal proceedings—setting aside orders	
4310 Magistrates Court order made in absence of party may be set aside—general	826
4311 Magistrates Court order made in absence of accused person may be set aside—summons for prescribed offence	827
4312 Magistrates Court order made in absence of party may be set aside—other offences	828
4313 Magistrates Court conviction made in absence of party set aside—warrant may be set aside	829
4314 Magistrates Court conviction made in absence of party set aside—hearing	829
4315 Magistrates Court order made in absence of party may be set aside—application by informant	830
Division 4.2.3 Magistrates Court criminal proceedings—witnesses	
4330 Magistrates Court witness—request by informant to attend	831
4331 Magistrates Court witness—power of magistrate to subpoena	831
4332 Magistrates Court witness—entitlement to claim expenses	832
4333 Magistrates Court witness—expenses	832
Part 4.3 Supreme Court criminal proceedings	
Division 4.3.1 Supreme Court criminal proceedings—preliminary	
4700 Definitions—pt 4.3	833
4701 Application—pt 4.3	834

EXPOSURE DRAFT

	Page
Division 4.3.2	Supreme Court criminal proceedings—representation
4705	Meaning of <i>criminal proceeding</i> —div 4.3.2 834
4706	Supreme Court criminal proceedings—notice of solicitor acting 835
4707	Supreme Court criminal proceedings—solicitor’s instructions to act for accused person ended 836
4708	Supreme Court criminal proceedings—withdrawal of solicitor 837
4709	Supreme Court criminal proceedings—handing over depositions 838
Division 4.3.3	Supreme Court criminal proceedings—bail
4720	Meaning of <i>accused person</i> —div 4.3.3 839
4721	Supreme Court bail application in relation to accused person 839
4722	Supreme Court bail application by informant 842
Division 4.3.4	Supreme Court criminal proceedings—pre-trial procedure
4730	Application—div 4.3.4 843
4731	Supreme Court criminal proceedings—appearance of accused person 843
4732	Supreme Court criminal proceedings—appearance when committed for sentence 843
4733	Supreme Court criminal proceedings—appearance when committed for trial 844
4734	Supreme Court criminal proceedings—pre-trial questionnaire 845
4735	Supreme Court criminal proceedings—pre-arraignment conference 846
4736	Supreme Court criminal proceedings—arraignment 847
4737	Supreme Court criminal proceedings—pre-trial directions hearing 848
Division 4.3.5	Supreme Court criminal proceedings—pre-trial applications
4750	Supreme Court criminal proceedings—application to set aside or stay proceeding 848
4751	Supreme Court criminal proceedings—application for separate trials 849
4752	Supreme Court criminal proceedings—other pre-trial applications 849
4753	Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752 850

EXPOSURE DRAFT

	Page
Division 4.3.6	Supreme Court criminal proceedings—other provisions
4780	Supreme Court criminal proceedings—arraignment dates 851
4781	Supreme Court criminal proceedings—production of person in custody 851
4782	Supreme Court criminal proceedings—defence response to prosecutor’s opening address 852
4783	Supreme Court criminal proceedings—execution of documents 852
4784	Supreme Court criminal proceedings—inspection of registry files 853
4785	Supreme Court criminal proceedings—certificate of conviction 855
4786	Supreme Court criminal proceedings—preparation of judgments 856
Chapter 5	Appellate proceedings
Part 5.1	Appeals to court other than Court of Appeal
5000	Definitions—pt 5.1 857
5001	Meaning of <i>registrar</i> —pt 5.1 858
5002	Application—pt 5.1 859
5003	Appeals—non-publication order 862
5004	Appeals—starting appeal 863
5005	Appeals—requirements for notice of appeal etc 863
5006	Appeals—notice of intention to respond 865
5007	Appeals—other parties 866
5008	Appeals—time for filing notice of appeal 867
5009	Appeals—notice of appeal to be sealed 868
5010	Appeals—date for settlement of appeal papers 868
5011	Appeals—service of notice of appeal 868
5012	Appeals—security for costs 869
5013	Appeals—stay of decision etc 870
5014	Appeals—documents 871
5015	Appeals—discontinuance of appeal 872
5016	Appeals—amending notice of appeal 873

EXPOSURE DRAFT

	Page
5017 Appeals—cross-appeals	874
5018 Appeals—notice of contention	876
5019 Appeals—content of appeal papers	877
5020 Appeals—presentation of appeal papers	877
5021 Appeals—filing appeal papers for settling	878
5022 Appeals—settlement of appeal papers	878
5023 Appeals—filing and serving settled appeal papers	879
5024 Appeals—setting appeal for hearing	879
5025 Appeals—written summary and list for appeal hearing	879
5026 Appeals—summaries of arguments	880
5027 Appeals—list of authorities, legislation and texts	881
5028 Appeals—abandonment of ground of appeal	882
5029 Appeals—directions about appeal etc	882
5030 Further evidence on appeal—Magistrates Court Act 1930, s 214	883

Part 5.2 Appeals to Court of Appeal from Supreme Court

Division 5.2.1 Interpretation—pt 5.2

5300 Meaning of <i>court</i> in pt 5.2	885
--	-----

Division 5.2.2 Leave to appeal to Court of Appeal from interlocutory judgments of Supreme Court

5310 Application—div 5.2.2	885
5311 Application for leave to appeal to Court of Appeal—interlocutory judgment	886
5312 Requirements for application for leave to appeal to Court of Appeal—interlocutory judgment	886
5313 Time for filing application for leave to appeal to Court of Appeal—interlocutory judgment	887
5314 Service of application for leave to appeal to Court of Appeal—interlocutory judgment	887
5315 Notice of intention to respond to application for leave to appeal to Court of Appeal—interlocutory judgment	887

EXPOSURE DRAFT

	Page	
5316	Time for filing and service of affidavits by respondents to application for leave to appeal to Court of Appeal—interlocutory judgment	888
Division 5.2.3 Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court		
5330	Definitions—div 5.2.3	888
5331	Application—div 5.2.3	889
5332	Application for leave to appeal to Court of Appeal out of time—final judgment	889
5333	Requirements for application for leave to appeal to Court of Appeal out of time—final judgment	889
5334	Filing and service of application for leave to appeal to Court of Appeal out of time—final judgment	890
5335	Notice of intention to respond to application for leave to appeal to Court of Appeal out of time—final judgment	890
5336	Time for filing and service of affidavits by respondents to application for leave to appeal to Court of Appeal out of time—final judgment	891
Division 5.2.4 Appeals to Court of Appeal from Supreme Court generally		
5400	Meaning of <i>appeal</i> —div 5.2.4	891
5401	Application—div 5.2.4	892
5402	Appeals to Court of Appeal—starting appeal	892
5403	Appeals to Court of Appeal—requirements for notice of appeal	892
5404	Appeals to Court of Appeal—parties to appeal	893
5405	Appeals to Court of Appeal—notice of intention to respond	894
5406	Appeals to Court of Appeal—time for filing and serving notice of appeal	895
5407	Appeals to Court of Appeal—notice of appeal to be sealed	896
5408	Appeals to Court of Appeal—service of notice of appeal	896
5409	Appeals to Court of Appeal—stay	896
5410	Appeals to Court of Appeal—competency of appeal	897
5411	Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent	897
5412	Appeals to Court of Appeal—discontinuance of appeal	898

EXPOSURE DRAFT

	Page
5413 Appeals to Court of Appeal—security for costs	899
5414 Appeals to Court of Appeal—amending notice of appeal	899
5415 Appeals to Court of Appeal—cross-appeal etc	900
5416 Appeals to Court of Appeal—application of certain rules to cross-appeals	902
5417 Appeals to Court of Appeal—keeping exhibits	902
5418 Appeals to Court of Appeal—date for settlement of appeal papers	903
5419 Appeals to Court of Appeal—filing of things before settlement of appeal papers	903
5420 Appeals to Court of Appeal—draft index of appeal papers	904
5421 Appeals to Court of Appeal—content of appeal papers	905
5422 Appeals to Court of Appeal—presentation of appeal papers	907
5423 Appeals to Court of Appeal—settlement of appeal papers	908
5424 Appeals to Court of Appeal—filing and serving appeal papers	909
5425 Appeals to Court of Appeal—setting appeal for hearing	909
5426 Appeals to Court of Appeal—power to change appeal hearing date	909
5427 Appeals to Court of Appeal—written summary and list for appeal hearing	910
5428 Appeals to Court of Appeal—summaries of arguments	911
5429 Appeals to Court of Appeal—list of authorities, legislation and texts	912
5430 Appeals to Court of Appeal—abandonment of ground of appeal	912
5431 Appeals to Court of Appeal—further evidence on appeal	913
5432 Appeals to Court of Appeal—absence of party	914
Division 5.2.5 Appeals to Court of Appeal against convictions and sentences	
Subdivision 5.2.5.1 Appeals to Court of Appeal against convictions and sentences—interpretation	
5500 Definitions—div 5.2.5	915
Subdivision 5.2.5.2 Leave to appeal to Court of Appeal out of time against convictions and sentences—convicted person	
5505 Application—sdiv 5.2.5.2	917

EXPOSURE DRAFT

	Page	
5506	Application for leave to appeal to Court of Appeal out of time— conviction or sentence	917
5507	Requirements for application for leave to appeal to Court of Appeal out of time—conviction or sentence	917
5508	Service of application for leave to appeal to Court of Appeal out of time—conviction or sentence	918
5509	Response by director of public prosecutions to application for leave to appeal to Court of Appeal out of time—conviction or sentence	918
5510	Registrar's decision to give or refuse leave to appeal to Court of Appeal out of time—conviction or sentence	919
Subdivision 5.2.5.3 Leave to appeal to Court of Appeal out of time against sentence—director of public prosecutions		
5520	Application of div 5.2.3 to certain appeals by DPP	920
Subdivision 5.2.5.4 Additional rules for appeals to Court of Appeal against convictions and sentences		
5530	Application for leave to appeal to Court of Appeal out of time against conviction or sentence may be treated as appeal	921
5531	Appeals to Court of Appeal against convictions and sentences— grounds of appeal	921
5532	Appeals to Court of Appeal against convictions and sentences—trial judge's report	922
5533	Appeals to Court of Appeal against convictions and sentences— service if convicted person in custody and unrepresented	922
5534	Convicted person is appellant—written case and presence	923
5535	Appeals to Court of Appeal against convictions and sentences— order for production of prisoner	924
5536	Appeals to Court of Appeal against convictions and sentences—fine paid to be kept pending appeal	925
5537	Appeals to Court of Appeal against convictions and sentences— solicitor's instructions to act for convicted person ended	926
5538	Appeals to Court of Appeal against convictions and sentences— solicitor wants to withdraw from acting for convicted person	927
5539	Appeals to Court of Appeal against convictions and sentences— notification of result etc	928

EXPOSURE DRAFT

	Page
Division 5.2.6	Written cases
5600	Definitions—div 5.2.6 929
5601	Application of div 5.2.6 to case stated etc 931
5602	Appeals to Court of Appeal—when are written cases used? 931
5603	Appeals to Court of Appeal—appellant wants written case 932
5604	Appeals to Court of Appeal—respondent wants written case 933
5605	Filing and serving written case—applications 933
5606	Filing and serving written case—appeal 934
5607	Appeals to Court of Appeal—form of written case 935
5608	Appeals to Court of Appeal—inspection of written cases 936
Division 5.2.7	Miscellaneous—pt 5.2
5650	Service for pt 5.2 generally 936
5651	Appeals to Court of Appeal—power to amend proceedings in court below 938
5652	Appeals to Court of Appeal—expediting appeals 938
5653	Directions by Court of Appeal and registrar about appeal etc 938
5654	Appeals to Court of Appeal—want of prosecution of appeal 939
5655	When Court of Appeal may be constituted by single judge—Supreme Court Act 1933, s 37J (1) (h) 941
5656	Jurisdiction of Court of Appeal that may be exercised by single judge—Supreme Court Act 1933, s 37J (3) 941
5657	Judgments of Court of Appeal—accidental slips or omissions 942
Part 5.3	Orders to review certain decisions of Magistrates Court by Supreme Court
5700	Meaning of <i>review order</i> —pt 5.3 943
5701	Review orders—application for order 943
5702	Review orders—affidavits 944
5703	Review orders—service of applications 944
5704	Review orders—parties 944
5705	Review orders—service of review order 944
5706	Review orders—notice of intention to respond to review order 945

EXPOSURE DRAFT

	Page
5707	Review orders—application to revoke review order 945
Part 5.4	Reference appeals
Division 5.4.1	Reference appeals to Supreme Court
Division 5.4.2	Reference appeals to Court of Appeal following acquittals on indictment
5800	Definitions for div 5.4.2 946
5801	Reference appeals to Court of Appeal—application for reference appeal 947
5802	Reference appeals to Court of Appeal—service of application or amended application for reference appeal 947
5803	Reference appeals to Court of Appeal—notice of intention to respond by interested party in reference appeal 947
5804	Reference appeals to Court of Appeal—discontinuance of reference appeal 948
5805	Reference appeals to Court of Appeal—application of certain rules to reference appeals 949
Part 5.5	Cases stated
Division 5.5.1	Questions referred to Supreme Court
5850	Application—div 5.5.1 951
5851	Definitions—div 5.5.1 951
5852	Question referred to Supreme Court—form 952
5853	Special case to Supreme Court—preparation and settling 952
5854	Special case to Supreme Court—person with legal disability 953
5855	Special case to Supreme Court—directions hearing 953
5856	Special case to Supreme Court—setting down for hearing 953
5857	Special case to Supreme Court—insufficient statement of case 954
5858	Special case to Supreme Court—court can draw inferences 954
Division 5.5.2	Cases stated and questions reserved to Court of Appeal
5870	Meaning of <i>Supreme Court</i> —div 5.5.2 955

EXPOSURE DRAFT

	Page	
5871	Case stated or question reserved to Court of Appeal—form	955
5872	Special case to Court of Appeal—preparation and settling	956
5873	Special case to Court of Appeal—setting down for hearing	956
5874	Special case to Court of Appeal—court can draw inferences	957
Chapter 6	General rules for all proceedings	
Part 6.1	Introductory provisions—ch 6	
6000	Application—ch 6	958
Part 6.2	Applications in proceedings	
6005	Definitions—pt 6.2	959
6006	Application—pt 6.2	959
6007	Application in proceeding—contents	960
6008	Application in proceeding—filing and service	962
6009	Application in proceeding—filing and service of supporting material	963
6010	Application in proceeding—absence of party	964
6011	Application in proceeding—dismissal or adjournment if application not served etc	964
6012	Application in proceeding—adjournment generally	965
6013	Application in proceeding—adjournment without attendance	965
6014	Application in proceeding—further hearing	966
6015	Application in proceeding—application under r 40	966
6016	Application in proceeding—oral applications	967
Part 6.3	Documents	
Division 6.3.1	General provisions about documents for filing	
6100	Application—div 6.3.1	968
6101	Documents—compliance with approved form	968
6102	Documents—general heading style	969
6103	Documents—layout etc	970

EXPOSURE DRAFT

	Page
6104 Documents—use of copies	972
6105 Documents—use of figures	972
6106 Documents—signing	972
6107 Documents—alterations	973
Division 6.3.2 Filing documents	
6120 Filing documents—number of copies	974
6121 How documents may be filed	974
6122 Filing documents personally	975
6123 Filing documents by post	975
6124 Filing documents by document exchange	977
6125 Practice notes about filing	978
6126 Date of filing	978
Division 6.3.3 Rejecting filed documents	
6140 Rejecting documents—noncompliance with rules etc	980
6141 Rejecting documents—inconvenient address for service	980
6142 Rejecting documents—abuse of process etc	981
6143 Rejecting document—registrar to give notice etc	982
6144 Rejecting document—costs	982
6145 Filed documents initially rejected	982
Part 6.4 Master	
6200 Jurisdiction exercisable by master	984
6201 Order that jurisdiction in proceeding be exercised by judge instead of master	985
6202 Master referring proceeding or issue to judge	985
Part 6.5 Registrar	
6250 Registrar’s powers—general	987
6251 Registrar’s powers—postponement of hearing	992
6252 Registrar’s powers—subpoenas	992

EXPOSURE DRAFT

	Page	
6253	Order that jurisdiction in proceeding be exercised by judicial officer other than registrar	993
6254	Registrar referring proceeding or issue to judicial officer	994
6255	Appeals from registrar's orders etc	995
Part 6.6	Registry	
6300	Office hours	997
6301	Registrar's duties	997
6302	Cause book	998
6303	Registrar to keep seals	999
6304	Documents—sealing and stamping	999
6305	Issue of commissions	1000
6306	Duplicate sealed etc documents	1000
6307	Delegation by registrar	1000
Part 6.7	Time	
6350	Time—certain days excluded in working out	1001
6351	Time—extending and shortening by court order	1002
6352	Time—fixing by court order	1002
Part 6.8	Service	
Division 6.8.1	Service—preliminary	
6400	Application—pt 6.8	1003
6401	Service of filed documents	1003
Division 6.8.2	Personal service	
6405	How document is personally served	1004
Division 6.8.3	Service—Magistrates Court	
6410	Application—div 6.8.3	1004
6411	Service on individuals generally—Magistrates Court	1005
6412	Service of originating process by post—Magistrates Court	1005
6413	Doubtful service—Magistrates Court	1007

EXPOSURE DRAFT

	Page
Division 6.8.4 Ordinary service	
6420 Ordinary service—address for service	1008
6421 Service by filing	1009
Division 6.8.5 Service—particular cases	
6430 Service in Australia but outside ACT	1009
6431 Service on corporations—generally	1010
6432 Service on corporations—additional ways for all corporations	1012
6433 Service on partnership	1012
6434 Service on defendant operating under unregistered business name	1013
6435 Service on children	1014
6436 Service on people with mental disabilities	1015
6437 Service on detainees	1016
6438 Service if no-one found at party's address for service	1017
6439 Service of originating application to recover unoccupied land	1017
Division 6.8.6 Time of service	
6450 Time of service at address for service	1018
Division 6.8.7 Service—other	
6460 Substituted service	1019
6461 Informal service	1020
6462 Service on agent	1021
6463 Service under contract	1022
6464 Acceptance of service by solicitor	1022
6465 Special requirements for service by fax	1023
6466 Email service—other matters	1023
6467 Proof of service	1025
6468 Identity of person served	1027
6469 Change of address for service	1027
Division 6.8.8 Service of subpoenas and notices instead of subpoenas— general	
6480 Subpoena—service on solicitor	1028

EXPOSURE DRAFT

	Page	
6481	Subpoena—service on medical expert	1028
6482	Medical expert—notice instead of subpoena	1030
6483	Medical expert—no shortening of time for service of notice	1030
Division 6.8.9 Service outside Australia—general		
6500	Definitions—div 6.8.9	1030
6501	Service outside Australia—service of originating process without leave	1031
6502	Service outside Australia—counterclaim or third-party notice	1035
6503	Service outside Australia—setting aside service of originating process etc	1036
6504	Service outside Australia—service of other documents in proceeding	1037
6505	Service outside Australia—leave for service	1037
6506	Service outside Australia—confirmation of service of other documents in proceeding	1038
6507	Service outside Australia—directions etc	1038
6508	Service outside Australia—leave to proceed against defendant	1039
6509	Service outside Australia—how service is made	1042
6510	Service outside Australia—service in convention countries	1042
6511	Service outside Australia—service in non-convention countries	1045
6512	Service outside Australia—other orders	1050
Division 6.8.10 Service of subpoenas in New Zealand		
6520	Application—div 6.8.10	1050
6521	Terms used in Evidence and Procedure (New Zealand) Act	1051
6522	Application for leave to serve subpoena in New Zealand	1051
6523	Supporting affidavit—application for leave to serve subpoena in New Zealand	1051
6524	Application for leave to serve subpoena in New Zealand need not be served etc	1053
6525	Undertaking about paying loss or expense in complying with subpoena served in New Zealand	1053
6526	Setting aside subpoena for service in New Zealand	1054
6527	Noncompliance with subpoena served in New Zealand	1055

EXPOSURE DRAFT

	Page
Division 6.8.11 Service of foreign legal process in the ACT	
6540 Letter of request from foreign tribunal—procedure	1057
6541 Orders for substituted service etc for div 6.8.11	1058
6542 Noncompliance with div 6.8.11	1059
Part 6.9 Subpoenas	
6600 Definitions—pt 6.9	1060
6601 Issuing subpoena	1060
6602 Form of subpoena	1061
6603 Subpoena to produce—leave to serve late	1063
6604 Setting aside subpoena or other relief	1064
6605 Service of subpoena	1064
6606 Compliance with subpoena	1065
6607 Production of subpoenaed document etc otherwise than on attendance	1066
6608 Removal, return, inspection etc of subpoenaed documents and things	1066
6609 Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance	1067
6610 Disposal of subpoenaed documents and things produced	1069
6611 Costs and expenses of compliance with subpoena	1070
6612 Failure to comply with subpoena—contempt of court	1070
6613 Documents and things in custody of court	1071
6614 Application of pt 6.9—subpoena under Commercial Arbitration Act	1072
Part 6.10 Evidence	
Division 6.10.1 General—pt 6.10	
6700 Way evidence given—civil proceedings	1074
6701 Evidence on affidavit by agreement—civil proceedings	1075
6702 Evidence in another civil proceeding etc	1076
6703 Evidence by telephone etc	1076
6704 Plans, photographs, video or audio recordings and models	1077

EXPOSURE DRAFT

	Page
Division 6.10.2 Affidavits	
6710 Affidavit—form	1078
6711 Affidavit—contents	1078
6712 Affidavit—annexures and exhibits	1079
6713 Affidavit—document included in	1082
6714 Affidavit—when may be taken	1082
6715 Affidavit—taking of	1082
6716 Affidavit—certificate of reading or signature for person making	1083
6717 Affidavit—alterations in	1085
6718 Affidavit—filing and service	1086
6719 Affidavit—irregular in form	1087
6720 Affidavit—scandalous matter etc	1087
6721 Affidavit—cross-examination of maker	1088
6722 Affidavit—taken before party	1089
Division 6.10.3 Exchange of correspondence before making application in proceeding	
6740 Definitions—div 6.10.3	1090
6741 Application—div 6.10.3	1090
6742 Applicant's letter to respondent	1091
6743 Respondent's reply to applicant's letter	1092
6744 Applicant and respondent—additional correspondence	1093
6745 Div 6.10.3 application—making application	1093
6746 Div 6.10.3 application—hearing	1094
Division 6.10.4 Notices under Commonwealth Evidence Act	
6750 Evidence of previous representation notice	1094
6751 Objection to hearsay evidence notice—civil proceedings	1095
6752 Tendency evidence notice	1095
6753 Coincidence evidence notice	1096
Division 6.10.5 Exhibits, documents and things	
6760 Meaning of <i>subpoenaed document or thing</i> —div 6.10.5	1096

EXPOSURE DRAFT

	Page
6761 Registrar to keep record of proceeding	1096
6762 Custody of exhibits after proceeding	1097
6763 Duty of parties to claim exhibits	1098
6764 Return of subpoenaed document or thing	1099
6765 Requirement to give or send exhibit	1100
6766 Disposal of exhibits	1101
6767 Power to allow removal of exhibits etc	1102
Division 6.10.6 Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link	
6800 Application for direction under Evidence (Miscellaneous Provisions) Act, s 20	1103
6801 Directions for Evidence (Miscellaneous Provisions) Act, s 20	1104
Division 6.10.7 Taking evidence from New Zealand by video link or telephone	
6805 Terms used in Evidence and Procedure (New Zealand) Act and div 6.10.7	1105
6806 Application for direction under Evidence and Procedure (New Zealand) Act, s 25	1105
6807 Directions for Evidence and Procedure (New Zealand) Act, s 25	1106
Division 6.10.8 Taking evidence otherwise than at trial	
6810 Definitions—div 6.10.8	1107
6811 Effect of court directions for examination order	1108
6812 Application of div 6.10.8 to letter of request	1108
6813 Order for taking evidence otherwise than at trial	1109
6814 When examination order may be made	1111
6815 Application for examination order	1111
6816 Appointment of examiner	1111
6817 Documents for examiner	1112
6818 Time and place of examination etc	1112
6819 Conduct of examination	1113
6820 Examination of additional people	1114

EXPOSURE DRAFT

	Page	
6821	Objections by party or person being examined	1114
6822	Recording evidence of examination	1115
6823	Authentication and filing of deposition of examination etc	1116
6824	Special report on examination	1117
6825	Default of witness at examination	1117
6826	Costs of examination	1118
6827	Witness expenses for witness at examination	1118
6828	Admissibility of deposition of examination	1118
6829	Letter of request	1119
6830	Use of evidence taken in examination	1121
6831	Use of evidence taken in an examination—subsequent proceedings	1122
6832	Amendment and revocation of examination orders	1124
6833	Exclusion of evidence in criminal proceeding	1124
Division 6.10.9 Taking evidence for Australian and foreign courts and tribunals		
6840	Definitions—div 6.10.9	1125
6841	Application—div 6.10.9	1126
6842	Application for div 6.10.9 order	1127
6843	Order relating to taking evidence for Australian or foreign court or tribunal	1127
6844	Div 6.10.9 order for criminal proceeding	1129
6845	Appointment of examiner for div 6.10.9	1129
6846	Attendance by div 6.10.9 order applicant at examination	1130
6847	Procedure for taking evidence under div 6.10.9 order	1130
6848	Keeping of exhibits at div 6.10.9 examination	1131
6849	Certificate of order and depositions—div 6.10.9 examination	1131
6850	Privilege of witnesses—div 6.10.9 examination	1131
6851	Privilege of witnesses—unsupported claim etc for div 6.10.9 examination	1132
Part 6.11 Miscellaneous—ch 6		
6900	Power to make orders	1134

EXPOSURE DRAFT

	Page	
6901	Orders may be made on conditions	1134
6902	Leave may be given on conditions	1134
6903	References to court acting on its own initiative	1134
6904	Mandatory order to registrar etc	1135
6905	Notices must be written	1135
6906	Power to make practice notes	1135
Chapter 7	Transitional	
7000	Transitional—existing proceedings	1137
Schedule 1	Expert witness code of conduct	1138
1.1	Application of code	1138
1.2	General duty to court	1138
1.3	Form of expert reports	1138
1.4	Experts' conference	1139
Schedule 2	Interest rates	1141
Part 2.1	Interest up to judgment	1141
Part 2.2	Interest after judgment	1144
Schedule 3	Costs amount—debts and liquidated demands	1146
Part 3.1	Claim for debt or liquidated demand	1146
Part 3.2	Default judgment	1147
Schedule 4	Scale of costs	1148
Part 4.1	Scale of costs—general	1148

EXPOSURE DRAFT

	Page	
4.1	Costs—general care and conduct	1148
4.2	Costs—registrar’s discretion	1149
4.3	Costs—letters sent by email	1149
4.4	Costs—allowance on affidavits to include attendances	1150
4.5	Costs—affidavit made by 2 or more people etc	1150
4.6	Costs—documents to be served together	1150
4.7	Costs—agency correspondence	1150
4.8	Costs—attendance to instruct counsel	1151
4.9	Costs—parties with same solicitor	1152
4.10	Costs—counsel drawing and settling documents	1152
4.11	Costs—premature brief	1152
4.12	Costs—folios	1152
4.13	Costs—transitional	1153
Part 4.2	Scale of costs—items	1154
Schedule 5	Jurisdiction exercisable by registrar	1169
Part 5.1	Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar	1169
Part 5.2	Jurisdiction related to Corporations Act exercisable by Supreme Court registrar	1177
Part 5.3	Jurisdiction related to ASIC Act exercisable by Supreme Court registrar	1194
Schedule 6	Corporations Rules	1195
Part 6.1	Preliminary—sch 6, pt 6.1	1195
1.1	Name of rules	1195
1.2		1195
1.3	Application of sch 6 and provisions of these rules	1195

EXPOSURE DRAFT

	Page	
1.4	Terms used in Corporations Act	1196
1.5	Definitions—sch 6	1196
1.6	References to rules	1197
1.7	Substantial compliance with forms	1197
1.8	Court's power to give directions	1198
1.9	Calculation of time	1198
1.10	Extending and shortening of time	1199
Part 6.2	Proceedings generally	1200
2.1	Title of documents in a proceeding	1200
2.2	Originating process and interlocutory process	1200
2.3	Setting of hearing	1201
2.4	Supporting affidavits	1201
2.4A	Application for order setting aside statutory demand (Corporations Act, s 459G)	1202
2.5	Affidavits made by creditors	1202
2.6	Form of affidavits	1203
2.7	Service of originating process or interlocutory process and supporting affidavit	1203
2.8	Notice of certain applications to be given to commission	1204
2.9	Notice of appearance (Corporations Act, s 465C)	1205
2.10	Intervention in proceeding by commission (Corporations Act, s 1330)	1206
2.11	Publication of notices	1207
2.12	Proof of publication	1207
2.13	Leave to creditor, contributory or officer to be heard	1208
2.14	Inquiry in relation to corporation's debts etc	1209
2.15	Meetings ordered by the court	1209
Part 6.3	Compromises and arrangements in relation to Part 5.1 bodies	1210
3.1	Application—pt 1.3	1210
3.2	Nomination of chairperson for meeting	1210

EXPOSURE DRAFT

	Page	
3.3	Order for meetings to identify proposed scheme	1211
3.4	Notice of hearing (Corporations Act, s 411 (4) and s 413 (1))	1212
3.5	Copy of order approving compromise or arrangement to be lodged with commission	1212
Part 6.4	Receivers and other controllers of corporation property (Corporations Act, pt 5.2)	1213
4.1	Inquiry into conduct of controller (Corporations Act, s 423)	1213
Part 6.5	Winding-up proceedings (including oppression proceedings where winding-up is sought)	1214
5.1	Application—pt 6.5	1214
5.2	Affidavit accompanying statutory demand (Corporations Act, s 459E (3))	1214
5.3	Application for leave to apply for winding-up in insolvency (Corporations Act, s 459P (2))	1215
5.4	Affidavit in support of application for winding-up (Corporations Act, s 459P, s 462, s 464)	1215
5.5	Consent of liquidator (Corporations Act, s 532 (9))	1216
5.6	Notice of application for winding-up	1216
5.7	Applicant to make copies of documents available	1217
5.8	Discontinuance of application for winding-up	1217
5.9	Appearance before registrar	1217
5.10	Order substituting plaintiff in application for winding-up (Corporations Act, s 465B)	1217
5.11	Notice of winding-up order and appointment of liquidator	1218
Part 6.6	Provisional liquidators (Corporations Act, pt 5.4B)	1219
6.1	Appointment of provisional liquidator (Corporations Act, s 472)	1219
6.2	Notice of appointment of provisional liquidator	1220
Part 6.7	Liquidators	1221
7.1	Resignation of liquidator (Corporations Act, s 473 (1))	1221
7.2	Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)	1221

EXPOSURE DRAFT

	Page	
7.3	Report to liquidator as to company's affairs (Corporations Act, s 475)	1221
7.4	Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)	1222
7.5	Release of liquidator and deregistration of company (Corporations Act, s 480 (c) and (d))	1222
7.6	Objection to release of liquidator	1225
7.7	Report on accounts of liquidator (Corporations Act, s 481)	1226
7.8	Application for payment of call (Corporations Act, s 483 (3) (b))	1226
7.9	Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488 (2))	1227
7.10	Powers delegated to liquidator by the court (Corporations Act, s 488)	1227
7.11	Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))	1227
Part 6.8	Special managers (Corporations Act, pt 5.4B)	1229
8.1	Application for appointment of special manager (Corporations Act, s 484)	1229
8.2	Security given by special manager (Corporations Act, s 484)	1229
8.3	Special manager's receipts and payments (Corporations Act, s 484)	1230
Part 6.9	Remuneration of office-holders	1231
9.1	Remuneration of receiver (Corporations Act, s 425 (1))	1231
9.2	Remuneration of administrator (Corporations Act, s 449E (1))	1233
9.3	Remuneration of provisional liquidator (Corporations Act, s 473 (2))	1235
9.4	Remuneration of liquidator (Corporations Act, s 473 (3))	1238
9.5	Remuneration of special manager (Corporations Act, s 484 (2))	1240
Part 6.10	Winding-up generally	1243
10.1	Determination of value of debts or claims (Corporations Act, s 554A (2))	1243
10.2	Disclaimer of contract (Corporations Act, s 568 (1A))	1243
10.3	Winding-up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act, s 601ND)	1244

EXPOSURE DRAFT

	Page	
Part 6.11	Examinations and orders (Corporations Act, pt 5.9, divs 1 and 2)	1245
11.1	Meaning of <i>examination summons</i> in pt 6.11	1245
11.2	Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)	1245
11.3	Application for examination summons (Corporations Act, s 596A, s 596B)	1246
11.4	Service of examination summons	1247
11.5	Discharge of examination summons	1247
11.6	Filing of record of examination (Corporations Act, s 597 (13))	1248
11.7	Authentication of transcript of examination (Corporations Act, s 597 (14))	1248
11.8	Inspection of record or transcript of examination or investigation under Corporations Act, s 411, s 423 or s 536	1249
11.9	Entitlement to record or transcript of examination held in public	1249
11.10	Default in relation to examination	1250
11.11	Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act, s 598)	1251
Part 6.12	Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C 6D and 7) and securities (Corporations Act, ch 7)	1252
12.1	Service on commission in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7	1252
12.1A	Reference to court of question of law arising in proceeding before Takeovers Panel (Corporations Act, s 659A)	1252
12.2	Application for summons for appearance of person (Corporations Act, s 1071D (4))	1252
12.3	Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)	1253
Part 6.13		1254
Part 6.14	Powers of courts (Corporations Act, pt 9.5)	1255
14.1	Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act, s 554A, s 1321)	1255

EXPOSURE DRAFT

Contents

	Page
Part 6.15	
Proceedings under ASIC Act	1257
15.1	
Reference to court of question of law arising at hearing of commission (ASIC Act, s 61)	1257
15.2	1257
15.3	
Application for inquiry (ASIC Act, s 70, s 201, s 219)	1257
Part 6.16	1258
Dictionary	1260

EXPOSURE DRAFT

Part 2.18 Enforcement

Division 2.18.1 Enforcement—general

2000 Definitions—pt 2.18

(MC(CJ)R s 287; NSW s 102; Qld r 793; SCQA sch 2)

In this part:

account, for a financial institution, includes—

- (a) a deposit account or withdrawable share account; and
- (b) any record of deposit or subscription for withdrawable shares;
and
- (c) a loan account that has a credit balance.

charging order—see rule 2401.

Note This definition also applies outside this part.

debt redirection order—see rule 2301 (1).

Note This definition also applies outside this part.

defendant, for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551.

earnings, of an enforcement debtor, means any of the following that are owing or accruing to the debtor:

- (a) wages or salary, including, for example, any allowance, bonus, commission, fee, overtime pay or other amount received under a contract of employment;
- (b) an amount that, although not payable under a contract of employment, is analogous to or in the nature of wages or

EXPOSURE DRAFT

salary, including, for example, an amount received under a contract for services;

- (c) any other amount received, or the value of any benefit gained, as compensation for services or profit arising from a contract of employment, contract for services or position;
- (d) a pension, benefit or similar payment;
- (e) an annuity;
- (f) an amount payable instead of leave;
- (g) retirement benefit.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

earnings redirection order—see rule 2350.

Note This definition also applies outside this part.

employer, of an enforcement debtor, means a person who, as principal, rather than as employee or agent, pays, or is likely to pay, earnings to the enforcement debtor.

Note This term applies to the Territory as an employer (see Legislation Act, s 121 (Binding effect of Acts)).

enforceable money order, of the court, means—

- (a) a money order of the court; or
- (b) a money order of another court or tribunal filed or registered, under a territory law or a law of the Commonwealth, in the court for enforcement.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 This definition also applies outside this part.

enforceable non-money order, of the court, means—

- (a) a non-money order of the court; or
- (b) a non-money order of another court or tribunal filed or registered, under a territory law or a law of the Commonwealth, in the court for enforcement.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

enforcement creditor, for an enforceable money order of the court, means—

- (a) the person entitled to enforce the money order; or
- (b) the person to whom the benefit of part of the money order has passed by way of assignment or in another way.

Note This definition also applies outside this part.

enforcement debtor, for an enforceable money order of the court, means the person required to pay an amount under the money order.

Note This definition also applies outside this part.

enforcement hearing subpoena means a subpoena issued under rule 2103.

enforcement hearing warrant—see rule 2110 (2).

enforcement officer means the sheriff, a sheriff's officer or a bailiff.

Note This definition also applies outside this part.

EXPOSURE DRAFT

enforcement order, of the court—

- (a) means an order of the court made under this part to enforce an enforceable money order or non-money order; and
- (b) includes an order mentioned in rule 2001 (3), but, to remove any doubt, does not include an instalment order.

Note This definition also applies outside this part.

exempt property means property that is not divisible among the creditors of a bankrupt under the relevant bankruptcy law as in force from time to time and, for the enforcement debtor for an enforceable money order of the court, includes property of the enforcement debtor to which an order under rule 2202 (1) (Seizure and sale order—additional exempt property) applies.

fourth person, for division 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

instalment order—see rule 2150 (1).

instalment order agreement—see rule 2157.

Note This definition also applies outside this part.

money order means an order of a court or tribunal, or part of an order of a court or tribunal, for the payment to a person (but not into court) of an amount, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

Note 1 **Order** is defined in the dictionary to include judgment (see also def *made*).

Note 2 This definition also applies outside this part.

non-money order means an order of a court or tribunal, or part of an order of a court or tribunal, for a form of relief other than the payment of an amount, whether or not the amount includes an amount for costs.

Note This definition also applies outside this part.

officer, of a corporation, includes a former officer of the corporation.

order debt, for an enforceable money order of the court, means the amount payable under the money order, and includes any amount payable under these rules without the need for an order.

order for delivery of possession of land—see rule 2451.

Note This definition also applies outside this part.

order for seizure and delivery of goods—see rule 2460.

Note This definition also applies outside this part.

order for seizure and detention of property—see rule 2470.

Note This definition also applies outside this part.

partner includes a former partner.

plaintiff, for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551.

principal officer, of a corporation, means a person who is or has been—

- (a) the chair, or president, (however described) of the governing body of the corporation; or
- (b) the general manager, chief executive officer, or other person, (however described) having general management of the affairs of the corporation; or

EXPOSURE DRAFT

- (c) the secretary, treasurer, or other person, (however described) having the general function of accepting correspondence for the corporation.

regular deposit, for part 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

regular redirection order—see rule 2332.

Note This definition also applies outside this part.

security interest—see rule 2401.\

seizure and sale order—see rule 2200.

Note This definition also applies outside this part.

senior officer, of a corporation, includes the principal officer of the corporation and anyone else who (whether alone or with others) has or has had powers of management, direction or control of the corporation.

third person, for division 2.18.6 (which is about debt redirection orders generally)—see rule 2300.

Note The Territory may be a **third person** (see Legislation Act, s 121 (Binding effect of Acts)).

2001 Enforcement orders generally

(SCR o 43 r 3; SCQA s 93A)

- (1) To enforce an order (the **original order**) (but not an order for the payment of money into court), a person entitled to enforce the original order may obtain an enforcement order from the court.

Note **Order** is defined in the dictionary to include judgment (see also def **made**).

EXPOSURE DRAFT

- (2) An enforcement order may contain any order directed to enforcing the original order.
- (3) Without limiting subrule (2), an enforcement order includes the following orders:
- (a) a seizure and sale order (see division 2.18.5);
 - (b) a debt redirection order (see division 2.18.6);
 - (c) a regular redirection order (see division 2.18.7);
 - (d) an earnings redirection order (see division 2.18.8);
 - (e) a charging order (see division 2.18.9);
 - (f) an order under division 2.18.10 relating to amounts or securities in court;
 - (g) an order under division 2.18.11 appointing a receiver;
 - (h) an order for delivery of possession of land (see division 2.18.13);
 - (i) an order for seizure and delivery of goods (see division 2.18.14);
 - (j) an order for seizure and detention of property (see division 2.18.15);
 - (k) an order issuing an arrest warrant or an arrest and detention warrant under division 2.18.16 (Contempt).

EXPOSURE DRAFT

- (4) An enforcement order may contain 2 or more orders directed to enforcing the original order and may be made to enforce an original order that is a money order and a non-money order.

Example of a condition for an enforcement order

payment of, or giving security for, the estimated expenses of an enforcement officer in enforcing the order

Note 1 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2002 Enforcement—enforcement application is application in original proceeding

An application to the court for an enforcement order in relation to an enforceable money order or non-money order of the court is an application in the proceeding in the court in which the money order or non-money order was made, registered or filed.

Example

A person's address for service in the proceeding in the court in which the money order or non-money order was made, registered or filed is the person's address for service for an application to the court for an enforcement order in relation to the money order or non-money order (unless the address for service is changed under these rules).

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

EXPOSURE DRAFT

2003 Enforcement—by or against non-party

(SCR o 43 r 24; NSW r 39.49; Qld r 795 and r 892)

- (1) If an order is made in favour of, or obtained by, a person who is not a party to the proceeding in which the order is made, the person may enforce the order as if the person were a party.
- (2) However, the person must not start a proceeding to enforce the order unless the person gives the court an address for service.

Note *Address for service* is defined in the dictionary.

- (3) If an order is made against a person who is not a party when the order is made, the order may be enforced against the person as if the person were a party.
- (4) If an order is made against a corporation that is not a party when the order is made, a senior officer of the corporation is liable to the same process of enforcement as if the corporation were a party.

2004 Enforcement—amount recoverable

(SCR o 43 r 13, r 14 and r 15; NSW s 137 (2); Qld r 797 and r 893)

- (1) The costs of enforcement of an order are recoverable as part of the order.
- (2) Interest on an order debt is recoverable as part of the money order.

2005 Enforcement—separate enforcement for costs

(SCR o 43 r 18; MC(CJ)R s 378; NSW s 137 (1); Qld r 798)

A person entitled to enforce an order with costs may enforce the order and, when the costs become payable, enforce payment of the costs separately.

2006 Enforcement—order in partnership name

(SCR o 50 r 8; SCQA s 88 and s 89; Qld r 88)

- (1) An order against partners in the partnership name may be enforced against 1 or more of the following:
 - (a) partnership property;
 - (b) a partner who filed a defence;
 - (c) a person who has admitted being a partner;
 - (d) a person who the court has decided is a partner;
 - (e) a person who has been individually served as a partner with the originating process and who has not filed a defence.

- (2) On application by a person entitled to enforce an order against partners in the partnership name, the court may amend the order to make it an order against the people who were partners when the cause of action arose.

Note Pt 6.2 (Applications in proceedings) applies to an application for an amendment or leave under this rule.

- (3) On application by a person entitled to enforce an order against partners in the partnership name, the court may give leave for the order to be enforced against someone else who is liable to satisfy the order.

- (4) The application for leave must be served on the person against whom the order is sought to be enforced.

Note Rule 6008 (3) (Application in proceeding—filing and service) applies to service of the application for leave.

- (5) If, on the hearing of the application for leave, the person denies liability, the court may decide liability summarily or give directions about how liability is to be decided.

EXPOSURE DRAFT

2007 Enforcement—against property of partnership

(Partnership Act 1963, s 28 (1))

An enforcement order must not be made against property of a partnership except to enforce an order against the partnership.

2008 Enforcement—against property of business

(SCQA s 90 and s 91)

- (1) This rule applies if—
 - (a) a proceeding is brought against a person under a business name; and
 - (b) rule 291 (Proceeding in business name if unregistered etc) applies to the business name.
- (2) An order in the proceeding may be enforced against any property of the person.
- (3) The court may amend an order made in the proceeding to make it an order against the person.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend an order.

2009 Enforcement—enforcement of Supreme Court order in Magistrates Court

(Qld r 801 (1) and (4) and r 802 (1))

- (1) If the amount payable under an enforceable money order of the Supreme Court is within the jurisdiction of the Magistrates Court, the order may be enforced in the Magistrates Court.
- (2) To enforce the order, the order must be filed in the Magistrates Court.

EXPOSURE DRAFT

- (3) Unless the Supreme Court otherwise orders, the costs of the order's enforcement, whether in the Supreme Court or the Magistrates Court, must be assessed on the basis of work done for or in relation to a proceeding in the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2010 Enforcement—enforcement of Magistrates Court order in Supreme Court

(MC(CJ)R s 238)

- (1) On application by the enforcement creditor for an enforceable money order of the Magistrates Court, the Magistrates Court may give the enforcement creditor a certificate of—
- (a) the money order; and
 - (b) the amount owing under the money order (including any amount payable for interest and costs).
- (2) An application under subrule (1) is made by filing in the Magistrates Court—
- (a) a draft certificate; and
 - (b) an affidavit in support of the application that contains sufficient information to enable the court to give the certificate.
- (3) Part 6.2 (Applications in proceedings) does not apply to the application.
- (4) The draft certificate and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (5) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

EXPOSURE DRAFT

- (6) The court may give a certificate under subrule (1) only if—
 - (a) a seizure and sale order previously made for the order has been returned completely or partly unsatisfied; or
 - (b) the court otherwise considers it appropriate.
- (7) If the certificate is given, no further action may be taken in the Magistrates Court to enforce the money order.
- (8) However, if the certificate, and an affidavit in support setting out the amount owing under the money order and relevant details about interest and costs, is filed in the Supreme Court, final judgment may be entered in the Supreme Court in favour of the enforcement creditor for—
 - (a) the amount stated in the certificate as the amount owing under the money order; and
 - (b) any interest and costs up to the day of entry of final judgment.
- (9) Subrule (8) does not authorise the giving of interest on interest.
- (10) A judgment entered under subrule (8) may be enforced as if it were a money order made by the Supreme Court.

2011 Enforcement—demand for compliance unnecessary

(SCR o 43 r 1; SCQA s 86)

- (1) It is not necessary to demand compliance with an order before starting an enforcement proceeding for the order.
- (2) If, under a territory law or a court order, an order must be served on a person before the order may be enforced against the person, the order may be served without a demand for compliance.

Note A *territory law* includes these rules (see Legislation Act, s 98).

EXPOSURE DRAFT

2012 Enforcement—when leave required

(SCR o 43 r 21 and r 22, o 44 r 3A; MC(CJ)R s 344; NSW s 134; NSW r 39.1; Qld r 799 and r 894)

- (1) A person entitled to enforce an order requires the court's leave to start an enforcement proceeding in the following circumstances:
- (a) if the proceeding would be started more than 6 years after the day the order is made;
 - (b) if the order is against any of the assets of a deceased person coming to the hands of an executor or administrator after the order was made;
 - (c) if the order is subject to a condition;
Note See r 2014 (Enforcement—conditional orders).
 - (d) if enforcement is sought as mentioned in rule 2006 (3) (Enforcement—order in partnership name);
 - (e) for a money order—if there has been any change in the enforcement creditor or enforcement debtor, whether by assignment, death or otherwise;
 - (f) if the order is for delivery of possession of land and a person other than the person against whom the original order for possession of land was made is in possession of the land or part of it;
Note See r 2452 (2) (Orders for delivery of possession of land—preconditions)
 - (g) if the order is against property in the hands of a receiver appointed by the court;
 - (h) if the order is against property in the hands of a sequestrator;
 - (i) if the order is against a future asset of the enforcement debtor;

EXPOSURE DRAFT

- (j) if the proceeding is an application for an enforcement order in aid of another enforcement order.

Note The *Limitation Act 1985*, s 14 makes provision for a 12 year limitation period in relation to the bringing of an action on a cause of action on a judgment.

- (2) An application for leave to start an enforcement proceeding need not be served on anyone unless the court otherwise orders on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (3) An application for leave to start an enforcement proceeding must be accompanied by an affidavit in support of the application.
- (4) The affidavit in support must state—
- (a) that the order has not been fully complied with; and
 - (b) the extent (if any) to which the order has been partly complied with; and
 - (c) that the applicant is entitled to enforce the order; and
 - (d) that the person against whom enforcement is sought is liable to comply with the order; and
 - (e) if it is more than 6 years since the day the order was made—the reasons for the delay; and
 - (f) for a money order—
 - (i) the amount (including any interest and costs) owing on the day the affidavit is made (the *affidavit date*); and
 - (ii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

EXPOSURE DRAFT

- (iii) if there has been a change in an enforcement creditor or enforcement debtor—the change that has happened.
- (5) The affidavit must be sworn not earlier than 2 days before the day the application for leave is filed in the court.

2013 Enforcement—stay

(SCR o 43 r 25; Qld r 800 and r 895)

- (1) On application by the enforcement debtor or other person liable to comply with an enforceable money order or non-money order of the court or by someone else affected by the order, the court may—
- (a) by order, stay the enforcement of all or part of the order, including because of facts arising or discovered after the order was made; and
 - (b) make the orders it considers appropriate, including, for a money order, an instalment order.
- Note 1* Rule 2150 (Instalment order—making) provides for the making of instalment orders.
- Note 2* See also r 2208 (Seizure and sale order—application for instalment order stays sale of seized property).
- Note 3* Pt 6.2 (Applications in proceedings) applies to an application under this rule.
- (2) The application may be made whether or not an enforcement order has already been made for the enforceable money order or non-money order.
- (3) The application must be accompanied by an affidavit in support of the application.

EXPOSURE DRAFT

- (4) Unless the court otherwise orders, the filing of the application does not stay the operation of the order.

2014 Enforcement—conditional orders

(SCR o 43 r 8; NSW r 39.50; Qld r 796)

- (1) An order of the court subject to a condition may be enforced only if the condition is satisfied.

Note 1 **Order** is defined in the dictionary to include judgment (see also def *made*).

Note 2 The court's leave is also required (see r 2012 (1) (c)).

- (2) Unless the court otherwise orders, if a person fails to satisfy a condition the court has included in an order, the person entitled to the benefit of the order loses the benefit.

- (3) The court may order otherwise for subrule (2) on an application made before or after the time to satisfy the condition has passed.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (4) If subrule (2) applies to an order, then, unless the court otherwise orders, any interested person may take any steps—

- (a) that are justified by the order; or
(b) that might have been taken if the order had not been made.

EXPOSURE DRAFT

2015 Enforcement—service of order and related information

- (1) Before an enforcement proceeding can be started for an enforceable money order or non-money order of the court, a sealed copy of the order and a notice in accordance with subrule (2) must be served on the enforcement debtor or other person liable to comply with the order.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The notice mentioned in subrule (1) must include the following:
- (a) details of the order, including whether it was obtained by default;
 - (b) a summary of the enforcement options available to the enforcement creditor or other person entitled to enforce the order;
 - (c) a summary of the options available to the enforcement debtor or other person liable to comply with the order, including—
 - (i) if the order was obtained by default—that application can be made to set the order aside; and
 - (ii) for a money order—that application can be made for an instalment order;
 - (d) information about where the enforcement debtor or other person liable to comply with the order may be able to obtain legal or financial advice and assistance in relation to the order.
- (3) An enforcement proceeding may not be started before the end of 7 days after the day the copy of the order and the notice are served on the enforcement debtor.

EXPOSURE DRAFT

Division 2.18.2 Enforcement orders—general

2050 Enforcement orders—content and issue

(Qld r 820, r 828 (2) and r 908)

- (1) An enforcement order must state—
- (a) for a money order—
 - (i) the name of the enforcement debtor; and
 - (ii) the amount recoverable under the order; and
 - (iii) for an enforcement order to which rule 2052 applies—the date the order ends; and

Note Certain enforcement orders must end not later than 1 year after they are made (see r 2052 (2)).

- (b) for a non-money order—what is authorised under the order; and
- (c) any other details required under these rules.

Note For other details required under these rules, see the following rules:

- r 2333 (Regular redirection order—content)
- r 2355 (Earnings redirection order—content).

- (2) For subrule (1) (a) (ii), the amount recoverable must include—
- (a) unless the court otherwise orders—
 - (i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and

- (ii) the unpaid interest on those costs; and

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (b) the costs relating to the enforcement order; and
 - (c) the amount of interest on the order debt.
- (3) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to an enforcement officer to be enforced:
- (a) a seizure and sale order;
 - (b) an order for delivery of possession of land;
 - (c) an order for seizure and delivery of goods;
 - (d) an order for seizure and detention of property;
 - (e) an order issuing an arrest warrant or arrest and detention warrant under division 2.18.16 (Contempt).
- (4) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor to be enforced:
- (a) a debt redirection order;
 - (b) a regular debt redirection order;
 - (c) an earnings redirection order.

EXPOSURE DRAFT

- (5) If the court makes either of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor:
- (a) a charging order;
 - (b) an order under division 2.18.10 relating to amounts or securities in court.
- (6) If the court makes an order under division 2.18.11 appointing a receiver, the registrar must give a sealed copy of the order to the receiver.

2051 Enforcement orders—application to set aside

(Qld r 819 and r 907)

- (1) This rule applies if an enforcement order is made for an enforceable money order or non-money order (the *original order*) of the court.
- (2) On application by the enforcement debtor or other person liable to comply with the original order or by someone else affected by the enforcement order, the court may—
- (a) set the enforcement order aside; and
 - (b) make the orders it considers appropriate, including, for an enforceable money order, an instalment order.

Note 1 A person liable to comply with the original order may also seek a stay under r 2013.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) Unless the court otherwise orders, the filing of the application does not stay the operation of the enforcement order.

EXPOSURE DRAFT

2052 Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers

(SCR o 43 r 19 and r 20; MC(CJ)R s 346; NSW r 39.20; SCQA s 92; Qld r 817 (5), r 821 and r 909)

- (1) This rule applies to the following enforcement orders:
 - (a) a seizure and sale order;
 - (b) an order for delivery of possession of land;
 - (c) an order for seizure and delivery of goods;
 - (d) an order for seizure and detention of property.
- (2) The enforcement order remains in force for 1 year after the day it is made unless the order states that it ends at an earlier time.

Note 1 A seizure and sale order may be extended under r 2222 (Seizure and sale order—postponement of sale).

Note 2 The ending of a seizure and sale order under this rule does not affect any agreement for sale etc entered into before the order ends (see r 2228 (Seizure and sale order—effect of ending of order on completion of sale etc)).
- (3) However, the order may be renewed for further periods of not longer than 1 year at a time.
- (4) An application for renewal of an enforcement order—
 - (a) must be made before the order ends; and
 - (b) is made by filing in the court—
 - (i) a request for the order to be renewed for a stated period of not longer than 1 year; and

- (ii) an affidavit setting out—
 - (A) the matters required to be included in the affidavit in support of an application for an enforcement order of that kind; and
 - (B) the reasons why the order has not been enforced during the period that the order has been in force.
- (5) Part 6.2 (Applications in proceedings) does not apply to the application.
- (6) The request and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (7) Unless the court otherwise orders on its own initiative, an application for renewal of an enforcement order must be dealt with without a hearing and in the absence of the parties.
- (8) If the court renews an enforcement order, the registrar must give a sealed copy of the order as renewed to an enforcement officer to be enforced.
- (9) A renewed enforcement order must be stamped with the seal of the court to show the period for which the order is renewed.
- (10) The priority of a renewed enforcement order is decided according to the date the enforcement order was originally made.
- (11) The production of an enforcement order purporting to be stamped with the seal of the court and showing the period for which the order has been renewed is sufficient evidence for all purposes of the order having been renewed for the period.

EXPOSURE DRAFT

2053 Enforcement orders—return by enforcement officer

(Qld r 822)

- (1) The registrar may require an enforcement officer who is given an enforcement order to enforce—
 - (a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and
 - (b) to send a copy of the order with the attached statement to the person who obtained the order; and
 - (c) to file in the court a copy of the order with the attached statement.

Note An enforcement officer may also be required to give a report under r 2234 (Seizure and sale order—report by enforcement officer).

- (2) A person who obtains a seizure and sale order that is given to an enforcement officer to enforce may require the enforcement officer—
 - (a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and
 - (b) to send a copy of the order with the attached statement to the person; and
 - (c) to file in the court a copy of the order with the attached statement.

2054 Enforcement orders—priority

(MC(CJ)R s 345 and s 346; NSW r 39.4; Qld r 823 and r 911)

- (1) The precise time an application for an enforcement order is made must be written on the application by the registrar.

- (2) If more than 1 application for an enforcement order against the same person is made to the court, the court must make the orders in order of the times written on the applications.
- (3) The precise time an enforcement order is made must be written on the order by the registrar.
- (4) If more than 1 enforcement order against the same person is given to an enforcement officer, the enforcement officer must enforce the orders in order of the times written on the orders.
- (5) In this rule:

precise time means the hour, day, month and year.

2055 Enforcement orders—payment under order

(SCQA s 93)

A payment under an enforcement order discharges the person making the payment to the extent of the payment.

2056 Enforcement orders—orders about enforcement

(NSWA s 135)

- (1) The court may make the orders in aid of, or otherwise in relation to, the enforcement of its orders that it considers appropriate.
- (2) Without limiting subrule (1), the court may make the following orders:
 - (a) an order authorising an enforcement officer to enter premises to take possession of property under a seizure and sale order;
 - (b) an order prohibiting an enforcement officer from taking any further action on an enforcement order;

EXPOSURE DRAFT

- (c) an order prohibiting anyone else from taking any further action, either permanently or until a stated day, to enforce an order of the court.
- (3) The court's powers under this rule are additional to its powers under any other territory law.

Note 1 A **territory law** includes these rules (see Legislation Act, s 98).

Note 2 For other provisions about entry to premises, see r 2203 (Seizure and sale order—entry, search and seizure powers if no consent) and r 2219 (Seizure and sale order—power of entry for auction of land).

2057 Enforcement orders—consecutive and concurrent orders

(NSWA s 138)

To remove any doubt, this part does not prevent the court—

- (a) from making consecutive seizure and sale orders against the same enforcement debtor, or making consecutive debt redirection orders, regular redirection orders, earnings redirection orders or charging orders in relation to the same enforcement debtor, in relation to the same order debt; or
- (b) from making concurrent debt redirection orders, regular redirection orders or earnings redirection orders against different entities, or consecutive debt redirection orders, regular redirection orders or earnings redirection orders against the same entity, in relation to the same order debt.

2058 Enforcement orders—deceased enforcement debtor

(Qld r 818)

If a money order is to be enforced against the estate of a deceased enforcement debtor, only the assets of the estate are subject to the enforcement.

EXPOSURE DRAFT

Division 2.18.3 Enforcement of money orders— enforcement hearings

2100 Enforcement hearing—application by enforcement creditor

(SCR o 43 r 31; MC(CJ)R s 295; NSW r 38.2; Qld r 807)

- (1) An enforcement creditor for an enforceable money order of the court may apply to the court for an enforcement hearing.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) However, unless the court otherwise orders, the enforcement creditor may not apply to the court for an enforcement hearing if any of the following orders is in force in relation to the enforceable money order:

- (a) an instalment order;
- (b) a debt redirection order;
- (c) a regular redirection order;
- (d) an earnings redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (3) An application under this rule for an enforcement hearing is made by filing in the court—
- (a) a draft order requiring the enforcement debtor to attend an enforcement hearing; and
 - (b) an affidavit in support of the application.

EXPOSURE DRAFT

- (4) The affidavit in support must state—
- (a) the date the money order was made; and
 - (b) the amount of the order debt; and
 - (c) the date and amount of each payment (if any) made under the money order; and
 - (d) the costs incurred in previous enforcement proceedings in relation to the money order; and
 - (e) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (f) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (g) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and
 - (h) the last-known address of the enforcement debtor; and
 - (i) if the enforcement creditor has conducted a company name search or business name search in relation to the enforcement debtor—the results of the search.
- (5) Part 6.2 (Applications in proceedings) does not apply to the application.
- (6) The affidavit and draft order need not be served on the enforcement debtor unless the court otherwise orders on its own initiative.
- (7) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

EXPOSURE DRAFT

2101 Enforcement hearing—otherwise than on enforcement creditor’s application

(Qld r 841)

- (1) This rule applies if the enforcement creditor or enforcement debtor for an enforceable money order of the court applies to the court for any order under this part in relation to the money order.
- (2) On application by the enforcement debtor by notice given to the court or on its own initiative, the court may order that an enforcement hearing be held to decide whether to make the order applied for.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) Part 6.2 (Applications in proceedings) does not apply to an application by an enforcement debtor.

2102 Enforcement hearing—limit on number of applications

(MC(CJ)R s 301; NSW r 38.3 (4))

- (1) An enforcement creditor may apply to the court for, and the court may order, 2 or more enforcement hearings for an enforcement debtor, whether in relation to the same order debt or different order debts.
- (2) However, the enforcement creditor must not make more than 1 application for an enforcement hearing for the enforcement debtor in relation to the same order debt within a 6-month period unless the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (3) An application for leave must be accompanied by an affidavit in support of the application.

2103 Enforcement hearing—order for hearing etc

(SCR o 43 r 31; MC(CJ)R s 295, s 296; NSW r 38.3; Qld r 807, r 809)

- (1) If the court orders that an enforcement hearing be held, the court must—
 - (a) set a date for the enforcement hearing; and
 - (b) by subpoena (an *enforcement hearing subpoena*), require the addressee for the subpoena—
 - (i) to complete, swear and file a statement of the enforcement debtor’s financial position in accordance with rule 2106; and
 - (ii) to attend before the court, at the time and place stated in the order—
 - (A) to answer questions and give information; and
 - (B) to produce the documents or other things (if any) stated in the order.
- Note 1* An enforcement hearing subpoena may direct the addressee for the subpoena and the enforcement creditor to meet to attempt to settle payment of the order debt (see r 2108 (Enforcement hearing—meeting of parties)).
- Note 2* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) The date set for the enforcement hearing must be at least 21 days after the day the enforcement hearing subpoena is issued.
- (3) To remove any doubt—
 - (a) the court may, by enforcement hearing subpoena, require 2 or more people to attend before the court, at the same time and place, in relation to an order debt; and

- (b) part 6.9 (Subpoenas) applies to an enforcement hearing subpoena with any necessary changes and any changes provided by these rules.

2104 Enforcement hearing—who may be directed to attend by enforcement hearing subpoena

(SCR o 43 r 31 (1); MC(CJ)R s 295 (1); NSW r 38.7; Qld r 808 (1) and r 810)

An enforcement hearing subpoena in relation to an enforcement debtor may be directed to—

- (a) the enforcement debtor; or
- (b) if the enforcement debtor is a partnership (including an incorporated limited partnership)—a partner or a person who has or had the control or management of the partnership business in the ACT; or

Note A **partner** includes a former partner (see r 2000).

- (c) if the enforcement debtor is an incorporated association—a member or former member of the committee, or a public officer or former public officer, of the association; or
- (d) if the enforcement debtor is a cooperative—a member or former member of the board of directors, or a secretary or former secretary, of the cooperative; or
- (e) if the enforcement debtor is an owners corporation under the *Unit Titles Act 2001*—an executive member, or former executive member, of the executive committee of the owners corporation; or

EXPOSURE DRAFT

- (f) if the enforcement debtor is a body corporate under the *Community Titles Act 2001*—a member or former member of the committee of management, or a manager or former manager, of the body corporate; or
- (g) if the enforcement debtor is a corporation (including a corporation mentioned in paragraphs (b) to (f))—any senior officer of the corporation.

2105 Enforcement hearing—service of enforcement hearing subpoena

(SCR o 43 r 31 (4); MC(CJ)R s 297; NSW r 38.3 (3); Qld r 808 (3))

- (1) An enforcement hearing subpoena must be served on the addressee for the subpoena at least 14 days before the date set for the enforcement hearing.
- (2) A copy of the form of the statement to be completed in accordance with rule 2106 must be served with the enforcement hearing subpoena.

Note The addressee is not required to comply with the subpoena unless conduct money is given to the addressee a reasonable time before attendance is required (see r 6606 (1)).

2106 Enforcement hearing—statement of enforcement debtor’s financial position

(Qld r 809)

- (1) At least 8 days before the date set for the enforcement hearing, the addressee for the enforcement hearing subpoena must file in the court a sworn statement of the enforcement debtor’s financial position.

- (2) If the enforcement debtor receives regular payments (for example, wages or social security benefits), the statement of financial position must include—
- (a) the dates the last 4 payments were received; and
 - (b) if the payments were paid to the enforcement debtor by payment into an account with a financial institution—a statement to that effect, and the account number and any other details necessary to identify the account.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The registrar must give a copy of the statement to the enforcement creditor at least 5 days before the date set for the enforcement hearing.
- (4) If the enforcement creditor is satisfied with the information in the statement, the enforcement creditor may give notice to the addressee for the subpoena and the registrar that the addressee is no longer required to attend the enforcement hearing.
- (5) If the enforcement hearing subpoena is issued by the court and the addressee for the subpoena, without reasonable excuse, contravenes the subpoena by failing to complete, swear or file a statement of the enforcement debtor's financial position in accordance with this rule, the addressee may be dealt with for contempt of court.
- (6) Subrule (5) does not limit any other power of the court in relation to the contravention.

Note 1 Failure to answer a question or give information in a legal proceeding may be an offence (see Criminal Code, s 722).

Note 2 See also r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

EXPOSURE DRAFT

2107 Enforcement hearing—subpoena to other person

(Qld r 810)

For an enforcement hearing in relation to an enforcement debtor, the court may issue a subpoena under part 6.9 to a person who has relevant knowledge about the circumstances of the enforcement debtor.

2108 Enforcement hearing—meeting of parties

- (1) The court may direct the enforcement debtor and enforcement creditor to meet together to attempt to settle payment of the order debt.

Note An order (including a direction) may be made on the consent of the parties affected by the order (see r 1611 (Orders—by consent)).

- (2) However, if the enforcement debtor or enforcement creditor asks, the court may direct the enforcement debtor and enforcement creditor to meet with a facilitator appointed by the court to attempt to settle payment of the order debt.

- (3) A direction under this rule—

- (a) may be given in an enforcement hearing subpoena directed to the enforcement debtor and require the enforcement debtor and enforcement creditor to meet at a stated time and place before the enforcement hearing; or
- (b) may be given during the enforcement hearing, on application by the enforcement debtor or enforcement creditor or on the court's own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction made during the enforcement hearing.

EXPOSURE DRAFT

- (4) Without limiting rule 6016 (Application in proceeding—oral applications), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement debtor or enforcement creditor or on its own initiative.
- (5) If a direction is given during the enforcement hearing, the court may adjourn the hearing to allow the parties to meet.
- (6) The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a facilitator under this rule.
- (7) If the court gives a direction to a person under this rule and the person, without reasonable excuse, contravenes the direction by failing to meet in accordance with the direction, the person may be dealt with for contempt of court.
- (8) Subrule (7) does not limit any other power of the court in relation to the contravention.

Note See r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

2109 Enforcement hearing—examination

(SCR o 43 r 31 (7); MC(CJ)R s 298, s 305 and s 307; NSW r 38.5; Qld r 812)

- (1) This rule applies if a person—
 - (a) attends before the court at an enforcement hearing on an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person);
or
 - (b) is brought before the court on an enforcement hearing warrant;
or
 - (c) otherwise attends by arrangement before the court.

EXPOSURE DRAFT

- (2) The person may—
- (a) be examined orally on oath about—
 - (i) the assets, liabilities, expenses and income of the enforcement debtor; and
 - (ii) any other means the debtor has of satisfying the debt; and
 - (iii) the debtor’s financial circumstances generally; and

Note **Oath** includes affirmation (see Legislation Act, dict, pt 1).
 - (b) be required, by order, to produce any document substantiating anything relevant to—
 - (i) the assets, liabilities, expenses and income of the enforcement debtor; and
 - (ii) any other means the debtor has of satisfying the debt; and
 - (iii) the debtor’s financial circumstances generally.
- (3) Unless the court otherwise orders, the examination may be conducted by the court and the enforcement creditor.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering, a direction or a decision under this rule.
- (4) The examination may be conducted in open court or in the absence of the public, as the court directs.
- (5) The court may adjourn an enforcement hearing from time to time and may, by order, require a person required to attend or attending the enforcement hearing (or an adjourned enforcement hearing) to attend an adjourned enforcement hearing (or a further adjourned enforcement hearing).

EXPOSURE DRAFT

- (6) If the enforcement creditor has been told the date, time and place for the enforcement hearing (or adjourned enforcement hearing), but does not attend before the court, the court may—
 - (a) set aside the order for the enforcement hearing; or
 - (b) conduct the examination in the absence of the enforcement creditor.
- (7) To remove any doubt, if subrule (6) applies, the court may make an order that it could make if that subrule did not apply.
- (8) Without limiting rule 6016 (Application in proceeding—oral applications), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement creditor or enforcement debtor or on its own initiative.

2110 Enforcement hearing—enforcement hearing warrant issue

(MC(CJ)R s 303; NSW s 97; NSW r 38.6; Qld r 814)

- (1) This rule applies if—
 - (a) a person is required—
 - (i) to attend an enforcement hearing by an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person); or
 - (ii) to attend an adjourned enforcement hearing (or further adjourned enforcement hearing) by an order under rule 2109 (5) (Enforcement hearing—examination); and
 - (b) the person fails to attend the hearing as required by the order.

EXPOSURE DRAFT

- (2) The court may issue a warrant (an *enforcement hearing warrant*) ordering an enforcement officer to apprehend the person and bring the person before the court to be examined at an enforcement hearing under rule 2109 if the court—
- (a) is satisfied that the person was served with the subpoena or was otherwise aware that the person was required by the enforcement hearing subpoena to attend the hearing as required by the subpoena; and
 - (b) considers that the person does not have a reasonable excuse for not attending the hearing.
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (3) The court may issue the enforcement hearing warrant on application by the enforcement creditor or on its own initiative.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an enforcement hearing warrant.
- (4) However, the enforcement hearing warrant may only be issued by the judicial officer conducting the enforcement hearing.
- (5) Also, the enforcement hearing warrant must not be issued earlier than 14 days or later than 3 months after the day the court has served notice on the person that failure to attend may result in the person's arrest.

EXPOSURE DRAFT

2111 Enforcement hearing—enforcement hearing warrant contents etc

(MC(CJ)R s 303; NSW s 97; Qld r 814)

- (1) An enforcement hearing warrant must—
 - (a) name, or otherwise describe, the person whose apprehension is required by the warrant; and
 - (b) state briefly the reason for its issue; and
 - (c) require an enforcement officer to arrest the person whose apprehension is required and bring the person before the court to be examined at an enforcement hearing under rule 2109; and
 - (d) be expressed to end not later than 3 months after the day it is issued.
- (2) For subrule (1) (c), the enforcement officer may enter and search any premises where the enforcement officer suspects, on reasonable grounds, the person to be using the force and assistance that is reasonable and necessary.
- (3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the enforcement hearing warrant.
- (4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.
- (5) The enforcement officer or a police officer may deliver the apprehended person to the person in charge of any correctional centre and that person must receive and keep the apprehended person in custody until the court or the enforcement officer otherwise directs.

EXPOSURE DRAFT

- (6) An enforcement hearing warrant continues in force until—
 - (a) the warrant is executed; or
 - (b) the warrant is set aside by the court and the enforcement officer is told that the warrant has been set aside; or
 - (c) the end of 3 months after the day it is issued.
- (7) For subrule (6) (a), a warrant is executed when—
 - (a) the person whose apprehension is required has been examined at an enforcement hearing under rule 2109; or
 - (b) the examination is adjourned to another day; or
 - (c) the order for the enforcement hearing is set aside.

2112 Enforcement hearing—orders

(MC(CJ)R s 299; Qld r 816)

- (1) At the enforcement hearing, the court may—
 - (a) issue an enforcement hearing warrant; or
 - Note* Rule 2110 (8) deals with the issue of a warrant.
 - (b) make an instalment order for the order debt; or
 - Note* Div 2.18.4 (Enforcement of money orders—instalment orders) provides for the making of instalment orders.
 - (c) make an order amending, suspending or setting aside an instalment order made for the order debt; or
 - Note* See r 2160 (Instalment order—amending, suspending or setting aside).

EXPOSURE DRAFT

- (d) make an earnings redirection order; or

Note Div 2.18.8 (Enforcement of money orders—earnings redirection orders) applies to the making of earnings redirection orders.

- (e) make an order amending, suspending or setting aside an earnings redirection order; or

Note See r 2360 (Earnings redirection order—amending, suspending or setting aside).

- (f) make an order staying the enforcement of the money order; or

Note Rule 2013 (Enforcement—stay) provides for the stay of money orders on application.

- (g) make another order about the enforcement of the order; or

- (h) award costs on application by the enforcement creditor, the enforcement debtor or someone else required to attend the enforcement hearing by a subpoena or warrant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under par (g) and an application under par (h).

- (2) Without limiting rule 6016 (Application in proceeding—oral applications), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement creditor or enforcement debtor or on its own initiative.

- (3) However, the court must not—

- (a) make an instalment order at the enforcement hearing unless the enforcement debtor—

(i) had applied for the order under rule 2151; or

(ii) consents to the making of the order; or

EXPOSURE DRAFT

- (b) amend an instalment order at the enforcement hearing unless the enforcement debtor—
 - (i) had applied for the amendment under rule 2160; or
 - (ii) consents to the amendment.
- (4) To remove any doubt, the court may set aside an instalment order at the enforcement hearing whether or not the enforcement debtor consents to the order being set aside.
- (5) Also, unless the court otherwise orders, the costs of the enforcement hearing are costs of enforcement of the order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Division 2.18.4 Enforcement of money orders— instalment orders

2150 Instalment order—making

(MC(CJ)R s 308 and s 309; NSW s 107 (1) (b); Qld r 868)

- (1) The court may make an order (an *instalment order*) authorising satisfaction of the amount payable under an enforceable money order of the court by instalment payments by the order debtor.
- (2) The court may make an instalment order—
 - (a) on application by the enforcement debtor when making the money order; or
 - (b) on application by the enforcement debtor or someone else under rule 2013 (Enforcement—stay) or rule 2051 (Enforcement orders—application to set aside); or

EXPOSURE DRAFT

- (c) on application by the enforcement debtor under rule 2151 or the enforcement creditor under rule 2153; or
- (d) on the filing in the court of an instalment order agreement under rule 2157; or
- (e) after hearing an application under rule 2314 (Debt redirection order—amending, suspending or setting aside); or
- (f) after hearing an application under rule 2360 (Earnings redirection order—amending, suspending or setting aside).

Note For the making of an instalment order, see esp—

- r 2154 (Instalment order—relevant considerations)
- r 2156 (Instalment order—content and issue).

2151 Instalment order—application by enforcement debtor

(MC(CJ)R s 308; NSW r 37.2; Qld r 868)

- (1) An application by an enforcement debtor for an instalment order is made by filing in the court—
 - (a) a sworn statement of the enforcement debtor’s financial position; and
 - (b) a draft of the order sought.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Some applications by the enforcement debtor need leave (see r 2152).

Note 3 For the effect of the making of the application on a seizure and sale order, see r 2208 (Seizure and sale order—application for instalment order stays sale of seized property).

- (2) Part 6.2 (Applications in proceedings) does not apply to the application.

EXPOSURE DRAFT

- (3) The sworn statement and draft order mentioned in subrule (1) need not be served on anyone unless the court otherwise orders on its own initiative.
- (4) Unless the court otherwise orders on its own initiative, an application for an instalment order by an enforcement debtor must be dealt with without a hearing and in the absence of the parties.
- (5) To remove any doubt, this rule does not apply to an application by an enforcement debtor for an instalment order made—
 - (a) when making the money order; or
 - (b) under any of the following rules:
 - (i) rule 2013 (Enforcement—stay);
 - (ii) rule 2051 (Enforcement orders—application to set aside);
 - (iii) rule 2314 (Debt redirection order—amending, suspending or setting aside);
 - (iv) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

2152 Instalment order—when application by enforcement debtor requires leave

- (1) The enforcement debtor may not make an application for an instalment order without the court’s leave if—
 - (a) the enforcement debtor has made an application for an instalment order in relation to the same money order in the previous 6 months; or

- (b) a previous instalment order made in relation to the same money order ceased to have effect under rule 2162 (Instalment order—ceasing to have effect for nonpayment).

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (2) An application for leave must be accompanied by an affidavit in support of the application.
- (3) In deciding whether to give leave under this rule, the court must have regard to the following matters:
- (a) any change in the enforcement debtor's property or financial circumstances since the enforcement debtor last applied to the court for an instalment order for the order debt;
 - (b) the payments made by the enforcement debtor in discharge of the order debt;
 - (c) the enforcement action (if any) taken in relation to the order debt;
 - (d) the interests and attitudes of the parties;
 - (e) whether giving leave would be consistent with the public interest in enforcing orders justly, efficiently and quickly.
- (4) Subrule (3) does not limit the matters to which the court may have regard.

2153 Instalment order—application by enforcement creditor

(MC(CJ)R s 308 and s 309; NSW r 37.2; Qld r 868)

- (1) An application by an enforcement creditor for an instalment order must be accompanied by—
- (a) a draft of the order sought; and

EXPOSURE DRAFT

(b) an affidavit in support of the application.

Note Pt 6.2 (Applications in proceedings) applies to the application.

- (2) The affidavit in support must state—
- (a) the date the money order was made; and
 - (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and
 - (c) the amount of the order debt; and
 - (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and
 - (j) any other information necessary for the order being sought.
- (3) The affidavit made must be sworn not earlier than 2 days before the day the application is made.

EXPOSURE DRAFT

- (4) To remove any doubt, this rule does not apply to an application by the enforcement creditor for an instalment order under any of the following rules:
- (a) rule 2013 (Enforcement—stay);
 - (b) rule 2051 (Enforcement orders—application to set aside);
 - (c) rule 2314 (Debt redirection order—amending, suspending or setting aside);
 - (d) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

2154 Instalment order—relevant considerations

(Qld r 869)

- (1) In deciding whether to make an instalment order on application by the enforcement creditor or enforcement debtor, the court must have regard to the following matters, as far as they are known to the court:
- (a) whether the enforcement debtor is employed;
 - (b) the enforcement debtor's means of satisfying the order debt;
 - (c) whether the order debt, including any interest, will be satisfied within a reasonable time;
 - (d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;
 - (e) other liabilities of the enforcement debtor;
 - (f) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

EXPOSURE DRAFT

- (2) Subrule (1) does not limit the matters to which the court may have regard.
- (3) In deciding the amount and timing of the instalments, the court must be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.
- (4) However, an enforcement hearing is not necessary before the court makes the instalment order.

2155 Instalment order—stay of enforcement

(MC(CJ)R s 314 (2); NSW r 37.5)

- (1) The filing of the first application for an instalment order in relation to an order debt operates to stay the enforcement of the order debt until the application is heard and decided.
- (2) However, the filing of a second or later application in relation to the order debt does not operate to stay the enforcement of the order debt unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2156 Instalment order—content and issue

(MC(CJ)R s 315; NSW s 107 (1) (b))

- (1) An instalment order for a money order must state—
 - (a) the amount recoverable under the money order; and
 - (b) the amount of the instalments and when they are payable under the instalment order.

- (2) The amount recoverable must include—
- (a) unless the court otherwise orders—
 - (i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and
 - (ii) the unpaid interest on those costs; and
 - (b) the costs relating to the instalment order; and
 - (c) the amount of interest on the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering under this rule.

- (3) The instalment order must require payment of the instalments to be made to, or as directed from time to time by, the enforcement creditor unless the court otherwise orders.
- (4) If the court makes an instalment order, or an order otherwise ordering under subrule (3), the registrar must give a sealed copy of the order to the enforcement creditor.
- (5) A direction under subrule (3) must be made by notice given to the enforcement debtor.

2157 Instalment order—instalment order agreement

(MC(CJ)R s 309; NSW r 37.1)

- (1) The enforcement creditor and enforcement debtor for an enforceable money order of the court may enter into an agreement (an *instalment order agreement*)—
- (a) stating—

- (i) the amount agreed by them to be owing by the enforcement debtor to the enforcement creditor under the money order; and
 - (ii) by what instalments payable at what times the amount owing is to be paid; or
- (b) revoking or amending an instalment order in force in relation to the money order.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) An agreement has no effect unless it is signed by the enforcement creditor and enforcement debtor and each signature is witnessed.
- (3) If an agreement in accordance with this rule is filed in the court, the court must make an instalment order—
- (a) for an agreement under subrule (1) (a)—for the payment of the order debt by the instalments payable at the times stated in the agreement; or
 - (b) for an agreement under subrule (1) (b)—revoking or amending the instalment order as stated in the agreement.

2158 Instalment order—service

- (1) If the court makes an instalment order on the application of the enforcement creditor, the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.
- (2) If the court makes an instalment order on the application of the enforcement debtor and in the absence of the enforcement creditor, the registrar must serve a sealed copy of the order on the enforcement creditor and the enforcement debtor.

EXPOSURE DRAFT

- (3) If the court makes an instalment order on the filing in the court of an instalment order agreement, the registrar must serve a sealed copy of the order on the enforcement creditor and the enforcement debtor.

2159 Instalment order—no other enforcement while in force

(MC(CJ)R s 314 (1) and s 321; NSW s 107 (2); Qld r 870)

Unless the court otherwise orders—

- (a) on the making of an instalment order for a money order, any other enforcement order in force in relation to the money order is automatically stayed; and
- (b) while the instalment order is in force, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2160 Instalment order—amending, suspending or setting aside

(MC(CJ)R s 313; NSW r 37.6; Qld r 871)

- (1) On application by the enforcement creditor or enforcement debtor (a *party*), the court may make an order amending, suspending or setting aside an instalment order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) A party must not make more than 1 application for an order amending an instalment order within a 6-month period unless the court gives leave.

- (3) The enforcement creditor may make an application for an order amending an instalment order only if—
- (a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the enforcement debtor—
 - (i) since the order was made; or
 - (ii) if the order has been amended—since the order was last amended; or
 - (b) when the order was made, amended or last amended, material facts had been withheld from the court or material evidence before the court was false.
- (4) If—
- (a) the court makes an order under subrule (1) on the application of the enforcement creditor; and
 - (b) the enforcement debtor was not before the court when the order was made;
- the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.
- (5) If—
- (a) the court makes an order under subrule (1) on the application of the enforcement debtor; and
 - (b) the enforcement creditor was not before the court when the order was made;
- the registrar must serve a sealed copy of the order on the enforcement debtor.

EXPOSURE DRAFT

- (6) Unless the court otherwise orders, an order amending or suspending an instalment order does not come into force until the end of 7 days after—
- (a) the day the order is made; or
 - (b) if a sealed copy of the order is required to be served under subrule (4) or (5)—the day the order is served.

2161 Instalment order—ceasing to have effect other than for nonpayment

(MC(CJ)R s 316; NSW r 37.7; Qld r 872)

- (1) An instalment order ceases to have effect if—
- (a) the order debt is satisfied; or
 - (b) the instalment order is set aside or ends in accordance with its terms; or
 - (c) unless the court otherwise orders, another enforcement order is made in relation to the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) If an instalment order ceases to have effect under subrule (1), otherwise than because of an order made in the presence of the enforcement debtor, the enforcement creditor must give notice to the enforcement debtor that the instalment order has ceased to have effect.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The enforcement creditor must file a copy of the notice in the court.

EXPOSURE DRAFT

2162 Instalment order—ceasing to have effect for nonpayment

- (1) An instalment order ceases to have effect if—
 - (a) the enforcement debtor fails to make 2 consecutive payments under the order at the times required by the order; and
 - (b) the enforcement creditor files in the court an affidavit stating that fact.
- (2) If an instalment order ceases to have effect under subrule (1), the enforcement creditor must serve on the enforcement debtor—
 - (a) a stamped copy of the affidavit; and
 - (b) a notice telling the enforcement debtor that the instalment order has ceased to have effect.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The enforcement creditor must file a copy of the notice in the court.

2163 Instalment order—record of payments

- (1) If an instalment order is made for an order debt, the enforcement creditor must make a record of the amount and date of each instalment paid by the enforcement debtor under the instalment order to, or as directed by, the enforcement creditor.
- (2) The enforcement creditor must keep the record for at least 6 years after the day the last instalment is paid by the enforcement debtor under the instalment order.

- (3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.
- (4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.
- (5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—
 - (a) an order requiring the enforcement creditor to—
 - (i) file in the court a copy of all or part of the record verified by affidavit; or
 - (ii) give the enforcement debtor a copy of all or part of the record; or
 - (b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

EXPOSURE DRAFT

Division 2.18.5 Enforcement of money orders— seizure and sale orders

2200 Seizure and sale order—making

(SCR o 43 r 3 and o 44 r 1; MC(CJ)R s 293 and s 343; Qld r 828 (1))

- (1) On application by the enforcement creditor for an enforceable money order of the Supreme Court, the Supreme Court may make an order (a *seizure and sale order*) authorising an enforcement officer to seize and sell in satisfaction of the order debt all real and personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest.
- (2) On application by the enforcement creditor for an enforceable money order of the Magistrates Court, the Magistrates Court may make an order (also a *seizure and sale order*) authorising an enforcement officer to seize and sell in satisfaction of the order debt all personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest.

Note See r 2050 (Enforcement orders—content and issue) for provisions about the content and issue of the order.

2201 Seizure and sale order—application

(SCR o 43 r 3 and o 44 r 1; MC(CJ)R s 343)

- (1) An application for a seizure and sale order is made by filing in the court—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (2) The affidavit in support must state—
- (a) the date the money order was made; and
 - (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and
 - (c) the amount of the order debt; and
 - (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and
 - (j) any addresses where property belonging to the enforcement debtor may be located; and
 - (k) any other information necessary for the order being sought.
- (3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.
- (4) Part 6.2 (Applications in proceedings) does not apply to the application.

EXPOSURE DRAFT

- (5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.
- (6) Unless the court otherwise orders on its own initiative, an application for a seizure and sale order must be dealt with without a hearing and in the absence of the parties.

2202 Seizure and sale order—additional exempt property

(MC(CJ)R s 354)

- (1) On application by the enforcement debtor for an enforceable money order of the court, the court may order that stated property of the enforcement debtor is exempt from seizure under a seizure and sale order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The court must not make an order under subrule (1) unless satisfied that the enforcement debtor or any of the enforcement debtor's dependants would be likely to suffer exceptional hardship if the order were not made.
- (3) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may amend or set aside an order under subrule (1).

2203 Seizure and sale order—entry, search and seizure powers if no consent

(SCA s 53A; MC(CJ)R s 349)

- (1) This rule applies if, in executing a seizure and sale order—
 - (a) an enforcement officer is refused entry to the enforcement debtor's premises, after having told or made reasonable attempts to tell the occupier (orally or in writing)—

- (i) about the procedure for execution of the order; and
 - (ii) that the enforcement officer intends to apply for an order for entry under this rule if entry is refused; or
- (b) an enforcement officer—
 - (i) has made reasonable attempts to contact the enforcement debtor and any other occupier of the enforcement debtor's premises to obtain consent to enter the premises; and
 - (ii) has been unable to make contact with the enforcement debtor or any other occupier of the premises.
- (2) At the request of the enforcement officer, the court may make an order authorising the enforcement officer, for any purpose connected with executing the seizure and sale order, to enter the enforcement debtor's premises—
 - (a) using the force and assistance that is reasonable and necessary; and
 - (b) with the assistance of a police officer or police officers if the enforcement officer considers the assistance to be necessary.
- (3) Without limiting subrule (2), an order under that subrule is sufficient authority for the enforcement officer—
 - (a) to search the enforcement debtor's premises for anything that the enforcement officer is entitled to seize in execution of the seizure and sale order; and
 - (b) to seize and remove anything the enforcement officer is entitled to seize in execution of the seizure and sale order.

EXPOSURE DRAFT

- (4) The court must not make an order under subrule (2) in relation to premises unless satisfied that—
 - (a) the enforcement debtor lives at the premises; or
 - (b) something the enforcement officer is entitled to seize is at the premises; or
 - (c) the enforcement officer is entitled to sell the premises.
- (5) An enforcement officer is not civilly liable for anything done or omitted to be done honestly and without recklessness in executing an order under subrule (2).
- (6) This rule does not limit any other power of an enforcement officer or the court in relation to the execution of an enforcement order.
- (7) In this rule:
enforcement debtor's premises means premises occupied by the enforcement debtor.

2204 Seizure and sale order—assistance to enforcement debtor

- (1) If it appears to the enforcement officer executing a seizure and sale order that the enforcement debtor does not properly understand the nature of the order (for example, for language or cultural reasons or because of a disability), the enforcement officer must—
 - (a) give the enforcement debtor written information about where the enforcement debtor may be able to obtain legal or financial advice and assistance in relation to the order; and

EXPOSURE DRAFT

- (b) if the enforcement debtor has difficulty understanding the English language—seek the assistance of an interpreter to explain the situation to the enforcement debtor and ensure the enforcement debtor understands the information given under paragraph (a).

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Further action may not be taken to execute the seizure and sale order before the end of 7 days after the day the information is given to the enforcement debtor.
- (3) The costs of complying with this rule are costs of enforcement of the seizure and sale order.

2205 Seizure and sale order—notice of order

(NSW r 39.18)

- (1) This rule applies if—
- (a) an enforcement officer enters premises for the first time for the purpose of executing a seizure and sale order; or
- (b) an enforcement officer seizes personal property under a seizure and sale order for the first time at a place.
- (2) If subrule (1) (a) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—
- (a) the enforcement debtor; or

EXPOSURE DRAFT

- (b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the premises is present—that person.
- (3) If subrule (1) (b) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—
 - (a) the enforcement debtor; or
 - (b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to be in possession of the seized property is present—that person.
- (4) If there is no-one present at the premises or place who can be given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must leave a sealed copy of the order, secured conspicuously, at the premises or place.
- (5) However, subrule (4) does not require the enforcement officer to leave a sealed copy of the order in a public place.
- (6) If the enforcement debtor is not given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must serve a sealed copy of the order on the enforcement debtor.
- (7) However, this rule does not require a sealed copy of the seizure and sale order to be given to or served on the enforcement debtor if the enforcement debtor has already been given or served with a sealed copy of the order.
- (8) In this rule:
premises includes the land around premises occupied by the enforcement debtor.

EXPOSURE DRAFT

2206 Seizure and sale order—notice of property seized

(MC(CJ)R s 353; NSW r 39.29 (2))

- (1) If an enforcement officer seizes personal property at a place under a seizure and sale order, the enforcement officer must—
 - (a) make an inventory of the seized property that is sufficient to identify it; and
 - (b) give notice of the seizure and a copy of the inventory to—
 - (i) the enforcement debtor; or
 - (ii) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the place, or to be in possession of the property, is present—that person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) The notice must include the following information:
 - (a) the amount (including any amount payable for interest and costs) required to satisfy the order debt;
 - (b) that application may be made under rule 2202 for an order exempting particular property from sale under the seizure and sale order;
 - (c) a summary of the process that is followed for sale of property under a seizure and sale order.
- (3) If there is no-one present at the place who can be given the notice and a copy of the inventory, the enforcement officer must leave the notice and a copy of the inventory, secured conspicuously, at the place.

EXPOSURE DRAFT

- (4) However, subrule (3) does not require the enforcement officer to leave the notice and a copy of the inventory in a public place.

2207 Seizure and sale order—removal etc of seized property

(MC(CJ)R s 352; NSW r 39.29; Qld s 831)

- (1) If an enforcement officer seizes personal property, the enforcement officer must consider how best to secure and preserve the property.
- (2) The enforcement officer may—
- (a) remove the property from the premises or place where the property was seized; or
 - (b) leave the property where it is but restrict access to it or otherwise mark the property as having been seized.
- (3) If the enforcement officer leaves the property where it is, the enforcement officer must tell the enforcement debtor or anyone else who has custody of the property, in writing, that the property has been seized under a seizure and sale order and that the person is responsible for its safekeeping.
- (4) The enforcement creditor is liable to pay any storage expenses but may recover them as costs of enforcement.

2208 Seizure and sale order—application for instalment order stays sale of seized property

(MC(CJ)R s 355)

- (1) This rule applies if—
- (a) property is seized under a seizure and sale order in relation to an enforceable money order of the court; and

- (b) the enforcement debtor makes an application to the court for an instalment order in relation to the money order.

Note Rule 2150 (Instalment order—making) provides for the making of instalment orders.

- (2) The property must not be sold until the court decides the application.
- (3) If the court refuses to make an instalment order on the application, the court may order a stay of sale of the property until any appeal on the application is finally decided.

2209 Seizure and sale order—property seized not abandoned

(MC(CJ)R s 351)

If an enforcement officer seizes property at premises under a seizure and sale order—

- (a) the enforcement officer is not taken to have abandoned the property if the enforcement officer leaves the property at the premises; and
- (b) the enforcement officer may at all reasonable times re-enter the premises while the property is there.

2210 Seizure and sale order—seizure of real property

(Qld r 828 (2)-(4))

- (1) Actual seizure is not necessary to authorise the sale of real property under a seizure and sale order.
- (2) If there is an advertisement of a notice about real property under rule 2221 (Seizure and sale order—advertisement of sale), an enforcement officer is taken to have seized the real property for these rules.

EXPOSURE DRAFT

- (3) An enforcement officer must send a sealed copy of the seizure and sale order, and a copy of the notice, by prepaid post to the enforcement debtor at the enforcement debtor's last-known address.

2211 Seizure and sale order—enforcement debtor not to deal with real property

- (1) After being given a copy of a notice about real property under rule 2210, the enforcement debtor must not sell, transfer or otherwise deal with the property without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

- (2) The courts may set aside or restrain any sale, transfer or other dealing in contravention of this rule, unless to do so would prejudice the rights of a genuine purchaser without notice.

2212 Seizure and sale order—order of seizing and selling property

(MC(CJ)R s 360; NSW r 39.6; Qld r 829)

- (1) An enforcement officer must seize and sell property under a seizure and sale order—
- (a) in the order appearing to the enforcement officer to be best for the prompt enforcement of the order without unnecessary expense; and
 - (b) subject to paragraph (a), in the order appearing to the enforcement officer to be best for minimising hardship to the enforcement debtor or other people; and
 - (c) subject to paragraphs (a) and (b), by seizing and selling personal property before real property unless—

EXPOSURE DRAFT

- (i) the enforcement debtor asks for real property to be sold before personal property; or
- (ii) the court otherwise orders on application by the enforcement debtor, the enforcement creditor or the enforcement officer.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) An enforcement officer may seize and sell an item of property under a seizure and sale order even though its value appears to exceed the amount recoverable under the order, but must not seize or sell additional items of property.

2213 Seizure and sale order—payment before sale

(MC(CJ)R s 356; NSW r 39.25; Qld 830)

An enforcement officer may not sell property seized under a seizure and sale order if, at or before the sale, the enforcement debtor or someone else pays to the enforcement officer—

- (a) the amount owing under the order, including interest; and
- (b) the costs of enforcement then known to the enforcement officer; and
- (c) the amount set by the enforcement officer as security for the enforcement creditor's other costs of enforcement.

EXPOSURE DRAFT

2214 Seizure and sale order—suspension etc of enforcement

(MC(CJ)R s 357; NSW r 39.12 (1))

- (1) If property has not been seized under a seizure and sale order, the enforcement creditor may, in writing—
 - (a) require enforcement of the order to be suspended unconditionally; and
 - (b) if enforcement of the order has been suspended under these rules—require enforcement to be resumed.
- (2) An enforcement officer must comply with a requirement made in accordance with this rule.

2215 Seizure and sale order—agreements to withdraw and re-enter

(MC(CJ)R s 358; NSW r 39.12 (2)-(5))

- (1) This rule applies if property has been seized under a seizure and sale order and the enforcement creditor—
 - (a) enters into an arrangement with the enforcement debtor that an enforcement officer may withdraw from and re-enter possession of the property; and
 - (b) tells the enforcement officer about the arrangement; and
 - (c) asks the enforcement officer to withdraw from possession of the property.
- (2) The enforcement officer must withdraw from possession of the property and suspend enforcement of the seizure and sale order.
- (3) However, the enforcement officer may, if asked in writing by the enforcement creditor, re-enter possession of the property and resume enforcement of the seizure and sale order.

EXPOSURE DRAFT

- (4) If property has been seized under a seizure and sale order and the enforcement creditor, without telling the enforcement officer about the arrangement mentioned in subrule (1), asks an enforcement officer to withdraw from possession or suspend enforcement of the order, other than for the purpose of postponing a sale for a reasonable time—
- (a) the enforcement creditor is taken to have abandoned the enforcement of the order; and
 - (b) the enforcement officer must withdraw from possession of the property and return the order to the enforcement creditor.
- (5) Subrule (4) does not apply if the court otherwise orders on application by the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2216 Seizure and sale order—nature of sale

(MC(CJ)R s 361 and s 365; NSW r 39.5, r 39.7, r 39.9 and r 39.30; Qld r 832)

- (1) Unless the court otherwise orders, an enforcement officer must put up for sale by public auction all property liable to be sold under a seizure and sale order—
- (a) as early as possible, having regard to the interests of the enforcement creditor and the enforcement debtor (the *parties*); and
 - (b) at a place and in a way appearing to the enforcement officer to be suitable for a beneficial sale of the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

EXPOSURE DRAFT

- (2) The property must not be sold before the end of 7 days after the day the property is seized unless—
 - (a) the enforcement debtor asks for the property to be sold before the end of the 7-day period; or
 - (b) the property is perishable.
- (3) However, personal property must be sold within 12 weeks after the day it is seized.
- (4) Before the property is sold by public auction, a party or the enforcement officer may apply to the court for an order that the property be sold privately.

Note Pt 6.2 (Applications in proceedings) applies to the application.
- (5) The application must be accompanied by an affidavit in support of the application.
- (6) If the applicant is a party, the applicant must also serve a stamped copy of the application on the enforcement officer.
- (7) If, on application by the enforcement creditor, the court makes an order that the property be sold privately before a public auction, the court may order that the enforcement creditor pay any costs already incurred by the enforcement officer for the auction.
- (8) Property sold by public auction must be sold under the following conditions of sale:
 - (a) for personal property, if the person conducting the auction considers the particular lot in which the property is to be auctioned is worth less than \$500, or for other property if the enforcement debtor agrees—at the best price obtainable;
 - (b) otherwise, if the reserve is reached—to the highest bidder;

EXPOSURE DRAFT

- (c) if the person conducting the auction considers there is a dispute as to who is the highest bidder, the property is to be reauctioned and knocked down to the highest bidder.
- (9) If property put up for sale at public auction is not sold by auction, the enforcement officer may sell the property privately—
- (a) for an amount not less than the highest bid made at the auction that the enforcement officer considers is a reasonable amount for the property; or
 - (b) if no bid was made at the auction—for an amount the enforcement officer considers is a reasonable amount for the property; or
 - (c) in accordance with an order of the court under rule 2220 (Seizure and sale order—sale at best price obtainable).
- (10) In this rule:

reserve, for a property to be sold at auction, means the reserve amount set by the enforcement officer that is an amount the enforcement officer considers is not less than a reasonable amount for the property.

2217 Seizure and sale order—setting reasonable amount

(MC(CJ)R s 363 and s 364; NSW r 39.7 (2) and r 39.10; Qld r 837)

- (1) To set an amount as a reasonable value of the property to be sold under a seizure and sale order, the enforcement officer—
- (a) may engage a suitably qualified and experienced valuer to give the enforcement officer an opinion about the value of the property; and

EXPOSURE DRAFT

- (b) may require the enforcement creditor to provide any information about the property that the enforcement creditor knows or can reasonably obtain; and
 - (c) may seek any other information the enforcement officer considers appropriate.
- (2) If the enforcement creditor fails to comply with the enforcement officer's request, the enforcement officer may refuse to proceed with the sale until the information is provided or the court otherwise orders on the application of the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application by the enforcement creditor.

- (3) The enforcement officer's costs under this rule are costs of enforcement of the seizure and sale order.
- (4) The enforcement officer may communicate the amount set as a reasonable value of property to be sold to any person before the sale only if the communication is necessary to conduct the sale or there is another sufficient excuse.

2218 Seizure and sale order—additional provisions relating to land

- (1) This rule applies if land is to be sold under a seizure and sale order.
- (2) An enforcement officer may—
- (a) seek expressions of interest from real estate agents to market the land and conduct the sale; and
 - (b) appoint a real estate agent after considering any expressions of interest received.
- (3) The costs of complying with subrule (2) are costs of enforcement of the seizure and sale order.

EXPOSURE DRAFT

- (4) The enforcement officer or appointed real estate agent may postpone the sale of the land if the officer or agent considers that an immediate sale would result in a sacrifice of the value of the land.
- (5) The enforcement officer must—
 - (a) search the title of the land for any encumbrances; and
 - (b) make inquiries about the outstanding value of any encumbrances.
- (6) The enforcement officer must take the value of any encumbrances into account in setting the reserve price of the property.
- (7) On application by the enforcement officer, the court may make any order it considers appropriate in aid of the sale of the land under the seizure and sale order, including, for example, an order for the disclosure of the amount owing under an encumbrance on the land.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
- (8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (7).
- (9) An application under subrule (7) need not be served on anyone unless the court otherwise orders on its own initiative.
- (10) Unless the court otherwise orders on its own initiative, an application under subrule (7) must be dealt with without a hearing and in the absence of the parties.
- (11) If the court makes an order under subrule (7), the registrar must give a sealed copy of the order to the enforcement creditor and enforcement debtor.

EXPOSURE DRAFT

2219 Seizure and sale order—power of entry for auction of land

(NSWA s 114)

- (1) If land is to be sold by public auction, the court may, on application by an enforcement officer, make an order—
 - (a) authorising entry onto the land by the enforcement officer (including entry by force if necessary) for the purpose of showing the land to prospective purchasers; and
 - (b) authorising entry onto the land by prospective purchasers in the presence of the enforcement officer.
- (2) The order may also authorise the enforcement officer to do either or both of the following:
 - (a) secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary);
 - (b) take the steps necessary to prevent people from entering the land.
- (3) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (4) An application under this rule need not be served on anyone unless the court otherwise orders on its own initiative.
- (5) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.
- (6) This rule does not affect any other power of the court to make orders.

EXPOSURE DRAFT

- (7) In this rule:

land includes premises on land.

2220 Seizure and sale order—sale at best price obtainable

(SCR o 44 r 2; MC(CJ)R s 366; NSW s 39.13; Qld r 833)

- (1) This rule applies if the property seized under a seizure and sale order is not sold under rule 2216 (Seizure and sale order—nature of sale).
- (2) The enforcement officer or enforcement creditor may apply to the court for an order to sell the property at the best price obtainable.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) The application must be accompanied by an affidavit, or a report by the enforcement officer, in support of the application giving details of the required steps for sale that have been taken.
- (4) A copy of the application and affidavit must be served on the enforcement debtor and any other interested party.

2221 Seizure and sale order—advertisement of sale

(MC(CJ)R s 365; NSW r 39.23 and r 39.31Qld r 834)

- (1) Before selling property seized under a seizure and sale order, an enforcement officer must arrange advertisement of a notice giving—
 - (a) the time and place of sale; and
 - (b) details of the property to be sold.
- (2) The notice must be published in a daily newspaper circulating generally in the ACT on 2 different days.

EXPOSURE DRAFT

- (3) Both of the days mentioned in subrule (2) must be not more than 4 weeks before the day of the sale and at least 1 of the days must be not less than 2 weeks before the day of the sale.
- (4) However, the enforcement officer may sell the seized property without arranging the advertisements if—
 - (a) the property is perishable; or
 - (b) the enforcement debtor asks in writing for the property to be sold without the advertisements and the enforcement creditor consents.
- (5) Also, if the seized property is put up for sale at a public auction to be conducted by someone other than an enforcement officer—
 - (a) it is sufficient for the notice to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and
 - (b) advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and
 - (c) an enforcement officer may require any other advertising the enforcement officer considers reasonable.
- (6) At least 48 hours before the day of the auction, the enforcement officer must serve on the enforcement debtor a notice stating the date, time and place of the auction and the property to be auctioned.
- (7) The advertisement must not contain any statement to the effect, or from which it can be inferred, that the auction is of property seized under a seizure and sale order.

EXPOSURE DRAFT

2222 Seizure and sale order—postponement of sale

(MC(CJ)R s 362; NSW r 39.11; Qld r 835)

- (1) On application by an enforcement officer, the enforcement creditor or the enforcement debtor, the court may order that the sale of property seized under a seizure and sale order be postponed to a stated date.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) For a sale of personal property, the stated date must not be later than 12 weeks after the day the property was seized unless the court otherwise orders.
- (3) If the order authorising the sale would otherwise end before the stated date, the postponement automatically extends the order until the end of the stated date.

2223 Seizure and sale order—amounts received

(MC(CJ)R s 371, ss 373-375; NSW r 39.15 and r 39.16; Qld r 836)

- (1) An enforcement officer must pay to the registrar all proceeds of sale and other amounts received by the enforcement officer under a seizure and sale order.
- (2) From the amounts received from the enforcement officer, the registrar must—
 - (a) pay the enforcement officer's fees and costs of enforcement (including any costs of valuing and advertising property); and
 - (b) pay any balance, up to the amount recoverable under the seizure and sale order, to the enforcement creditor; and
 - (c) pay any remaining balance to the enforcement debtor.

- (3) If the enforcement officer receives seizure and sale orders in relation to more than 1 enforcement creditor, the enforcement creditors must be paid from the proceeds of sale in the order in which the seizure and sale orders were received by the enforcement officer.
- (4) The registrar must give the enforcement debtor and enforcement creditor an account showing how the amounts received have been paid.

2224 Seizure and sale order—terms about payment

(MC(CJ)R s 367; NSW r 39.14)

- (1) An enforcement officer must sell property seized under a seizure and sale order on terms that the purchaser of an item of the property—
 - (a) must pay—
 - (i) 10% of the purchase price as a deposit immediately after the sale; and
 - (ii) the balance of the purchase price within the period (not longer than 2 days after the day of the sale) that the enforcement officer decides before the sale; or
 - (b) must pay all the purchase price immediately after the sale.
- (2) An enforcement officer must require payment of the purchase price to be in cash or by bank draft, electronic funds transfer, debit card or credit card.
- (3) If payment is made by electronic funds transfer, debit card or credit card, any charge made for the payment must be included in the costs of enforcement.

EXPOSURE DRAFT

2225 Seizure and sale order—securities held by enforcement officer

(MC(CJ)R s 348; NSW s 111; SCQA s 93B)

- (1) This rule applies if an enforcement officer seizes a cheque, bill of exchange, promissory note, bond, specialty, or another security for money, (the *seized document*) under a seizure and sale order.
- (2) The enforcement officer holds the seized document as security for the amount to be recovered under the seizure and sale order for the benefit of the enforcement creditor.
- (3) The enforcement officer may sue in the officer's own name for, and recover, an amount payable under the seized document from the person liable under it.
- (4) Payment to the enforcement officer of an amount payable under the seized document discharges the person liable under the document to the extent of the payment.

2226 Seizure and sale order—personal property subject to conditional bill of sale

(NSW s 110)

- (1) This rule applies if personal property subject to a seizure and sale order is in the enforcement debtor's possession and is also subject to a conditional bill of sale.
- (2) An enforcement officer may sell the enforcement debtor's interest in the property without taking possession of it.
- (3) On receiving written notice that a person (the *purchaser*) has purchased the interest, the person having the benefit of the bill of sale (the *holder of the bill*) may take possession of the property.

EXPOSURE DRAFT

- (4) If the holder of the bill takes possession of the property, the holder is taken to hold it for the use of the purchaser, subject to the purchaser's payment of any amounts payable under the bill of sale.
- (5) If the property is later sold under the bill of sale and any surplus remains from the proceeds of sale after the debt to the holder of the bill is satisfied, the holder must pay the surplus to the purchaser.
- (6) This rule does not affect the right of the enforcement creditor to test the validity of the bill of sale by interpleader.

2227 Seizure and sale order—effect of sale of property

(NSWA s 115)

- (1) A sale of property by an enforcement officer under this division is as valid as if the property had been sold to the purchaser by the enforcement debtor personally.
- (2) In an instrument executed by an enforcement officer in relation to land, a statement in the instrument to the effect that—
 - (a) the land has been sold under a seizure and sale order; and
 - (b) the seizure and sale order was made for the enforcement of a money order made in a proceeding stated in the order;

is admissible in any proceeding as evidence of those facts.

2228 Seizure and sale order—effect of ending of order on completion of sale etc

(NSWA s 116)

Subject to any order made by the court under rule 2056 (Enforcement orders—orders about enforcement)—

- (a) the ending of a seizure and sale order under rule 2052 (Enforcement orders—duration and renewal of certain

enforcement orders given to enforcement officers) does not affect any agreement for sale or other transaction entered into under the authority of the order before the order ends; and

- (b) any action necessary to complete the sale or give effect to the transaction may be taken as if the order were still in force.

2229 Seizure and sale order—appropriation of payments towards order debt

(NSWA s 136)

Unless the court otherwise orders, any payment made on account of an order debt is to be appropriated—

- (a) first towards the part of the order debt that is costs; and
(b) second towards the part of the order debt that is interest; and
(c) third toward the balance of the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2230 Seizure and sale order—documents giving effect to sale

(NSW r 39.26)

- (1) If land is sold at auction under a seizure and sale order, the enforcement officer and the purchaser must each sign an appropriate contract of sale immediately after the auction.
- (2) Unless the court otherwise orders, the settlement date under the contract of sale must not be later than 90 days after the day of the auction.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

EXPOSURE DRAFT

- (3) As soon as practicable after receiving payment in full for land sold under a seizure and sale order, an appropriate transfer prepared by the purchaser must be executed by the enforcement officer and given to the purchaser for the purpose of giving effect to the sale.

2231 Seizure and sale order—payment to enforcement debtor

(NSW r 39.28)

- (1) An enforcement creditor on whose application a seizure and sale order has been made may file in the court—
- (a) an agreement with the enforcement debtor about the amount of the enforcement creditor’s costs of enforcement (a ***costs agreement***); or
- Note* Rule 1702 (Costs—agreement about costs) applies to the agreement.
- (b) a bill of costs.
- (2) A costs agreement or bill of costs must be filed—
- (a) not later than 2 months after the day an enforcement officer receives the proceeds of any sale under the seizure and sale order; or
- (b) within any longer time the enforcement debtor agrees to in writing.
- (3) If the enforcement creditor files a costs agreement in accordance with subrule (2), the registrar must pay the enforcement debtor any amount held by the court over the amount necessary to satisfy the seizure and sale order.

EXPOSURE DRAFT

- (4) If the enforcement debtor files a bill of costs in accordance with subrule (2), the registrar must pay the enforcement debtor, before assessing the costs, any amount held by the court over the amount that, on the basis of the amount claimed in the bill of costs, is necessary to satisfy the seizure and sale order.
- (5) If the enforcement creditor does not file a costs agreement or bill of costs in accordance with subrule (2), the registrar may pay the enforcement debtor any amount held by the court over the total amount necessary to satisfy the seizure and sale order (including interest) and the costs of enforcement then known to the registrar.
- (6) The registrar must pay the enforcement creditor any of the proceeds of sale that the registrar is not required by this rule to pay to the enforcement debtor.
- (7) This rule does not affect the right of the enforcement creditor to recover from the enforcement debtor the costs of enforcement of the seizure and sale order.

2232 Seizure and sale order—purchase by enforcement officer or auctioneer prohibited

(MC(CJ)R s 369)

An enforcement officer, or a real estate agent or auctioneer appointed or engaged by an enforcement officer in relation to a seizure and sale order, is not entitled—

- (a) to bid at an auction at which property seized under the order is offered for sale; or
- (b) to purchase, personally or for someone else, any property seized under the order at auction or by private agreement.

EXPOSURE DRAFT

2233 Seizure and sale order—account etc

(MC(CJ)R s 370)

- (1) This rule applies to a person if the person—
 - (a) is a real estate agent or auctioneer; and
 - (b) is appointed or engaged by an enforcement officer in relation to a seizure and sale order.
- (2) The person must tell an enforcement officer the amount of the person’s charges in relation to the seizure and sale order as soon as practicable after—
 - (a) being told by the enforcement officer that the person’s services are not required, or will no longer be required, in relation to the order; or
 - (b) being asked by an enforcement officer for an account of the person’s charges in relation to the order.
- (3) The person must, as soon as practicable after receiving any amount under a seizure and sale order, pay the amount, less the person’s charges, to an enforcement officer.

2234 Seizure and sale order—report by enforcement officer

(MC(CJ)R s 375; NSW r 39.16)

- (1) If an enforcement officer sells property seized under a seizure and sale order, the enforcement officer must, on request by the registrar, enforcement creditor or enforcement debtor, give a report of the sale of the property seized under a seizure and sale order.

- (2) The report must include an account of—
- (a) the proceeds of the sale and any other amount received by the enforcement officer under the seizure and sale order; and
 - (b) all the costs and charges incurred in giving effect to the order, including any costs of removing the property from where it was seized and advertising the sale; and
 - (c) how the proceeds and other amount (if any) have been disposed of.

2235 Seizure and sale order—order for disposal and return of property to enforcement debtor

(MC(CJ)R s 376 and s 377)

- (1) If property seized under a seizure and sale order remains unsold after being offered for sale at an auction, the court may, on application by the enforcement creditor, make an order for the disposal of the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) An application under subrule (1) must be made not later than 4 weeks after the day of the auction.
- (3) In considering whether to make an order for the disposal of the property, the court must have regard to—
- (a) the amount of the enforcement debt and costs and charges remaining unpaid; and
 - (b) any hardship that would be imposed on the enforcement creditor if the order were not made and on the enforcement debtor if the order were made.

EXPOSURE DRAFT

- (4) If—
- (a) the enforcement creditor does not make an application in accordance with subrule (2) in relation to property remaining unsold; or
 - (b) the court refuses to make an order under subrule (1) for the disposal of property remaining unsold;
- the property must be returned to the enforcement debtor.

Division 2.18.6 Enforcement of money orders—debt redirection orders generally

2300 Application—div 2.18.6

(Qld r 793, def *third party* and r 839)

- (1) This division applies if a debt is, or is likely to become, payable by a person (a *third person*) to the enforcement debtor for a money order.

Note Div 2.18.7 also applies if the third person is a financial institution and regular redirection of amounts is, or is to be, authorised.

- (2) However, this division does not apply to—
- (a) a redirection of earnings; or
 - (b) an order for the payment of money into court.

Note Div 2.18.8 deals with earnings redirection orders.

EXPOSURE DRAFT

2301 Debt redirection order—making

(SCR o 46 r 1; MC(CJ)R s 317; Qld r 839 and r 840)

- (1) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may make an order (a *debt redirection order*) authorising the redirection to the enforcement creditor of the third person's debt to the enforcement debtor.
- (2) To remove any doubt, a single debt redirection order may be made in relation to 2 or more debts.
- (3) A debt may be redirected only if the debt is payable or accruing to the enforcement debtor by the third person on the day the order for redirection of the debt is served on the third person.

Note See r 2050 (Enforcement orders—content and issue) for provisions about the content and issue of the order.

2302 Debt redirection order—application

- (1) An application for a debt redirection order is made by filing in the court—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) The affidavit in support must state—
 - (a) the date the money order was made; and
 - (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

EXPOSURE DRAFT

- (c) the amount of the order debt; and
 - (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the money order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the money order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the money order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and
 - (j) the name of the third person; and
 - (k) the amount of the debt that appears to be owed by the third person to the enforcement debtor; and
 - (l) any other information necessary for the order being sought.
- (3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.
- (4) Part 6.2 (Applications in proceedings) does not apply to the application.
- (5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

EXPOSURE DRAFT

- (6) Unless the court otherwise orders on its own initiative, an application for a debt redirection order must be dealt with without a hearing and in the absence of the parties.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2303 Debt redirection order—relevant considerations

(NSW r 39.38; Qld r 840 (2))

- (1) In deciding whether to make a debt redirection order, the court must have regard to the following matters, as far as they are known to the court:
- (a) the enforcement debtor's means of satisfying the order debt;
 - (b) whether the order debt, including any interest, will be satisfied within a reasonable time;
 - (c) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;
 - (d) other liabilities of the enforcement debtor;
 - (e) the amount of the order debt;
 - (f) the amount of the debt to be redirected and the amount of each instalment (if any);
 - (g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly;
 - (h) whether, having regard to the nature of the debt and the kind of redirection, the redirection is appropriate.

EXPOSURE DRAFT

- (2) Subrule (1) does not limit the matters to which the court may have regard.
- (3) In deciding the amount of the debt to be redirected under the order and the amount of each instalment (if any), the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.
- (4) However, an enforcement hearing is not necessary before the court makes the debt redirection order.

2304 Debt redirection order—joint funds

(SCQA s 93C)

- (1) This rule applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a *joint fund*).
- (2) A debt redirection order may authorise redirection to an enforcement creditor of the joint fund to the extent of the enforcement debtor's entitlement.
- (3) Unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner, it is presumed a joint fund is owned by the fund owners in equal shares.

Note Pt 6.2 (Applications in proceedings) applies to an application under r (3).

2305 Debt redirection order—partnership debts

(SCQA s 93E)

A court may make a debt redirection order in relation to debts belonging to an enforcement debtor from a partnership carrying on business in the ACT even if a partner lives outside the ACT.

2306 Debt redirection order—account with financial institution

(MC(CJ)R s 325; NSW s 117 (2); SCQA s 93F)

- (1) An amount standing to the credit of an enforcement debtor in an account with a financial institution is, for enforcing a money order, a debt payable by the financial institution to the enforcement debtor.
- (2) Subrule (1) applies even if any of the following conditions applying to the account have not been satisfied:
 - (a) a condition requiring a demand or notice to be made or given before an amount is withdrawn;
 - (b) a condition about how, or the place where, a demand is to be made;
 - (c) a condition requiring a personal application to be made before an amount is withdrawn;
 - (d) a condition requiring the production of a deposit book, receipt or anything else for an amount deposited in the account before the amount is withdrawn;
 - (e) a condition requiring an amount not be withdrawn for a stated period;
 - (f) a condition requiring a minimum amount for a withdrawal;
 - (g) a condition requiring a minimum balance to be maintained in the account;
 - (h) a similar condition.
- (3) This rule applies, with any necessary changes, to an amount that is placed to the credit of an enforcement debtor in an account in a financial institution between the date of the debt redirection order and any hearing deciding the validity of the order.

EXPOSURE DRAFT

2307 Debt redirection order—claim by someone else

(SCR o 46 r 5 and r 6; MC(CJ)R s 336; NSW r 39.41; Qld r 845)

- (1) This rule applies if—
 - (a) the court is considering making, or has made, a debt redirection order for a debt; and
 - (b) the court considers that someone other than the enforcement debtor who may be entitled to all or a part of the debt, or to a charge or lien on it, (an *interested person*) should be given the opportunity to object.
- (2) The court may, on its own initiative, give the directions it considers appropriate for deciding the interested person’s entitlement.

Examples of directions

- 1 that a stamped copy of a debt redirection order be served on a person who may be an interested person
- 2 that a stamped copy of an objection, supporting affidavit, or response to an objection, filed under rule 2311 (Debt redirection order—third person disputes liability) be served on a person who may be an interested person
- 3 that a person who may be an interested person be given an opportunity to file a notice of objection and supporting affidavit
- 4 directions for deciding any question arising out of a notice of objection or supporting affidavit

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2308 Debt redirection order—when debt redirected

(SCR o 46 r 2; MC(CJ)R s 319 (2), s 320 and s 328; NSW s 117 (1); NSW r 39.39; Qld r 842)

- (1) A debt redirection order must be served on the third person to have effect.
- (2) On the service of the order, all debts then payable or accruing from the third person to the enforcement debtor are redirected in the hands of the third person to the enforcement creditor to the extent of the amount recoverable under in the order.

2309 Debt redirection order—notice by third person to enforcement creditor

(MC(CJ)R s 329; NSW r 39.43)

If a debt redirection order attaches a debt that is payable to the enforcement debtor later than 28 days after the day the order is served on the third person, the third person must, before the end of that period, serve on the enforcement creditor a notice stating—

- (a) the date the debt is, or is likely to be, payable to the enforcement debtor; and
- (b) if the amount of the debt is less than the unpaid amount of the amount recoverable under the money order—the amount of the debt.

EXPOSURE DRAFT

2310 Debt redirection order—payments by third person

(NSWA s 123 (1) and (2) (a))

- (1) Payments under a debt redirection order must be made in accordance with, and to the enforcement creditor stated in, the order.
- (2) Out of each amount redirected under the order, the third person may deduct a reasonable amount to cover the third person's costs and expenses of complying with the order.

2311 Debt redirection order—third person disputes liability

(SCR o 46 r 4; MC(CJ)R s 334; NSW r 39.40; Qld r 844)

- (1) This rule applies if—
 - (a) a debt redirection order is served on the third person; and
 - (b) the third person disputes liability to pay any debt to the enforcement debtor.
- (2) The third person may file a notice of objection in the court.
- (3) The notice must be filed not later than 7 days after the day the order is served on the third person.
- (4) The notice must be accompanied by an affidavit in support stating the facts relied on by the third person.
- (5) The disclosure of any information in the affidavit does not subject the third person to any liability if the disclosure was reasonable in the circumstances.
- (6) The filing of the notice stays any obligation of the third person to pay the debt to the enforcement debtor or enforcement creditor but does not stay any accrual of interest on the debt.

EXPOSURE DRAFT

- (7) The third person must serve a stamped copy of the notice and supporting affidavit on the enforcement creditor and enforcement debtor.
- (8) The enforcement debtor or enforcement creditor may file in the court an affidavit in response to the notice of objection.
- (9) The court may—
 - (a) decide the question of liability without a hearing and in the absence of the parties; or
 - (b) on its own initiative, give directions for the question to be decided.
- (10) To remove any doubt, part 6.2 (Applications in proceedings) does not apply to a notice of objection, or response to a notice of objection, under this rule.

2312 Debt redirection order—discharge of third person

(SCR o 46 r 7; MC(CJ)R s 327 (2); NSW s 123 (4); Qld r 846)

- (1) A payment to an enforcement creditor made by the third person in accordance with a debt redirection order is a valid discharge of the third person's liability to the enforcement debtor to the extent of the amount paid.
- (2) This rule applies even if, after the payment, the debt redirection order is set aside or the money order from which it arose is amended or set aside.

EXPOSURE DRAFT

2313 Debt redirection order—payment to enforcement debtor despite redirection

(MC(CJ)R s 338; Qld r 843)

- (1) This rule applies if, after redirection of a debt in the hands of the third person—
- (a) the third person acts with reasonable diligence to give effect to the redirection; and
 - (b) although the third person acts with reasonable diligence, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt, including, for example, by payment to the enforcement debtor.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) On application by the third person or other interested person, the court may order that, for this division, the redirected debt be reduced to the extent of its satisfaction.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2314 Debt redirection order—amending, suspending or setting aside

(MC(CJ)R s 330 and s 332; QLD r 854)

- (1) On application by the enforcement creditor or enforcement debtor, the court may make an order amending, suspending or setting aside a debt redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The registrar must give notice of the date and time the application is to be heard to the enforcement creditor, enforcement debtor and third person.
- (3) After hearing the application, the court may make 1 or more of the following orders:
 - (a) an instalment order;
 - (b) an order amending, suspending or setting aside the debt redirection order;
 - (c) a regular redirection order;
 - (d) an earnings redirection order.
- (4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—
 - (a) the order (if any) preferred by the enforcement debtor; and
 - (b) the likelihood of the enforcement debtor complying with an instalment order; and
 - (c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor.
 - (d) any other information that the court considers is relevant and reliable.

EXPOSURE DRAFT

- (5) Subrule (4) does not limit—
- (a) the other matters to which the court must have regard in deciding whether to make an instalment order or earnings redirection order; or
- Note* For these matters, see—
- r 2154 (Instalment order—relevant considerations)
 - r 2352 (Earnings redirection order—relevant considerations).
- (b) the other matters to which the court may have regard.
- (6) If the court makes an order amending, suspending or setting aside the debt redirection order under this rule—
- (a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and third person; and
- (b) the order does not come into force until the end of 7 days after the day it is served on the third person.

2315 Debt redirection order—procedure if order not complied with

(MC(CJ)R s 335; NSW s 124; SCQA s 93G)

- (1) If the enforcement creditor considers that a debt redirection order has not been complied with, the court may, on application by the enforcement creditor, hear and decide any question about the liability of the third person to pay the debt to which the order applies.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

EXPOSURE DRAFT

- (2) If the court is satisfied that the third person is liable to pay the debt and has not complied with the debt redirection order, the court may make an order against the third person in favour of the enforcement creditor for the lesser of—
 - (a) the amount that has not been paid to the enforcement creditor as required by the debt redirection order; and
 - (b) the unpaid amount of the order debt.
- (3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b), or for any other reason.
- (4) As between the third person and the enforcement debtor, an amount paid to the enforcement creditor by the third person under an order under this rule is taken to have been paid by the third person to the enforcement debtor.

Division 2.18.7 Enforcement of money orders— regular redirections from financial institutions

2330 Application—div 2.18.7

(Qld r 847 (1))

This division applies if—

- (a) the enforcement debtor for an enforceable money order of the court has an account with a financial institution; and
- (b) the financial institution or someone else (the *fourth person*) regularly deposits earnings, interest or rent into the account (the *regular deposit*).

EXPOSURE DRAFT

2331 Regular redirection order—application of div 2.18.6

(Qld r 847 (2))

- (1) The provisions of division 2.18.6 (other than the non-applied provisions) apply, with any necessary changes, to a regular redirection order under this division as if a reference to the *third person* were a reference to the financial institution.

- (2) In this rule:

non-applied provisions means the following provisions:

- rule 2301 (3) (Debt redirection order—making)
- rule 2308 (Debt redirection order—when debt redirected)
- rule 2310 (Debt redirection order—payments by third person).

2332 Regular redirection order—making

(Qld r 848 (1) and (3))

- (1) On application by the enforcement creditor or enforcement debtor for the money order, the court may make an order (a *regular redirection order*) authorising the regular redirection to the enforcement creditor of all or part of a regular debt.

- (2) In this part:

regular debt means a debt, belonging to the enforcement debtor, from the financial institution because of the regular deposit by the fourth person.

2333 Regular redirection order—content

(NSWA s 123 (1); NSW r 39.37; Qld r 849)

A regular redirection order must state the following:

- (a) the name of the financial institution that must deduct amounts from a regular deposit;
- (b) details of the enforcement debtor's account from which the deduction is to be made;
- (c) the name and address of the fourth person;
Note For the meaning of *fourth person*, see r 2330.
- (d) the amount that the financial institution must deduct each time a regular deposit is made;
- (e) the name and address of the enforcement creditor to whom the financial institution must give the deducted amount.

Note The order must also state the matters mentioned in r 2050 (Enforcement orders—content and issue).

2334 Regular redirection order—service and coming into force

(MC(CJ)R s 319 (2); NSW r 39.39; Qld r 850)

- (1) This rule applies if the court makes a regular redirection order, whether or not on the enforcement creditor's application.

Note The registrar must give a sealed copy of the order to the enforcement creditor (see r 2050 (4)).

- (2) The enforcement creditor must serve a sealed copy of the order personally or by prepaid post on the financial institution and the enforcement debtor.

- (3) The order does not come into force until the end of 7 days after the day the order is served on the financial institution.

2335 Regular redirection order—financial institution to make payments etc

(MC(CJ)R s 327 (2), 338 (2) and 339 (1); NSW s 123; Qld r 851)

- (1) For each regular deposit into the enforcement debtor's account while the regular redirection order is in force, the financial institution—
- (a) must, not later than 3 days after the day the deposit is made, deduct from the account the amount stated in the order and pay it to the enforcement creditor stated in the order; and
 - (b) may deduct from the account a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and
 - (c) must, at least once a month, give the enforcement debtor a notice detailing the deductions.
- (2) Any charge deducted under subrule (1) (b) must not be more than—
- (a) if the financial institution has an amount it usually charges its customers for making periodic payments—that amount; or
 - (b) otherwise—an amount that covers the financial institution's costs and expenses of complying with the order.
- (3) In applying subrule (1) (a) to the last deduction, the financial institution must deduct the amount (not more than the amount stated in the order for deduction for each regular deposit) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

EXPOSURE DRAFT

- (4) A deduction paid or kept by a financial institution under subrule (1) is a valid discharge of the financial institution's liability to the enforcement debtor to the extent of the deduction.

2336 Regular redirection order—enforcement debtor not to defeat order

(Qld r 852)

- (1) The enforcement debtor must ensure that sufficient funds remain in the enforcement debtor's account after each regular deposit for the deduction from the account of the amount stated in the order.
- (2) The enforcement debtor must tell the enforcement creditor in writing if—
- (a) the fourth person discontinues making the regular deposit; or
 - (b) the enforcement debtor closes the account or arranges for the fourth person to pay the enforcement debtor in another way.

Note For the meaning of *fourth person*, see r 2330.

2337 Regular redirection order—no other enforcement while in force

(MC(CJ)R s 342; Qld r 853)

Unless the court otherwise orders, while a regular redirection order is in force in relation to a money order, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

EXPOSURE DRAFT

2338 Regular redirection order—ceasing to have effect

(Qld r 848 (2))

- (1) A regular redirection order ceases to have effect when—
 - (a) the order debt is satisfied; or
 - (b) the regular redirection order is set aside or ends in accordance with its terms.
- (2) If a regular redirection order ceases to have effect otherwise than because of an order the enforcement creditor is required under these rules to serve on the financial institution, the enforcement creditor must give notice to the financial institution that the regular redirection order has ceased to have effect.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The enforcement creditor must file a copy of the notice in the court.
- (4) If a regular redirection order ceases to have effect, the financial institution does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the financial institution:
 - (a) a sealed copy of the order because of which the regular redirection order ceases to have effect;
 - (b) the notice mentioned in subrule (2).

2339 Regular redirection order—return of excess

- (1) If a regular redirection order is made for an order debt and the enforcement creditor receives from the financial institution more than the amount payable under the order—
 - (a) the enforcement creditor must return the excess to the financial institution; and
 - (b) the financial institution must deposit it to the account from which amounts were deducted under the regular redirection order or otherwise deal with it in accordance with the enforcement debtor's written request.
- (2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.
- (3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

2340 Regular redirection order—record of payments

- (1) If a regular redirection order is made for an order debt, the enforcement creditor must make a record of the amount and date of each payment received by the enforcement creditor under the regular redirection order.
- (2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the regular redirection order.
- (3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

EXPOSURE DRAFT

- (4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.
- (5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—
- (a) an order requiring the enforcement creditor to—
 - (i) file in the court a copy of all or part of the record verified by affidavit; or
 - (ii) give the enforcement debtor a copy of all or part of the record; or
 - (b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

EXPOSURE DRAFT

Division 2.18.8 Enforcement of money orders— earnings redirection orders

2350 Earnings redirection order—making

(MC(CJ)R s 317; Qld r 855 (1) and r 856 (1) and (2))

On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may make an order (an *earnings redirection order*) authorising redirection to the enforcement creditor of particular earnings of the enforcement debtor from an employer of the enforcement debtor.

Note 1 **Employer** of an enforcement debtor is defined in r 2000.

Note 2 An earnings redirection order may be made at an enforcement hearing (see r 2112 (Enforcement hearing—orders)).

2351 Earnings redirection order—application

(1) An application for an earnings redirection order is made by filing in the court—

- (a) a draft of the order sought; and
- (b) an affidavit in support of the application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(2) The affidavit in support must state—

- (a) the date the money order was made; and
- (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and
- (c) the amount of the order debt; and

EXPOSURE DRAFT

- (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and
 - (j) any other information necessary for the order being sought.
- (3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.
- (4) Part 6.2 (Applications in proceedings) does not apply to the application.
- (5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.
- (6) Unless the court otherwise orders on its own initiative, an application for an earnings redirection order must be dealt with without a hearing and in the absence of the parties.

EXPOSURE DRAFT

2352 Earnings redirection order—relevant considerations

(NSW r 39.38; Qld r 856 (3))

- (1) In deciding whether to make an earnings redirection order, the court must have regard to the following matters, as far as they are known to the court:
 - (a) the enforcement debtor’s means of satisfying the order debt;
 - (b) whether the order debt, including any interest, will be satisfied within a reasonable time;
 - (c) the necessary living expenses of the enforcement debtor and the enforcement debtor’s dependants;
 - (d) other liabilities of the enforcement debtor;
 - (e) the amount of the order debt;
 - (f) the amount of the earnings to be redirected each payday;
 - (g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.
- (2) Subrule (1) does not limit the matters to which the court may have regard.
- (3) In deciding the amount and timing of the earnings to be redirected under the order on each payday, the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.
- (4) However, an enforcement hearing is not necessary before the court makes the earnings redirection order.

EXPOSURE DRAFT

2353 Earnings redirection order—limit

(CPA s 115 and s 116; MC(CJ)R s 322 and s 324 (2); NSW s 122)

The court must not make an earnings redirection order for the enforcement debtor that would, if the order (and all other earnings redirection orders (if any) in force for the enforcement debtor) were enforced, reduce the total earnings of the enforcement debtor to an amount that is less than—

- (a) if the enforcement debtor has dependants—\$484.40 a week;
- (b) if the enforcement debtor does not have dependants—\$363.30 a week.

2354 Earnings redirection order—information about enforcement debtor’s earnings

(Qld r 857)

To decide whether to make an earnings redirection order, the court may order a person the court considers may pay earnings to the enforcement debtor to give the court a signed statement setting out details of—

- (a) the earnings owing to the debtor; and
- (b) the earnings payable to the debtor from time to time.

Note The court may also order that an enforcement hearing be held (see r 2101 (Enforcement hearing—otherwise than on enforcement creditor’s application)).

2355 Earnings redirection order—content

(MC(CJ)R s 319 (1); NSW s 123 (1); NSW r 39.37; Qld r 858)

An earnings redirection order must state—

- (a) the name of the enforcement debtor; and
- (b) the name of the enforcement debtor’s employer who must deduct from the enforcement debtor’s earnings; and
- (c) the total amount the employer must deduct from the enforcement debtor’s earnings; and
- (d) if an amount is required to be deducted from the enforcement debtor’s earnings each payday—the amount; and
- (e) the name and address of the enforcement creditor to whom the employer must pay the deductions.

Note The order must also state the matters mentioned in r 2050 (Enforcement orders—content and issue).

2356 Earnings redirection order—service and coming into force

(MC(CJ)R s 319 (2) and s 320; NSW s 119 (2) and s 120; NSW r 39.39; Qld r 859)

- (1) This rule applies if the court makes an earnings redirection order, whether or not on the enforcement creditor’s application.

Note The registrar must give a sealed copy of the order to the enforcement creditor (see r 2050 (4)).

- (2) The enforcement creditor must serve a sealed copy of the order personally or by prepaid post on the enforcement debtor’s employer and the enforcement debtor.

Rule 2357

- (3) The enforcement creditor must also serve on the enforcement debtor's employer—
- (a) a notice telling the enforcement debtor's employer of the effect of the order and the employer's obligations under this division; and
 - (b) a copy of a notice that the employer may use if the debtor is not employed by the employer.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) The order does not come into force until the end of 7 days after the day it is served on the employer.

2357 Earnings redirection order—person served not employer

(MC(CJ)R s 334; Qld r 865)

- (1) This rule applies if—
- (a) an earnings redirection order is served on a person on the basis that the person is the enforcement debtor's employer; and
 - (b) the person is not the enforcement debtor's employer when the order is served on the person.
- (2) The person must immediately tell the registrar, in writing, that the person is not the enforcement debtor's employer.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) To remove any doubt, the person is not bound by the order.

EXPOSURE DRAFT

2358 Earnings redirection order—employer to make payments etc

(MC(CJ)R s 327 (2), s 328 (2) and s 339; NSW s 123; Qld r 860)

- (1) For each payday while an earnings redirection order is in force, the enforcement debtor's employer—
 - (a) must deduct from the enforcement debtor's earnings the amount stated in the order and pay it to the person stated in the order; and
 - (b) may deduct from the enforcement debtor's earnings a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and
 - (c) must give the enforcement debtor a notice detailing the deductions.
- (2) Any charge deducted by an employer under subrule (1) (b) must not be more than—
 - (a) if the employer has an amount the employer usually charges employees for making periodic payments—that amount; or
 - (b) otherwise—an amount that covers the employer's costs and expenses of complying with the order.
- (3) In applying subrule (1) (a) to the last deduction, the employer must deduct the amount (not more than the amount stated in the order for deduction each payday) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

EXPOSURE DRAFT

- (4) A deduction paid or kept by an employer under subrule (1) is a valid discharge as between the employer and the enforcement debtor, to the extent of the deduction, of the employer's liability to pay earnings.

2359 Earnings redirection order—no other enforcement while in force

(MC(CJ)R s 342; Qld r 861)

Unless the court otherwise orders, while an earnings redirection order is in force in relation to a money order, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2360 Earnings redirection order—amending, suspending or setting aside

(MC(CJ)R s 330 and s 332; Qld r 862)

- (1) On application by the enforcement creditor or enforcement debtor, the court may make an order amending, suspending or setting aside an earnings redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The registrar must give notice of the date and time the application is to be heard to the enforcement creditor, enforcement debtor and enforcement debtor's employer.

- (3) After hearing the application, the court may make 1 or more of the following orders:
- (a) an instalment order;
 - (b) an order amending, suspending or setting aside the earnings redirection order;
 - (c) a debt redirection order;
 - (d) a regular redirection order.
- (4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—
- (a) the order (if any) preferred by the enforcement debtor; and
 - (b) the likelihood of the enforcement debtor complying with an instalment order; and
 - (c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor; and
 - (d) any other information that the court considers is relevant and reliable.
- (5) Subrule (4) does not limit—
- (a) the other matters to which the court must have regard in deciding whether to make an instalment order or debt redirection order; or
- Note* For these matters, see—
- r 2154 (Instalment order—relevant considerations)
 - r 2303 (Debt redirection order—relevant considerations).
- (b) the other matters to which the court may have regard.

EXPOSURE DRAFT

- (6) If the court makes an order amending, suspending or setting aside the earnings redirection order under this rule—
- (a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and employer; and
 - (b) the order does not come into force until the end of 7 days after the day it is served on the employer.

2361 Earnings redirection order—ceasing to have effect

(MC(CJ)R s 338; NSW s 119 (3); Qld r 855 (2) and 863 (1) and (2))

- (1) An earnings redirection order for a money order ceases to have effect when—
- (a) the order debt is satisfied; or
 - (b) the earnings redirection order is set aside or ends in accordance with its terms; or
 - (c) unless the court otherwise orders, another enforcement order is made for the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) If an earnings redirection order ceases to have effect otherwise than because of an order the enforcement creditor is required under these rules to serve on the enforcement debtor's employer, the enforcement creditor must give notice to the employer that the earnings redirection order has ceased to have effect.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The enforcement creditor must file a copy of the notice in the court.

EXPOSURE DRAFT

- (4) If an earnings redirection order ceases to have effect, the enforcement debtor's employer does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the employer:
- (a) a sealed copy of the order because of which the earnings redirection order ceases to have effect;
 - (b) the notice mentioned in subrule (2).

2362 Earnings redirection order—return of excess

(MC(CJ)R s 337; NSW s 125; Qld r 863 (3) and (4))

- (1) If an earnings redirection order is made for an order debt and the enforcement creditor receives from the enforcement debtor's employer more than the amount payable under the order—
- (a) the enforcement creditor must return the excess to the employer; and
 - (b) the employer must pay it to the enforcement debtor.
- (2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.
- (3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

2363 Earnings redirection order—record of payments

- (1) If an earnings redirection order is made for an order debt, the enforcement creditor order must make a record of the amount and date of each payment received by the enforcement creditor under the earnings redirection order.

- (2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the earnings redirection order.
- (3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.
- (4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.
- (5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—
 - (a) an order requiring the enforcement creditor to—
 - (i) file in the court a copy of all or part of the record verified by affidavit; or
 - (ii) give the enforcement debtor a copy of all or part of the record; or
 - (b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

EXPOSURE DRAFT

2364 Earnings redirection order—2 or more orders in force

(MC(CJ)R s 324; Qld r 864)

- (1) This rule applies if 2 or more earning redirection orders are in force in relation to the same earnings of an enforcement debtor.
- (2) The employer must comply with the orders according to the dates they were served on the employer and disregard an order served later until an order served earlier ceases to have effect.

Note Rule 2361 deals with earnings redirection orders ceasing to have effect.

- (3) If an earnings redirection order is amended, it continues to have priority according to the date the original order was served.

2365 Earnings redirection order—person served ceasing to be employer

(MC(CJ)R s 334; Qld r 866)

- (1) This rule applies if—
 - (a) a person who is an enforcement debtor's employer is served with an earnings redirection order; and
 - (b) the person later ceases to be the enforcement debtor's employer.
- (2) The person must immediately tell the court and enforcement creditor, in writing, that the person is no longer the enforcement debtor's employer.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

2366 Earnings redirection order—enforcement debtor changes or ceases employment

(MCA s 297; MC(CJ)R s 340)

- (1) This rule applies if an enforcement debtor for whom an earnings redirection order is in force changes employer or ceases to be employed.
- (2) Not later than 7 days after the day the enforcement debtor changes employer or ceases employment, the enforcement debtor must tell the registrar and the enforcement creditor, in writing, the details of the debtor's new employer or that the debtor has ceased employment.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If the registrar is told under subrule (2) that the enforcement debtor has changed employer, the court may, on its own initiative—
 - (a) set aside the existing earnings redirection order; and
 - (b) make a new earnings redirection order authorising redirection to the enforcement creditor of earnings of the enforcement debtor from the new employer.

2367 Earnings redirection order—directions

(Qld r 867)

- (1) An employer on whom an earnings redirection order is served may apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The employer must serve a stamped copy of the application on the enforcement creditor and enforcement debtor.

- (3) The enforcement creditor and enforcement debtor are parties to the application.
- (4) On application under this rule, the court may give the directions it considers appropriate.
- (5) Without limiting subrule (4), the court may decide whether payments being made by the employer to the enforcement debtor that are described in the application are earnings.
- (6) While the application or any appeal from a decision made on the application is pending, the employer does not incur any liability for failing to comply with the earnings redirection order in relation to payments mentioned in subrule (5) that are described in the application.

2368 Earnings redirection order—employment protection

(SCQA s 93H)

An employer must not dismiss an employee, or otherwise prejudice an employee in the employee's employment, because an earnings redirection order authorising redirection of the employee's earnings has been made.

EXPOSURE DRAFT

2369 Earnings redirection order—procedure if order not complied with

(MC(CJ)R s 335; NSW s 124)

- (1) If the enforcement creditor considers that an earnings redirection order has not been complied with, the court may, on application by the enforcement creditor, hear and decide any question about the liability of the enforcement debtor's employer to pay the earnings to which the order applies.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) If the court is satisfied that the employer is liable to pay the earnings, the court may make an order against the employer in favour of the enforcement creditor for the lesser of—
- (a) the amount of earnings that has not been paid to the enforcement creditor as required by the earnings redirection order; and
 - (b) the unpaid amount of the order debt.
- (3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b).
- (4) As between the employer and the enforcement debtor, an amount paid to the enforcement creditor by the employer under an order under this rule is taken to have been paid by the employer to the enforcement debtor.

Division 2.18.9 Enforcement of money orders— charging orders

2400 Application—div 2.18.9

(Qld r 874)

This division applies only in relation to the Supreme Court.

2401 Charging order—making

(SCR o 47 r 1 and r 4; NSW s 126; NSW r 39.44; Qld r 875)

- (1) On application by the enforcement creditor for an enforceable money order of the court, the court may make an order (a ***charging order***) imposing a charge over all or part of the enforcement debtor's equitable interest in any property or legal or equitable interest in 1 or more of the following (each of which is a ***security interest***):
 - (a) annuities;
 - (b) debentures;
 - (c) stocks;
 - (d) bonds;
 - (e) shares;
 - (f) marketable securities;
 - (g) interests in a managed investment scheme;
 - (h) units of—
 - (i) shares; or
 - (ii) marketable securities;

EXPOSURE DRAFT

- (i) money on deposit in a financial institution that is held—
 - (i) in the enforcement debtor’s name in the enforcement debtor’s own right; or
 - (ii) in someone else’s name on trust for the enforcement debtor.
- (2) A charging order operates, in relation to each security interest stated in the order—
 - (a) to charge the security interest in favour of the enforcement creditor to the extent necessary to satisfy the order debt; and
 - (b) to restrain the chargee from dealing with the security interest otherwise than in accordance with the directions of the enforcement creditor.

2402 Charging order—application

- (1) An application for a charging order is made by filing in the court—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) The affidavit in support must state—
 - (a) the date the money order was made; and
 - (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and
 - (c) the amount of the order debt; and

- (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and
 - (j) the security interest or interests to be charged by the order being sought; and
 - (k) any other information necessary for the order being sought.
- (3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.
- (4) Part 6.2 (Applications in proceedings) does not apply to the application.
- (5) The draft order and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (6) Unless the court otherwise orders on its own initiative, an application for a charging order must be dealt with without a hearing and in the absence of the parties.

EXPOSURE DRAFT

2403 Charging order—effect

(SCR o 47 r 5 and r 6; NSW s 126; Qld r 876)

- (1) A charging order takes effect when it is made.
- (2) However, to have effect on the enforcement debtor, a charging order must be served on the enforcement debtor.
- (3) A charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge imposed by the order had been made in the enforcement creditor's favour by the enforcement debtor.
- (4) However, unless the court otherwise orders, the enforcement creditor must not start a proceeding to obtain a remedy in relation to property charged by the charging order until—
 - (a) a sealed copy of the charging order is served on the enforcement debtor and the person who issued or administers the property; and
 - (b) 1 month has passed since the day the order was served, or the later of the days the order was served, as required by paragraph (a).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2404 Charging order—enforcement debtor dealing with charged property

(SCR o 47 r 11; NSW s 127 and s 128; Qld r 877)

- (1) After being served with a charging order in relation to property, the enforcement debtor must not sell, transfer or otherwise deal with the property otherwise than in accordance with the directions of the court or the enforcement creditor.

- (2) Any sale, transfer or other dealing by the enforcement debtor in contravention of subrule (1) is of no effect against the enforcement creditor.
- (3) The court may set aside or restrain the sale, transfer or other dealing unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

2405 Charging order—issuer etc dealing with charged property

(SCR o 47 r 1; NSW s 127; Qld r 878)

- (1) This rule applies to—
 - (a) a person who issued or administers charged property and has been served with a charging order in relation to the property; and
 - (b) anyone else who has notice of a charging order in relation to property.
- (2) The person must not sell, transfer or otherwise deal with the property otherwise than in accordance with the directions of the court or the enforcement creditor.
- (3) If the person deals with the property in contravention of subrule (2), the person is liable to the enforcement creditor for whichever is the smaller of—
 - (a) the value or amount of the charged property sold, transferred or otherwise dealt with; and
 - (b) the order debt.

EXPOSURE DRAFT

2406 Charging order—application to enforce charge

(Qld r 879)

An application to enforce a charge imposed under a charging order must be made in the proceeding in which the order is made.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2407 Charging order—procedure against partnership property for partner’s separate order debt

(*Partnership Act 1963*, s 28 (2)-(4); SCR o 47 r 2 and r 3; NSW r 39.48; Qld r 880)

- (1) This rule applies if the enforcement debtor in relation to an enforceable money order of the court is a partner in a partnership.
- (2) On application by the enforcement creditor, the court may—
 - (a) make an order charging the interest of the partner in the partnership property and profits of the partnership with payment of the amount of the order debt (including interest); and
 - (b) by that order or another order—
 - (i) appoint a receiver of the partner’s share of the profits (whether already declared or accruing) of the partnership and of any other amount that may be coming to the partner in relation to the partnership; and
 - (ii) make any order or give any direction that might have been made or given if the charge had been made in favour of the enforcement creditor by the partner or that the circumstances require.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The application must be served on the enforcement debtor and the partners of the partnership.
- (4) For this rule, service on each partner who lives in the ACT is sufficient service on any partner who lives outside the ACT.
- (5) If the interest of a partner in partnership property and profits of the partnership is charged under subrule (2), the other partners in the partnership may—
 - (a) at any time, redeem the interest charged; or
 - (b) if a sale of the interest is directed—buy the interest.
- (6) This rule does not apply in relation to an incorporated limited partnership.

Division 2.18.10 Enforcement of money orders— amounts in court and stop orders

2420 Enforcement orders—amounts in court

(NSW r 41.16; Qld r 881)

- (1) This rule applies if the enforcement debtor for a money order is entitled, in the enforcement debtor's own right, to an amount, security or bond in court standing to the enforcement debtor's credit in another proceeding in the court.
- (2) On application by the enforcement creditor, the court may order that the amount, security or bond be applied towards satisfying the order debt.
- (3) The application must be made in the proceeding in which the money order is being enforced.

EXPOSURE DRAFT

- (4) An amount, security or bond in court standing to the credit of an enforcement debtor must not be paid out if an application in relation to the amount, security or bond has been made under this rule and not heard.

2421 Enforcement orders—stop orders

(SCR o 47 r 13 and r 14; NSW r 41.16; Qld r 882)

- (1) This rule applies if a person claims an interest (including an interest under a charge) in any amount, security or bond in court that has been mortgaged, charged or assigned.
- (2) On application by the person, the court may make an order (a *stop order*) preventing payment, delivery or transfer of the amount, security or bond without notice to the applicant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The application must be made in the proceeding in which the amount, security or bond stands in court.
- (4) The application must be accompanied by an affidavit in support of the application.
- (5) The affidavit must include information sufficient to identify the proceeding mentioned in subrule (3).
- (6) A copy of the application must be served on anyone who appears to have an interest in the amount, security or bond.
- (7) An amount, security or bond in court must not be paid, delivered or transferred if an application in relation to the amount, security or bond has been made under this rule and not heard.

EXPOSURE DRAFT

Division 2.18.11 Enforcement of money orders— receivers

2430 Application—div 2.17.11

(Qld r 883)

This division applies only in relation to the Supreme Court.

2431 Receiver—appointment

(Qld r 274 and r 885)

- (1) On application by the enforcement creditor for an enforceable money order of the court, the court may appoint a receiver to receive an amount payable under the order if it is impracticable to enforce payment in another way.
- (2) A receiver may be appointed even though no other proceeding has been taken for enforcement of the money order.

2432 Receiver—application for appointment

- (1) An application for an order appointing a receiver must be accompanied by—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order appointing a receiver.

EXPOSURE DRAFT

- (2) The affidavit in support must state—
- (a) the date the money order was made; and
 - (b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and
 - (c) the amount of the order debt; and
 - (d) that the order debt has not been fully paid; and
 - (e) the date and amount of each payment (if any) made under the order; and
 - (f) the costs incurred in previous enforcement proceedings in relation to the order; and
 - (g) the interest owing on the day the affidavit is made (the *affidavit date*); and
 - (h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and
 - (i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and
 - (j) any other information necessary for the order being sought.
- (3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

EXPOSURE DRAFT

2433 Receiver—relevant considerations for appointment

(Qld r 886 and r 887)

- (1) In deciding whether to make an order appointing a receiver, the court must have regard to—
 - (a) the amount of the order debt; and
 - (b) the amount likely to be obtained by the receiver; and
 - (c) the probable costs of appointing and remunerating a receiver.
- (2) In deciding whether to make an order appointing a receiver, the court may direct the holding of an enforcement hearing or other inquiry about a matter mentioned in subrule (1) or anything else the court considers relevant.

2434 Receiver—powers

(Qld r 888)

The powers of a receiver appointed under this division operate to the exclusion of the enforcement debtor's powers for the duration of the receiver's appointment.

2435 Receiver—general provisions apply

(Qld r 884)

Division 2.9.5 (Receivers) applies, with any necessary changes, to a receivers appointed to enforce an enforceable money order of the court.

Division 2.18.12 Enforcement of non-money orders— general

2440 Enforcement—orders for possession of land

(SCR o 43 r 5 and o 48 r 1-3; NSW s 104; Qld r 896)

- (1) An order for possession of land (the *original order*) may be enforced by 1 or more of the following:

- (a) an order for delivery of possession of land;

Note For provisions about orders for delivery of possession of land, see div 2.18.13.

- (b) for an order to which rule 2442 (Enforcement—order to do or not do act) applies—

- (i) punishment for contempt of the person liable under the original order; or

Note For provisions about contempt, see div 2.18.16.

- (ii) an order for seizure and detention of property against the person liable under the original order.

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

- (2) Subrule (1) (b) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).

EXPOSURE DRAFT

2441 Enforcement—orders for return of goods etc

(SCR o 49; NSW s 105; Qld r 897)

- (1) An order for the return of goods, or for the return of goods or the payment of their value, (the *original order*) may be enforced by 1 or more of the following:

- (a) an order for seizure and delivery of goods;

Note For provisions about orders for seizure and delivery of goods, see div 2.18.14.

- (b) for an order to which rule 2442 (Enforcement—order to do or not do act) applies—

- (i) punishment for contempt of the person liable under the original order; or

Note For provisions about contempt, see div 2.18.16.

- (ii) an order for seizure and detention of property against the person liable under the original order.

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

- (2) Subrule (1) (b) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).
- (3) An order for the payment of the value of goods may be enforced as if it were a money order.

2442 Enforcement—orders to do or not do an act

(SCR o 43 r 28 and r 29 and o 44 r 4; Qld r 898 and r 899)

- (1) This rule applies to an order (the *original order*) if—

- (a) the order is a non-money order that requires a person—

- (i) to do an act within a stated time; or
 - (ii) not to do an act; and
- (b) the person contravenes the order.
- (2) The original order may be enforced in 1 or more of the following ways:
 - (a) punishment for contempt of the person liable under the original order;
Note For provisions about contempt, see div 2.18.16.
 - (b) an order for seizure and detention of property against the person liable under the original order;
Note For provisions about orders for seizure and detention of property, see div 2.18.15.
 - (c) if the person liable under the original order is a corporation—without limiting paragraphs (a) and (b), either or both of the following:
 - (i) punishment for contempt of any senior officer of the corporation;
 - (ii) an order for seizure and detention of property against the corporation.
- (3) Subrule (2) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).
- (4) Also, if the original order is an order to do an act, the court may—
 - (a) appoint someone else to do the act; and
 - (b) order the person liable under the original order to pay the costs and expenses caused by the failure to do the act.

- (5) Subrule (4) does not affect the court's power to—
- (a) appoint a person to execute a document by order of the court;
or
 - (b) punish for contempt.

2443 Enforcement—undertakings

(Qld r 900)

- (1) An undertaking to the court, other than for the payment of money, may be enforced in 1 or more of the following ways:
- (a) punishment for contempt of the person liable under the undertaking;
Note For provisions about contempt, see div 2.18.16.
 - (b) an order for seizure and detention of property against the person liable under the undertaking;
Note For provisions about orders for seizure and detention of property, see div 2.18.15.
 - (c) if the person liable under the undertaking is a corporation—without limiting paragraphs (a) and (b), either or both of the following:
 - (i) punishment for contempt of any senior officer of the corporation;
 - (ii) an order for seizure and detention of property against the corporation.
- (2) Also, if the undertaking is an undertaking to do an act, the court may—
- (a) appoint someone else to do the act; or

EXPOSURE DRAFT

- (b) order the person liable under the undertaking to pay the costs and expenses caused by the failure to do the act.
- (3) An undertaking for the payment of money may be enforced as if it were a money order.
- (4) If a party is in breach of an undertaking, another party may apply for compensation to the court in the proceeding in which the undertaking was given.

Note Pt 6.2 (Applications in proceedings) applies to an application for compensation under this rule.

- (5) If the court decides that—
 - (a) a party is in breach of an undertaking; and
 - (b) another party has sustained a loss because of the breach; and
 - (c) the party in breach should pay the other party compensation for the loss;

the court may make an order against the party in breach for the amount the court decides should be paid.

2444 Enforcement—failure of individual to comply with subpoena etc

(SCQA s 93I; Qld s 901 and r 903)

- (1) This rule applies if an individual fails to comply with—
 - (a) a subpoena; or
 - (b) a notice for non-party production; or
 - (c) an order requiring attendance to give evidence or produce a document or thing before—

- (i) the court; or
 - (ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant to an enforcement officer for—
- (a) the arrest of the individual; and
 - (b) the production of the individual as required by the subpoena, notice or order for the purpose of the proceeding; and
 - (c) the detention in custody of the individual until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) Without limiting rule 6016 (Application in proceeding—oral applications), an application for an order under this rule may be made orally, unless the court otherwise orders on its own initiative.
- (4) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.
- (5) This rule does not limit any other power of the court.

Note 1 Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

Note 2 See also r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

EXPOSURE DRAFT

2445 Enforcement—failure of corporation to comply with subpoena etc

(SCQA s 93J; Qld r 902 and r 903)

- (1) This rule applies if a corporation fails to comply with—
 - (a) a subpoena; or
 - (b) a notice for non-party production; or
 - (c) an order requiring attendance to give evidence or produce a document or thing before—
 - (i) the court; or
 - (ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant to an enforcement officer for—
 - (a) the arrest of a named senior officer of the corporation; and
 - (b) the production of the senior officer as required by the subpoena, notice or order for the purpose of the proceeding; and
 - (c) the detention in custody of the senior officer until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

EXPOSURE DRAFT

- (4) This rule does not limit any other power of the court.

Note 1 Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

Note 2 See also r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

2446 Enforcement by contempt or seizing and detaining property—preconditions

(NSW r 40.7; Qld r 904)

- (1) Unless the court otherwise orders, a non-money order (the *original order*) may be enforced by a contempt proceeding or an order for seizure and detention of property only if—
- (a) the person against whom the original order is to be enforced is served personally with a sealed copy of the original order; and
 - (b) if the original order requires a person to do an act within a time stated in the order—the order is served a reasonable time before the end of the time stated in the order.
- (2) This rule does not apply to a non-money order requiring a person to do an act within a stated time, or requiring a person not to do an act, if the person has notice of the order because—
- (a) the person was present when the order was made; or
 - (b) the person was told about the terms of the order by telephone or in another way a reasonable time before the end of the time for doing the act or before the time when the prohibited act was done.

EXPOSURE DRAFT

Division 2.18.13 Enforcement of non-money orders—orders for delivery of possession of land

2450 Application—div 2.18.13

This division applies only in relation to the Supreme Court.

2451 Order for delivery of possession of land—making

(Qld r 915)

- (1) On application by the person in whose favour an order for possession of land (the *original order*) is made, the court may make an order (an *order for delivery of possession of land*) authorising an enforcement officer to enter on the land described in the order and deliver possession of the land and appurtenances to the person.

Note 1 *Appurtenances* are things that belong to an estate in the land eg houses, other buildings and gardens.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application is made by filing in the court—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.
- (3) The affidavit in support must state—
 - (a) the date a sealed copy of the original order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor or other person liable to comply with the order; and
 - (b) that the original order has not been complied with; and

EXPOSURE DRAFT

- (c) whether to the best of the applicant's knowledge a person other than the person liable under the original order is in possession of the land or part of it and, if so, how the person is in possession; and
 - (d) how rule 2452 has been complied with; and
 - (e) any other information necessary for the order being sought.
- (4) The affidavit may contain statements of information and belief if the applicant states the sources of the information and the reasons for the belief.
 - (5) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.
 - (6) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
 - (7) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
 - (8) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

2452 Orders for delivery of possession of land—preconditions

(Qld r 913 and r 914)

- (1) An order for possession of land (the *original order*) may be enforced by an order for delivery of possession of land only if the person against whom the original order is to be enforced is served with a copy of the original order at least 7 days before the order for delivery of possession of land is made.

EXPOSURE DRAFT

- (2) If a person other than the person against whom the original order is made is in possession of the land or part of it, an order for delivery of possession of land may be made only if the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 2.18.14 Enforcement of non-money orders—orders for seizure and delivery of goods

2460 Order for seizure and delivery of goods—making

(SCR o 49 r 1; Qld r 916)

- (1) If an order for the return of goods (the *original order*) does not give the person against whom the original order is made the option of retaining the goods and paying their value, the court may, on application by the person in whose favour the original order was made, make an order (an *order for seizure and delivery of goods*) authorising an enforcement officer to seize the goods and deliver them to the person who is entitled to them under the original order.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If—
- (a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and
 - (b) the person does not exercise the option;

the court may, on application by the person in whose favour the original order was made, make an order for seizure and delivery of goods.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) An application under this rule is made by filing in the court—
 - (a) a draft of the order sought; and
 - (b) an affidavit in support of the application.
- (4) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (5) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (6) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.
- (7) An order for seizure and delivery of goods may include provision for enforcing the payment of an amount required by the order to be paid.
- (8) If—
 - (a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and
 - (b) the person exercises the option;the original order may be enforced in the same way as a money order.

EXPOSURE DRAFT

Chapter 2	Civil proceedings generally
Part 2.18	Enforcement
Division 2.18.15	Enforcement of non-money orders—orders for seizure and detention of property

Rule 2470

Division 2.18.15 Enforcement of non-money orders— orders for seizure and detention of property

2470 Order for seizure and detention of property—making

(Qld r 917)

The court may make an order (an *order for seizure and detention of property*) authorising an enforcement officer to seize and detain all real and personal property (other than exempt property) in which the person liable to comply with a non-money order has a legal or beneficial interest.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2471 Order for seizure and detention of property— preconditions

(Qld r 918)

The court may make an order for seizure and detention of property only if the non-money order being enforced stated a time for compliance and the time has passed.

2472 Order for seizure and detention of property—against officer of corporation

(Qld r 919)

- (1) This rule applies if, to enforce a non-money order with which a corporation must comply, a person applies for an order for seizure and detention of property against a senior officer of the corporation.
- (2) A stamped copy of the application and of each affidavit in support must be served on the officer.

EXPOSURE DRAFT

2473 Order for seizure and detention of property—return of seized property

(Qld r 920)

If the person against whom an order for seizure and detention of property was made complies or is released from complying with the order, the court may order that the property, after deduction of the costs of enforcement, be returned to the person.

Division 2.18.16 Enforcement—contempt

2500 Contempt—application of div 2.18.16

(Qld r 925)

This division applies to the following contempts:

- (a) contempt for contravention of an order of the court or an undertaking given to a court;
- (b) contempt committed in the face or in the hearing of the court;
- (c) any other contempt of the court;
- (d) for the Supreme Court—contempt of the Magistrates Court or any other court.

2501 Contempt—applications generally

(Qld r 926)

- (1) A person applying for punishment of a person (the *respondent*) for contempt must make an application to the court stating the alleged contempt.

- (2) The application may be made—
- (a) in the proceeding in which the contempt was committed; or
- Note* Pt 6.2 (Applications in proceedings) applies to an application under this paragraph.
- (b) by originating application.
- Note* Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc).
- (3) The application must set out particulars of the contempt.
- (4) The application and any affidavit in support of it must be served on the respondent personally.
- (5) An affidavit in support of or opposing the application must not contain evidence that the person making it could not give if giving evidence orally.

2502 Contempt—application by registrar

(Qld r 928)

- (1) The Supreme Court may, by order, direct the registrar of the Supreme Court to apply to the court for a person to be punished for contempt.
- (2) The Magistrates Court may, by order, direct the registrar of the Magistrates Court to apply to the Magistrates Court or the Supreme Court for a person to be punished for contempt.

EXPOSURE DRAFT

2503 Contempt—arrest warrant if respondent likely to abscond etc

(Qld r 927)

- (1) This rule applies if—
 - (a) an application for punishment of a person for contempt has been filed in the court; and
 - (b) the court considers that the person is likely to abscond or otherwise withdraw from the court’s jurisdiction.
- (2) The court may issue a warrant for the person’s arrest and detention in custody until the court hears the charge unless the person gives security satisfactory to the court for the person’s appearance in court in person to answer the charge and to submit to the court’s decision.
- (3) In the application of this rule to the Magistrates Court, a reference to the court includes a reference to the Supreme Court.

2504 Contempt in face or hearing of court—alternative procedure

(Qld rr 922-924)

- (1) For a contempt committed in the face of, or in the hearing of, the court, the procedure under this rule is an alternative to the procedure under rule 2501 (Contempt—applications generally).
- (2) If it is alleged or it appears to the court that a person is guilty of contempt of court committed in the face of, or in the hearing of, the court, the court may—
 - (a) by oral order direct the person to be brought before the court;
or

- (b) issue a warrant for the person's arrest.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) Pending disposal of the charge of contempt, the court may direct that the person be kept in the custody the court directs or be released.
- (4) Without limiting subrule (3), the court may release the person on conditions, including, for example, a condition that security be given to secure the person's attendance to answer the charge and that the security be forfeited if the person fails to attend.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (5) If the person is brought before the court, the court must—
- (a) tell the person orally of the contempt charged; and
- (b) ask the person to show cause why punishment should not be imposed for contempt of court; and
- (c) after hearing the person, decide the matter in the way it considers appropriate; and
- (d) make an order for the person's punishment or discharge.

EXPOSURE DRAFT

2505 Contempt—arrest warrant

(Qld r 929)

- (1) A warrant for the arrest and detention, or the arrest, of a person (the *respondent*) under this division must be—
 - (a) addressed to an enforcement officer; and
 - (b) signed by a judicial officer of the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) Pending the court's decision, if the respondent is arrested under a warrant, the respondent must be held in a correctional centre or in any other custody that is satisfactory to the enforcement officer.
- (3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the warrant.
- (4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.
- (5) The enforcement officer or a police officer may deliver the respondent to the person in charge of any correctional centre and the person must receive and keep the respondent in custody until the court or the enforcement officer otherwise directs.

2506 Contempt—punishment

(Qld r 930 and r 931)

- (1) This rule applies if the court decides that a person has committed a contempt.
- (2) If the person is an individual, the court may punish the individual by making an order that may be made under the *Crimes (Sentencing) Act 2005*.

EXPOSURE DRAFT

- (3) If the person is a corporation, the court may punish the corporation by seizing corporation property or a fine or both.
- (4) However, the maximum penalty that may be imposed by the Magistrates Court is—
 - (a) for an individual—imprisonment for 6 months, a fine of \$5 000 or both; and
 - (b) for a corporation—a fine of \$25 000.
- (5) Without limiting subrule (2), the court may make an order for punishment on conditions, including, for example, a suspension of punishment during good behaviour, with or without the respondent giving security satisfactory to the court for good behaviour.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
- (6) Without limiting subrule (2), if the person is imprisoned for a term, the court may order the person’s release from imprisonment before the end of the term.

2507 Contempt—costs

(Qld r 932)

The costs of a proceeding for punishment for contempt are in the court’s discretion whether or not a specific punishment is imposed.

2508 Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt

- (1) This rule applies if a person, without reasonable excuse, contravenes an order of, or undertaking given to, the Magistrates Court.

- (2) This rule also applies if a person, without reasonable excuse, contravenes—
 - (a) rule 672 (2) (Solicitor to notify party of certain matters about pt 2.8) in relation to a proceeding in the Magistrates Court; or
 - (b) rule 673 (2) (Improper use of disclosed document) in relation to a proceeding in the Magistrates Court.
- (3) The Magistrates Court may refer the person to the Supreme Court to be dealt with for contempt of court.
- (4) The Supreme Court may deal with the person for contempt of court as if—
 - (a) for a contravention of an order of the Magistrates Court—the order were an order of the Supreme Court; or
 - (b) for a contravention of a provision mentioned in subrule (2)—the proceeding in relation to which the contravention happened were a proceeding in the Supreme Court.
- (5) This rule does not limit the powers of the Magistrates Court.

Division 2.18.17 Enforcement—arrest warrants for absconding defendants

2550 Application—div 2.18.17

(Qld r 933)

This division applies only in relation to the Supreme Court.

EXPOSURE DRAFT

2551 Meaning of *plaintiff* and *defendant*—div 2.18.17

For a proceeding in relation to an enforceable money order of the court—

- (a) a reference in this division to the *plaintiff* is a reference to the enforcement creditor; and
- (b) a reference in this division to the *defendant* is a reference to the enforcement debtor.

2552 Arrest warrant for defendant—application

(Qld r 934)

An application for an arrest warrant under this division need not be served on anyone unless the court otherwise orders on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an arrest warrant.

2553 Arrest warrant for defendant—issue

(Qld r 935)

- (1) The court may issue a warrant for the arrest of a defendant under this division only if satisfied that—
 - (a) the defendant has absconded or is about to abscond; and
 - (b) the absence of the defendant would materially prejudice the plaintiff in prosecuting a proceeding or enforcing any order that may be given.

- (2) The court may issue the warrant at any time, for example, before the defendant has been served with the originating process or before judgment.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The warrant must state—
- (a) the name of the defendant; and
 - (b) the date the warrant ends.
- (4) The date stated under subrule (3) (b) must be not later than 2 months after the day the warrant is issued.
- (5) The court may fix an amount to be stated in the warrant entitling the defendant to be released.
- (6) In fixing the amount, the court may have regard to anything it considers relevant, including the following:
- (a) the amount (if any) of the plaintiff's claim;
 - (b) the costs of issuing the warrant;
 - (c) an estimate of the costs of executing the warrant.

2554 Arrest warrant for defendant—enforcement

(Qld r 936)

- (1) The registrar must give a warrant under this division for the arrest of a defendant to an enforcement officer to be enforced.
- (2) The warrant may be enforced by the enforcement officer or an appropriately qualified person authorised in writing by the enforcement officer.

EXPOSURE DRAFT

(3) Receipt of a fax copy of a warrant is sufficient authority for the enforcement officer or someone else to enforce the warrant.

(4) In this rule:

appropriately qualified, for a person who may be authorised to enforce a warrant, includes having the qualifications, experience or standing appropriate to enforce the warrant.

Examples

- 1 an enforcement officer of another court
- 2 a police officer

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2555 Arrest warrant for defendant—costs of enforcement

(Qld r 937)

(1) Unless the court otherwise orders—

- (a) the plaintiff is liable to pay to the enforcement officer the costs the enforcement officer considers appropriate for enforcing a warrant under this division for the arrest of a defendant; and
- (b) the enforcement officer may, as a condition of enforcing the warrant, require the plaintiff to give security, for the amount and in the form the enforcement officer considers appropriate, for the costs to be incurred by the enforcement officer in enforcing the warrant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) The enforcement officer may refuse to execute a warrant if the plaintiff fails to comply with a reasonable requirement by the enforcement officer under subrule (1) (b).

2556 Arrest warrant for defendant—service of warrant and claim

(Qld r 938)

A person who enforces a warrant under this division for the arrest of a defendant must, as soon as practicable after enforcing it, serve the defendant with—

- (a) a copy of the warrant; and
- (b) if the defendant has not been served with the originating process for which the warrant was issued—a sealed copy of the originating process.

2557 Arrest warrant for defendant—record of enforcement

(Qld r 939)

A person who enforces a warrant for the arrest of a defendant must write on the warrant the time and place of enforcement.

2558 Arrest warrant for defendant—procedure after arrest

(Qld r 940)

- (1) A person who enforces a warrant for the arrest of a defendant must, as soon as practicable after enforcing it, take the defendant to the nearest correctional centre.
- (2) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.

EXPOSURE DRAFT

- (3) A warrant on which the time and place of enforcement is written is sufficient authority for the officer in charge of the correctional centre to hold the defendant in custody.

2559 Arrest warrant for defendant—release of defendant

(Qld r 941)

- (1) The person in charge of the correctional centre where the defendant is in custody must release the defendant if—
- (a) the court orders that the defendant be released; or
 - (b) the plaintiff gives the enforcement officer a written consent to the defendant's release; or
 - (c) the warrant states an amount fixed by the court the payment of which entitles the defendant to be released and the defendant pays the amount into court or secures payment of the amount in a way that the plaintiff or enforcement officer considers satisfactory.
- (2) An amount paid into court or security given under subrule (1) (c) may be paid out or released only in accordance with an order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2560 Arrest warrant for defendant—court powers

(Qld r 942)

- (1) The court must, on its own initiative, order that the defendant be released from custody unless satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any order that may be made.

- (2) If the court is satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any order that may be made, the court may, on application by the plaintiff or defendant—
- (a) order that the defendant be released unconditionally from custody; or
 - (b) order that the defendant be released from custody subject to 1 or more of the following conditions:
 - (i) that the defendant undertake not to leave Australia until an amount stated by the court is paid to the plaintiff, or into court, as the court directs;
 - (ii) that the defendant surrender the defendant's passport to the registrar;
 - (iii) that the defendant give security, either with or without surety, for the payment of an amount stated by the court;
 - (iv) that the defendant pay a stated amount to the plaintiff;
 - (v) that the defendant pay a stated amount into court to await further consideration by the court; or
 - (c) order that the defendant be detained in custody for the period the court considers appropriate or until the defendant complies with any condition stated by the court.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.
- (3) If the court makes an order under subrule (2), it may, by order, expedite the trial of the proceeding under rule 1311 (Expedited trial) and give any direction it considers appropriate for the conduct of the proceeding.

EXPOSURE DRAFT

- (4) The court may make an order, or give a direction, under subrule (3) on application by the plaintiff or defendant or on its own initiative.
- (5) Without limiting rule 6016 (Application in proceeding—oral applications), an application for an order or direction under this rule may be made orally, unless the court otherwise orders on application by the plaintiff or defendant or on its own initiative.

2561 Arrest warrant for defendant—failure to comply with conditions

(Qld r 943)

- (1) The enforcement officer or a surety may, without a warrant, arrest a defendant who has been conditionally released from custody by the court under rule 2560 if the enforcement officer or surety, on reasonable grounds, suspects, that the defendant has failed or will fail to comply with a condition of the defendant's release.
- (2) The enforcement officer or a surety may ask a police officer to help in the exercise of the enforcement officer's or surety's power under subrule (1).
- (3) The police officer must give the enforcement officer or surety the reasonable help the enforcement officer or surety requires, if it is practicable to give the help.
- (4) If the defendant is arrested under subrule (1) by the enforcement officer or a police officer, the enforcement officer or police officer must, as soon as practicable after the arrest, take the defendant to the nearest correctional centre.
- (5) If the defendant is arrested under subrule (1) by a surety, the surety must, as soon as practicable after the arrest, take the defendant to an enforcement officer or a police officer who must take the defendant to the nearest correctional centre as soon as practicable.

EXPOSURE DRAFT

- (6) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.
- (7) If the court is satisfied that the defendant has failed to comply or is about to fail to comply with a condition of the defendant's release, the court may, on application by the plaintiff or defendant—
- (a) set aside the order under which the defendant was released; and
 - (b) make any order that it could make under rule 2560 (Arrest warrant for defendant—court powers).

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2562 Arrest warrant for defendant—review

(Qld r 944)

- (1) A defendant may, at any time and from time to time, apply to the court for an order that—
- (a) the warrant be set aside; or
 - (b) the defendant be released from custody; or
 - (c) an order made under rule 2560 (Arrest warrant for defendant—court powers) be amended.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) On an application under subrule (1), the court may make any order that it could make under rule 2560.

EXPOSURE DRAFT

2563 Arrest warrant for defendant—restriction on further applications

(Qld r 945)

- (1) This rule applies if—
 - (a) the court makes an order refusing to issue or set aside a warrant under this division for the arrest of a defendant; or
 - (b) the court makes an order that the defendant be released from custody under this division.
- (2) Within the 6-month period starting on the day the order is made, the plaintiff may apply for another warrant for the defendant's arrest in relation to the same cause of action only if the plaintiff produces evidence that was not and could not reasonably have been given when the order was made.

2564 Arrest warrant for defendant—costs

(Qld r 946)

On any application under this division or at the trial or hearing of a proceeding, the court may make the order the court considers appropriate about costs, including costs payable by the plaintiff under rule 2555 (Arrest warrant for defendant—costs of enforcement).

Note Pt 6.2 (Applications in proceedings) applies to an application under this division.

Part 2.19 Interpleader proceedings

Division 2.19.1 Stakeholder's interpleader

2600 Interpleader—application by stakeholder

(SCR o 59 r 1 (a), r 2 and r 5; MC(CJ)R s 240; NSW r 43.2; Qld r 949)

- (1) This rule applies if—
 - (a) a person other than an enforcement officer (the *stakeholder*) is under a liability in relation to a debt or personal property (the *disputed property*); and
 - (b) the stakeholder is, or expects to be, sued by 2 or more people (each of whom is a *claimant*) making adverse claims to the disputed property.
- (2) If the stakeholder is sued by a claimant in a proceeding in the court in relation to the disputed property, the stakeholder may apply to the court in that proceeding for interpleader relief.

Note Pt 6.2 (Applications in proceedings) applies to the application.
- (3) If subrule (2) does not apply to the stakeholder, the stakeholder may apply to the court by originating application for interpleader relief and include each claimant as a defendant.
- (4) An application under this rule for interpleader relief must be supported by an affidavit.
- (5) The affidavit must state that the stakeholder—
 - (a) claims no interest in the disputed property, other than for charges or costs; and
 - (b) is not in collusion with any claimant; and

EXPOSURE DRAFT

- (c) is willing to—
 - (i) pay or transfer the disputed property into court; or
 - (ii) dispose of the property as the court directs; or
 - (iii) give security to the value of the property to the court's satisfaction.
- (6) A sealed or stamped copy of the application and supporting affidavits must be served on each of the claimants.
- (7) If a claimant is not a party to the proceeding, the application and supporting affidavits must be served personally.

Division 2.19.2 Enforcement officer's interpleader

2605 Interpleader—notice of claim to enforcement officer

(SCR o 59 r 1 (b) and r 16; MC(CJ)R s 241 (2) (c); NSW r 43.3 (1) and (2); Qld r 950)

- (1) This rule applies if—
 - (a) an enforcement officer seizes or intends to seize personal property (the *disputed property*) under an enforcement order; and
 - (b) a person (the *claimant*) claims to be entitled to, or to have an interest in, the disputed property or the proceeds of sale of the disputed property.
- (2) The claimant must give notice of the claim to the enforcement officer.
- (3) The notice must—
 - (a) state the claimant's name and give an address for service; and

EXPOSURE DRAFT

- (b) identify each item of the disputed property to which the claim relates; and
- (c) state the grounds of the claim.

2606 Interpleader—failure to give notice of claim

(NSW r 43.4; Qld r 951)

- (1) This rule applies if the claimant mentioned in rule 2605 does not give notice of the claim under that rule in relation to the disputed property within a reasonable time after becoming aware that the enforcement officer has seized or intends to seize the property.
- (2) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in the court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order after the time when the claimant might reasonably have given notice of the claim.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) The application must be supported by an affidavit.
- (4) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the disputed property, the enforcement officer may apply to the court for an order under subrule (2) in that proceeding.
- (5) If subrule (4) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (2) in the proceeding in which the enforcement order was made.
- (6) An application for an order under subrule (2) and supporting affidavits must be served on the claimant personally.

EXPOSURE DRAFT

2607 Interpleader—notice to enforcement creditor

(SCR o 59 r 16 (1); MC(CJ)R s 242; NSW r 43.3 (3) and (4); Qld r 952)

- (1) The enforcement officer must serve a copy of the notice under rule 2605 on the enforcement creditor not later than 4 days after the day the notice is served on the enforcement officer.
- (2) The enforcement creditor may serve a notice on the enforcement officer stating that the claim is admitted.
- (3) If the enforcement creditor admits the claim, the enforcement creditor is liable for the enforcement officer's costs and expenses of enforcement, including any costs of complying with rule 2608.

2608 Interpleader—admission of claim

(SCR o 59 r 16 (2) and r 17; NSW r 43.5; Qld r 953)

- (1) This rule applies if the enforcement creditor admits the claimant's claim under rule 2605 by serving notice on the enforcement officer under rule 2607.
- (2) The enforcement creditor is not liable to the enforcement officer for fees or expenses incurred by the enforcement officer under the enforcement order after the notice is given to the enforcement officer.
- (3) The enforcement officer must—
 - (a) withdraw from possession of the property in relation to which the claim is admitted (the *relevant property*); or
 - (b) if the relevant property has been sold—pay the proceeds of sale into court and tell the enforcement debtor and the claimant in writing that the proceeds of sale have been paid into court.

- (4) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in a court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order in relation to the relevant property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (5) The application must be supported by an affidavit to which the notices mentioned in rule 2605 (2) and rule 2607 (2) are annexed.
- (6) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the relevant property, the enforcement officer may apply to the court for an order under subrule (4) in that proceeding.
- (7) If subrule (6) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (4) in—
- (a) the proceeding in which the enforcement order was made; or
 - (b) if a proceeding is pending in which the property's ownership is an issue—the pending proceeding.
- (8) An application for an order under subrule (4) and supporting affidavits must be served on the claimant personally.

2609 Interpleader—enforcement officer's interpleader application

(MC(CJ)R s 241 (1); NSW r 43.6; Qld r 954)

- (1) This rule applies if—
- (a) the enforcement officer has served notice of the claimant's claim on the enforcement creditor under rule 2607; and

EXPOSURE DRAFT

- (b) the enforcement creditor does not, before the end of 4 days after the day the notice is served, serve on the enforcement officer a notice under that rule that the enforcement creditor admits the claim; and
 - (c) the claimant does not afterwards withdraw the claim.
- (2) The enforcement officer may apply to the court for interpleader relief.
- Note* Pt 6.2 (Applications in proceedings) applies to the application.
- (3) The application must be supported by an affidavit to which the notice mentioned in rule 2605 (2) is annexed.
 - (4) The application may be made only in the proceeding in which the enforcement order was made.
 - (5) A stamped copy of the application and supporting affidavits must be served on the enforcement creditor and claimant personally.

2610 Interpleader—enforcement debtor’s rights not affected

(Qld r 955)

This part does not affect a right of the enforcement debtor to bring a claim against the enforcement officer or the enforcement creditor.

Division 2.19.3 Interpleader orders

2620 Interpleader—orders

(SCR o 59 r 7, r 9, r 12 and r 13; MC(CJ)R s 243 (4); NSW r 43.7; SCQA s 83 (1))

- (1) On application under division 2.19.1 (Stakeholder’s interpleader) or division 2.19.2 (Enforcement officer’s interpleader) for interpleader relief, the court may make the orders it considers appropriate for hearing and deciding all matters in dispute.

- (2) Without limiting subrule (1), the court may do any of the following:
- (a) if a proceeding is pending against the applicant in relation to any of the disputed property—order that a claimant in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the applicant, or order that the proceeding be stayed or dismissed;
 - (b) order that a question between claimants to the disputed property be stated and tried, direct which of the claimants is to be the plaintiff and which the defendant, and give any necessary directions for the trial;
 - (c) order that the applicant pay or transfer all or any of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale;
 - (d) if a claimant claims to be entitled to any of the disputed property by way of security for a debt—make orders for the sale of all or part of the property and for the application of the proceeds of sale;
 - (e) decide summarily a question of law or fact arising on the application;
 - (f) order that a special case be stated on a question of law under part 5.5 (Cases stated);
 - (g) make any order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.

EXPOSURE DRAFT

2621 Interpleader—summary disposal of proceeding

(SCR o 59 r 8)

The court may, having regard to the value of the disputed property, decide the claimants' claims summarily on any conditions it considers just if—

- (a) the claimants consent; or
- (b) a claimant applies to the court for the court to decide the claims summarily.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2622 Interpleader—adverse claims

(SCR o 59 r 3; MC(CJ)R s 245)

The applicant is not disentitled to relief only because the titles of the claimants do not have a common origin, but are adverse to and independent of one another.

2623 Interpleader—default by claimant

(SCR o 59 r 10; MC(CJ)R s 243 (5); NSW r 43.8; Qld r 956)

- (1) This rule applies if—
 - (a) a claimant to the disputed property has been given appropriate notice of the hearing of an application for interpleader relief; and
 - (b) the claimant does not appear at the hearing or does not comply with an order made on an application for interpleader relief.
- (2) The court may order that the claimant, and anyone claiming under the claimant, be barred from prosecuting the claim against the applicant and anyone claiming under the applicant.

- (3) An order under subrule (2) does not affect the rights of the claimants as between themselves.

2624 Interpleader—neutrality of applicant

(SCR o 59 r 2; NSW r 43.9; Qld r 957)

- (1) If a person (the *stakeholder*) applies for interpleader relief under rule 2600, the court may dismiss the application or give judgment against the stakeholder unless satisfied that the stakeholder—
- (a) claims no interest in the disputed property, other than for charges or costs; or
 - (b) is not in collusion with a claimant to the disputed property.
- (2) If an enforcement officer applies for interpleader relief under rule 2609, the court may dismiss the application unless satisfied that the enforcement officer—
- (a) claims no interest in the disputed property other than for charges or costs; or
 - (b) is not in collusion with a claimant to the disputed property.
- (3) This rule does not affect the power of the court in other cases to dismiss an application for interpleader relief or to give judgment against an applicant for interpleader relief.

2625 Interpleader order—2 or more proceedings

(SCR o 59 r 14; NSW r 43.10; SCQA s 83 (2))

- (1) This rule applies if—
- (a) an application for interpleader relief is made; and
 - (b) 2 or more proceedings are pending in the court for or about any or all of the disputed property; and

- (c) the court makes an order in any 2 or more of the proceedings.
- (2) An order is binding on all the parties to all the proceedings to which it applies.

2626 Interpleader—trial

(SCR o 59 r 13; NSW r 43.11; Qld r 958)

If, in a proceeding for interpleader relief, the court directs the trial of an issue, part 2.13 (Pre-trial procedures), part 2.14 (Court supervision) and part 2.15 (Trial) apply to the trial with all necessary changes and subject to directions the court may give.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

2627 Interpleader—disposal of amounts in court

(Qld r 959)

If an enforcement officer has paid an amount into court under rule 2608 (Interpleader—admission of claim), the court may order it be paid out to the person who is entitled to it or make an order under rule 2620 (Interpleader—orders).

Part 2.20 **Trusts, estates, accounts and inquiries**

Division 2.20.1 **Trusts and estates**

Note to div 2.20.1

This div contains miscellaneous rules applying in relation to trusts and estates of deceased people. For examples of other provisions applying to trusts and estates, see:

- div 2.4.6 (Representation—trustees and personal representatives)
- pt 3.1 (Administration and probate).

2700 **Trusts and estates—decision without order for administration**

(SCR o 58 r 10)

The court need not make an order for the administration of a trust or deceased person's estate if the questions between the parties can be properly decided without the order.

2701 **Trusts and estates—application not to affect powers**

(SCR o 58 r 12)

- (1) This rule applies if an application is made in relation to a question or matter in relation to a trust or the estate of a deceased person, without administration of the trust or estate if—
 - (a) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

- (b) there is no opposing party to the proceeding or it is not intended to serve anyone with the originating process.

Note The application may be made by originating application (see r 35 (When originating application may be used)).

- (2) Unless the court otherwise orders, the making of the application does not interfere with or control any power or discretion of an executor, administrator or trustee, except as far as the interference or control is necessarily involved in the particular relief sought.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2702 Trusts and estates—conduct of sale

(SCR o 52 r 10)

- (1) This rule applies if—
- (a) there is a proceeding for the administration of a deceased person's estate or enforcement of the trust of a written instrument; and
- (b) the court orders the sale of property vested in an executor or administrator of the estate or trustee of the trust.
- (2) Unless the court otherwise orders, the conduct of the sale must be given to the executor, administrator or trustee.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

EXPOSURE DRAFT

Division 2.20.2 Taking of accounts

Note For the accounts of executors, administrators and trustees, see div 3.1.11 (Executors, administrators and trustees—accounts and commission).

2720 Meaning of *accounting party*—div 2.20.2

In this division:

accounting party means the party required to account.

2721 Account—order for account

(SCR o 18 r 1 and o 36 r 3; Qld r 527)

- (1) If an account is claimed in the first instance or a claim involves taking an account, the court may at any stage order that an account be taken.
- (2) Without limiting subrule (1), the court may order that an account be taken if—
 - (a) an originating application seeks the taking of an account; and
 - (b) the defendant fails to satisfy the court that there is a preliminary question to be decided.
- (3) An order directing that an account be taken must state—
 - (a) the transaction or series of transactions of which the account is to be taken; and
 - (b) the basis of the account; and
 - (c) the period of the account.

2722 Account—orders

(SCR o 19 r 45 and r 46, o 36 r 4 and o 58 r 20, r 21, r 25, r 29, r 30, r 31, r 34 (1), r 38, r 39, r 41 (3) and (4), r 45 and r 46; Qld r 528)

- (1) This rule applies if the court orders the taking of an account.
- (2) The court may, by the same or a later order, make the orders it considers appropriate about taking or verifying the account, including, for example, orders about the following:
 - (a) the advertisements to be published, the evidence to be presented, the procedure to be followed, and the time and place for taking the account;
 - (b) if the court orders an advertisement to be published—an order excluding from the benefit of the order for the taking of the account a claimant who does not send full particulars of the claimant's claim to the person named in the advertisement, within the time stated in the advertisement;
 - (c) whether in taking the account the books and records of account are evidence of the matters contained in them;
 - (d) the people (whether or not parties to the proceeding) to be served with the order and who are entitled to be heard on the taking of the account;
 - (e) the people to be called as witnesses at the taking of the account;
 - (f) whether an order should be given for a balance found to be owing.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for a later order.

EXPOSURE DRAFT

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the court orders that the books and records of account are evidence of the matters contained in them, the parties have leave to take objections.

2723 Accounts—service of order etc

(SCR o 19 r 45 and o 58 r 23 and r 24; Qld r 529)

- (1) An order for the taking of an account that is to be served on a person who was not a party to the proceeding must be served personally.
- (2) The account must not be taken until all necessary people have been served with the order for the taking of the account, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) If the court dispenses with service, the court may also order that the people in relation to whom service is dispensed with are bound by the order for the taking of the account.
- (4) An order under subrule (3) does not apply to a person if the order (or the order dispensing with service) was obtained by fraud or nondisclosure of material facts.
- (5) If—
- (a) the court orders the taking of an account in a proceeding for the administration of a deceased person's estate, the enforcement of the trust of a written instrument or the partition or sale of an hereditament; and

Note A hereditament is land or an interest in land that can be passed to heirs.

EXPOSURE DRAFT

- (b) the court also orders that the order mentioned in paragraph (a) be served on the people interested in the estate, trust or hereditament;

everyone on whom the order is served is bound by the proceeding.

2724 Accounts—form and verification

(SCR o 36 r 5 and r 6 and o 58 r 38 and r 44; Qld r 530)

- (1) All items in an account must be numbered consecutively.
- (2) The accounting party must verify the account by an affidavit and the account must be made an annexure or exhibit to the affidavit.

Note See r 6712 (Affidavit—annexures and exhibits) and r 6717 (Affidavit—alterations in).

- (3) On the taking of an account, all payments over \$250 must be verified by receipts.
- (4) The court may order that the documents relating to an account be produced for inspection by another party at the office of the accounting party's solicitor or another convenient place, and that only the contested items be brought before the court.

2725 Accounts—filing and service

(Qld r 531)

The accounting party must—

- (a) file the account and verifying affidavit; and
- (b) serve stamped copies on everyone entitled to be heard at the taking of the account.

2726 Accounts—challenging account

(SCR o 36 r 7; Qld r 532)

If a person challenges the accuracy of an account, the person must serve a notice on the accounting party that—

- (a) states the errors or omissions claimed; and
- (b) gives brief details of them.

2727 Accounts—witness

(Qld r 533)

A witness on the taking of an account or the person who made an affidavit read at the taking of an account may be examined or cross-examined on oath.

Note **Oath** includes affirmation (see Legislation Act, dict, pt 1).

2728 Accounts—allowances

(SCR o 36 r 10 and o 58 r 42; Qld r 534)

In taking an account directed by an order, all just allowances for the expenses and claims of the accounting party may be made without a direction for the purpose.

2729 Accounts—delay

(SCR o 36 r 12; Qld r 535)

- (1) If there is delay in prosecuting the taking of an account, the court may make orders for staying or expediting the proceeding, or for the conduct of the proceeding (including orders about costs).

- (2) The court may make an order under this rule on the application of anyone entitled to be heard at the taking of the account or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2730 Accounts—powers exercisable on taking account

(SCR o 58 r 25 and r 31; Qld r 537)

On the taking of an account, the court may order that advertisements be published, witnesses subpoenaed, oaths administered, documents or records be produced and oral examinations conducted on oath.

Note **Oath** includes affirmation (see Legislation Act, dict, pt 1).

2731 Accounts—class interests

(SCR o 58 r 27 and r 28; Qld r 538)

- (1) If it appears to the court that the interests of the people who are entitled to attend the taking of the account can be classified, the court may order each class to be represented by 1 solicitor and counsel.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) Despite an order under subrule (1), a person who objects to being represented as a member of a class—
- (a) may be separately represented; and
 - (b) if separately represented, is not entitled to an order for costs and may be ordered to pay additional costs incurred by someone else because of the separate representation.

- (3) The court may order separate representation for members of a class who are represented by 1 solicitor and counsel.
- (4) This rule is additional to rule 259 (Representation—proceeding about administration of deceased person’s estate or trust property) and rule 266 (Representation—numerous concurrent interests).

2732 Accounts—reference to judicial officer

(Qld r 539)

- (1) If an account is taken by the master or registrar of a court, the master or registrar must if asked by a person interested in the account, or may on his or her own initiative, refer to a judicial officer of the court a question arising, and the account must be taken in accordance with a direction the judicial officer gives on the reference.
- (2) A direction given by the judicial officer under subrule (1) may be amended at any time until a certificate is filed of the results of the account.
- (3) This rule is additional to the following rules:
 - rule 6201 (Order that jurisdiction in proceeding be exercised by judge instead of master)
 - rule 6202 (Master referring proceeding or issue to judge)
 - rule 6253 (Order that jurisdiction in proceeding be exercised by judicial officer other than registrar)
 - rule 6254 (Registrar referring proceeding or issue to judicial officer).
- (4) In this rule:

judicial officer means—

 - (a) for the master—a judge; or

EXPOSURE DRAFT

- (b) for the registrar of the Supreme Court—a judge or the master;
or
- (c) for the registrar of the Magistrates Court—a magistrate.

2733 Accounts—certificate about taking of account

(SCR o 58 r 41 (2), r 55 and r 56; Qld r 540)

- (1) The result of the taking of an account must be stated in a certificate that must be filed in the court immediately after it is settled.
- (2) Anyone who is interested in the account may apply to the court for the certificate to be set aside or amended not later than 7 days after the day the certificate is filed.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or leave under this rule.

- (3) The application must state—
 - (a) the items objected to; and
 - (b) briefly, but specifically, the grounds of the objection.
- (4) The court must decide the application on the same evidence as was presented at the taking of the account, unless the court gives leave for further evidence to be presented.
- (5) The certificate becomes final, and is binding on the parties, at the end of 7 days after the day it is filed in the court, unless someone applies under subrule (2) for the certificate to be set aside or amended.
- (6) However, in special circumstances the court may set aside or amend the certificate after it has become final and binding.

EXPOSURE DRAFT

- (7) The certificate must not set out the order, the documents, evidence or reasons, but it must refer to the order or the documents or evidence so that the basis of the result of the account is stated in the certificate.
- (8) The certificate must state the items allowed and disallowed.
- (9) The party responsible for the prosecution of the taking of the account must prepare a draft certificate for settling by the court on at least 7 days notice to everyone who appeared at the taking of the account.
- (10) The registrar must serve a stamped copy of the certificate on each party to the account.

2734 Accounts—further consideration

(SCR o 58 r 57; Qld r 541)

If a proceeding is adjourned for an account to be taken, it may be set down for further hearing not later than 7 days after the day the certificate for the account becomes final and binding.

Division 2.20.3 Making of inquiries

2740 Inquiries—procedure for inquiries

(SCR o 36 r 3; Qld r 542)

Division 2.20.2 (Taking of accounts) applies, with necessary changes, to the making of an inquiry.

2741 Inquiries—orders

(SCR o 36 r 3 and o 58 rr 31-43; Qld r 543)

- (1) This rule applies if the court orders the making of an inquiry.

Chapter 2 Civil proceedings generally
Part 2.20 Trusts, estates, accounts and inquiries
Division 2.20.3 Making of inquiries

Rule 2741

- (2) The court may, by the same or a later order, make the orders about the making of the inquiry it considers appropriate.

EXPOSURE DRAFT

Part 2.21 Representation by solicitors

2800 Power to act by solicitor

(MC(CJ)R s 484; NSW r 7.24; Qld r 985)

- (1) Every act required or allowed to be done by a party in the conduct of a proceeding in the court may be done by the party's solicitor.
- (2) However, this rule does not apply to a document that must be signed by a party.

Examples for r (2)

- 1 answers to interrogatories
- 2 an affidavit

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2801 Appointment of solicitor

(MC(CJ)R s 485 (1))

If a solicitor signs, and files on behalf of a party to a proceeding, an originating process, notice of intention to respond, defence or other document in the proceeding, the solicitor is taken to be the party's solicitor on the record in the proceeding.

2802 Change between acting personally and acting by solicitor

(SCR o 8 r 3 and r 4; MC(CJ)R s 485 (2), s 486 (4) and s 487; NSW r 7.27 and r 7.28; Qld r 986)

- (1) If a party acts in person in a proceeding and later appoints a solicitor, the solicitor must—
 - (a) file a notice of the solicitor's appointment; and

- (b) serve a stamped copy of the notice on all other active parties.
- (2) The notice must state the party's address for service.
 - Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (3) If a party appoints a solicitor and later decides to act in person, the party must—
 - (a) file a notice that the party is acting in person; and
 - (b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.
- (4) The notice must state the party's address for service.
 - Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (5) The party's former solicitor remains the solicitor on the record until the party complies with subrule (3).

2803 Change of solicitor

(SCR o 8 r 2; MC(CJ)R s 486 (1) and (2) and s 487; NSW r 7.26; Qld r 987)

- (1) A party may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the party.
- (2) If a party appoints another solicitor, the newly appointed solicitor must—
 - (a) file a notice of the change of solicitor; and
 - (b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.

EXPOSURE DRAFT

- (3) The notice must state the party's address for service.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) The party's former solicitor remains the solicitor on the record until the newly appointed solicitor complies with subrule (2).

2804 Removal of solicitor by court

(SCR o 8 r 5; Qld r 988)

- (1) This rule applies if a solicitor for a party on the record in a proceeding loses the capacity to act as a solicitor or cannot be found, but a notice of change of solicitor or notice that the party is acting in person is not filed.

- (2) A party may apply to the court for the removal of the solicitor's name from the record.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) On application under subrule (2), the court may order that the solicitor's name be removed from the record.

- (4) On removal of the solicitor's name from the record, the party must—

- (a) appoint another solicitor; or
- (b) comply with subrule (5).

- (5) To comply with this subrule, the party must—

- (a) file a notice that the party is acting in person; and
- (b) serve a stamped copy of the notice on all other active parties.

EXPOSURE DRAFT

- (6) The notice must state the party's address for service.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

2805 Solicitor removed from roll etc

(Qld r 989)

- (1) This rule applies if a solicitor's name is removed from the local roll under the *Legal Profession Act 2006* or a solicitor's local practising certificate under that Act is cancelled or suspended.
- (2) If a receiver is appointed under the *Legal Profession Act 2006* for the solicitor's practice, a copy of all processes and other documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.
- (3) If a receiver is not appointed, rule 2808 (Effect of removal of, or leave to withdraw as, solicitor) applies with necessary changes.

2806 Application for leave to withdraw as solicitor

(SCR o 8 r 6 (1); MC(CJ)R s 486 (5), (6) and (7); NSW r 7.29; Qld r 990)

- (1) A solicitor for a client who is a party in a proceeding in the court may apply to the court for leave to withdraw from the record in the proceeding.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (2) The solicitor may apply to the court for leave to withdraw from the record only if, at least 7 days before the day the solicitor applies for leave, the solicitor gives notice (a ***notice of intention to apply for leave to withdraw***) to the client—
- (a) stating the solicitor's intention to withdraw; and

- (b) asking the client, not later than 7 days after the day the notice is given to the client—
 - (i) to appoint another solicitor; or
 - (ii) to file, and serve a stamped copy of, a notice that the client acts in person; and
- (c) stating that, if the client does not comply with the notice—
 - (i) the solicitor may apply to the court for leave to withdraw; and
 - (ii) the client may be ordered to pay the solicitor's costs of the application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

2807 Leave to withdraw as solicitor

(SCR o 8 r 6 (1), (2) and (3); NSW r 7.29; Qld r 991)

- (1) A solicitor for a client who is a party in a proceeding in the court may withdraw from the record in the proceeding only with the court's leave on application under rule 2806.
- (2) If the solicitor's client does not comply with the notice of intention to apply for leave to withdraw given to the client under rule 2806, the court may give the solicitor leave to withdraw from the record and make an order for costs.

EXPOSURE DRAFT

- (3) On withdrawing from the record, the solicitor must—
- (a) file a notice of withdrawal; and
 - (b) serve a stamped copy of the notice on—
 - (i) the party the solicitor represented in the proceeding; and
 - (ii) all other active parties to the proceeding.
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (4) The solicitor's withdrawal does not take effect until the solicitor has complied with subrule (3).
- (5) On the withdrawal of the solicitor's name from the record, the party must—
- (a) appoint another solicitor; or
 - (b) comply with subrule (6).
- (6) To comply with this subrule, the party must—
- (a) file a notice that the party is acting in person; and
 - (b) serve a stamped copy of the notice on all other active parties.
- (7) The notice must state the party's address for service.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 **Address for service** is defined in the dictionary.

EXPOSURE DRAFT

2808 Effect of removal of, or leave to withdraw as, solicitor

(SCR o 8 r 5 (3) and r 6 (4); Qld r 992)

- (1) This rule applies if a solicitor for a client who is a party to a proceeding is removed from the record under rule 2804 (Removal of solicitor by court) or withdraws from the record under rule 2807 (Leave to withdraw as solicitor).
- (2) The client's home or business address becomes the address for service until—
 - (a) another solicitor is appointed; or
 - (b) the client notifies another address for service in accordance with these rules.
- (3) The removal, or withdrawal, of a solicitor from the record under this part does not affect the rights or liabilities of the solicitor and the party for whom the solicitor acted as between them.

2809 Withdrawal of solicitor's agent

(MC (CJ)R s 486 (3); NSW r 7.26; Qld r 993)

- (1) An agent solicitor of a principal solicitor in a proceeding in the court may withdraw from the record.
- (2) However, the agent solicitor must not withdraw from the record unless the agent has—
 - (a) at least 7 days before the day the agent intends to withdraw as agent, given notice of the agent's intention to the principal solicitor; or
 - (b) obtained the court's leave to withdraw without giving notice under paragraph (a).

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to withdraw.

EXPOSURE DRAFT

- (3) The application for leave to withdraw need not be served.
- (4) On application for leave to withdraw, the court may give the solicitor leave to withdraw from the record without giving notice under subrule (2) (a).
- (5) On withdrawing from the record, the agent solicitor must—
 - (a) file a notice of withdrawal of agent; and
 - (b) serve a stamped copy of the notice on all other active parties.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (6) The agent solicitor's withdrawal does not take effect until the agent has complied with subrule (5).
- (7) If the agent solicitor withdraws from the record, the principal solicitor's business address becomes the address for service until another agent is appointed.

Note *Address for service* is defined in the dictionary.

2810 Solicitor not to act for adverse parties

(SCR o 8 r 8)

A solicitor must not act in a proceeding for a plaintiff and a defendant, or for any 2 or more parties having adverse interests in the proceeding.

EXPOSURE DRAFT

Part 2.22 Miscellaneous—ch 2

2900 Declaratory order

(SCR o 29 r 5; NSWSCA s 75; QldSCA s 128)

- (1) A proceeding is not open to objection on the ground that the only relief sought is a declaratory order.
- (2) The court may make binding declarations of right, whether or not any consequential relief is claimed.

2901 Copies of documents from registrar

(MC(CJ)R s 494; Qld r 980)

- (1) A person may, in writing, ask the registrar for—
 - (a) a copy or certified copy of an order of the court in a proceeding; or
 - (b) a copy or certified copy of a document filed in a proceeding.
- (2) The registrar must give the person the copy or certified copy asked for.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

- (3) However, the registrar must not give a copy (or certified copy) of the order or document to a person who is not a party to the proceeding unless the person appears to the registrar to have a sufficient interest in the order or document.

EXPOSURE DRAFT

2902 Searches of registers etc

(SCR o 62 r 8; MC(CJ)R s 495; Qld r 981)

- (1) A person may, in writing, ask the registrar to search the registers, indexes or calendars of the court.
- (2) The registrar may—
 - (a) comply with the request; and
 - (b) issue a certificate of the result of the search.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

2903 Inspection of registry files

(SCR o 66 r 11 and o 83 r 6; MC(CJ)R s 495; Qld 981)

- (1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry.

Note Rule 4784 (Supreme Court criminal proceedings—inspection of registry files) applies to documents filed in criminal proceedings.

- (2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person appears to the registrar to have a sufficient interest in the document or the court gives leave:
 - (a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;
 - (b) an affidavit that has not been read in court;
 - (c) a part of an affidavit ruled to be inadmissible in evidence;
 - (d) an interrogatory, or an answer to an interrogatory, that has not been admitted into evidence;

EXPOSURE DRAFT

- (e) a list of documents given on discovery;
- (f) an admission that has not been admitted into evidence;
- (g) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

- (h) an application for leave to serve a subpoena in New Zealand;
- (i) a document in relation to a proceeding about the adoption, custody or guardianship of a child;
- (j) a document in relation to a proceeding under the *Family Law Act 1975* (Cwlth);
- (k) a document filed in the probate jurisdiction, other than—
 - (i) a grant of probate or letters of administration; or
 - (ii) an order to administer an estate; or
 - (iii) a proceeding about a contested matter;
- (l) a deposition taken before an examiner;
- (m) a document filed in support of an application made in the absence of a party;
- (n) a written submission that has not been read in court;
- (o) an unsworn statement of evidence;
- (p) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

EXPOSURE DRAFT

- (3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.
- (4) However, subrule (3) does not apply to a subpoena that has been served on the party.
- (5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:
 - (a) an application for a document, evidence or thing to be kept confidential;
 - (b) an application for a document or thing to be granted privilege from production;
 - (c) an application for leave to serve a subpoena in New Zealand.
- (6) Before considering an application for leave under subrule (3), the court may require the applicant for leave to do either or both of the following:
 - (a) give notice of the application for leave to a party to the relevant proceeding or another interested person;
 - (b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

EXPOSURE DRAFT

(7) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or
- (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
- (d) a drawing, map, photograph or plan.

EXPOSURE DRAFT

Chapter 3 Particular civil proceedings

Part 3.1 Administration and probate

Division 3.1.1 Administration and probate—general

3000 Definitions—pt 3.1

(SCR o 72 r 1; NSW Prob r 1; Qld r 596; Vic Prob r 1.04)

In this part:

Administration and Probate Act means the *Administration and Probate Act 1929*.

administration bond—see rule 3050 (Administration bond—requirement for bond).

estate means estate of a deceased person.

3001 Terms used in Administration and Probate Act

(SCR o 72 r 1A)

A term used in the Administration and Probate Act has the same meaning in this part.

Note For example, the following terms are defined in the Administration and Probate Act, s 5 (1):

- administration
- administrator
- distribute
- representation
- will.

3002 Application—pt 3.1

This part applies only in relation to the Supreme Court.

Division 3.1.2 Application for grant of representation

3005 Grant of representation—application

(SCR o 72 r 5; NSW Prob r 1; Qld r 597; Vic Prob r 2.02, r 30.02 and r 4.02)

- (1) A proceeding for a grant of representation for an estate must be started by originating application.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

Note 2 For notice of the application, see the following rules:

- r 3006 (Grant of representation—notice of intention to apply to be published in newspaper)
- r 3007 (Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin)
- r 3008 (Grant of representation—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (Grant of representation—when notice of intention to apply to be served on public trustee).

- (2) The application must be accompanied by—

- (a) a draft of the grant of representation sought, in duplicate; and

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for a grant of representation, the form must be used.

- (b) a supporting affidavit; and

Note Rule 3010 (Grant of representation—supporting affidavit for application) deals with the contents of the supporting affidavit.

(c) for an application for grant of probate or letters of administration with the will annexed—the original will, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; and

(d) an affidavit of search; and

Note Rule 3011 (Grant of representation—affidavit of search) deals with the contents of the affidavit of search.

(e) each other affidavit required by a territory law; and

Note The following provisions of this division require other affidavits:

- r 3007 (4) (Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin)
- r 3008 (3) (Grant of representation—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (3) (Grant of representation—when notice of intention to apply to be served on public trustee).

(f) anything else required under a territory law.

(3) An application for a grant of representation and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

3006 Grant of representation—notice of intention to apply to be published in newspaper

(SCR o 72 r 3; NSW Prob r 10; Qld r 598 and r 599; Vic Prob r 2.03 and r 4.03)

(1) A person intending to apply for a grant of representation for an estate must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.
- (3) The notice must—
 - (a) include an address for service for the person intending to apply for the grant; and
Note *Address for service* is defined in the dictionary.
 - (b) include a statement requiring creditors of the estate to send particulars of their claims to the address for service included in the notice; and
 - (c) if the person giving the notice wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under rule 3051 (Administration bond—dispensing with bond)—state the proposed request.

3007 Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin

(SCR o 72 r 18; NSW Prob r 24A (3) and (4) and r 25A (3))

- (1) This rule applies if an application is made for a grant of administration of the estate of a deceased person by only 1 or some of the people entitled to be administrators of the estate.
- (2) If the deceased person is survived by a domestic partner who is not the applicant or 1 of the applicants—
 - (a) the application must be accompanied by the written consent of the domestic partner to the application, verified by affidavit; or

EXPOSURE DRAFT

- (b) the supporting affidavit for the application must state that the domestic partner—
- (i) has been served with notice of the application; or
 - (ii) cannot be found.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 For the meaning of **domestic partner**, see the Legislation Act, s 169.

- (3) If the deceased person is survived by a next of kin who is an adult and is not the applicant or 1 of the applicants, the supporting affidavit for the application must state that the next of kin—
- (a) has been served with notice of the application; or
 - (b) cannot be found.
- (4) If subrule (2) (b) (i) or (3) (a) applies to the application, an affidavit of service of the notice must accompany the application for grant of representation.

3008 Grant of representation—notice of intention of creditor to apply to be served on domestic partner and next of kin

(SCR o 72 r 15; Vic Prob r 4.06)

- (1) This rule applies if an application is made for a grant of administration of the estate of a deceased person by a creditor of the deceased person.
- (2) A copy of the application and supporting affidavit to accompany the application must be served on each person who is a domestic partner or next of kin of the deceased person at least 14 days before the day the application is filed.

Note For the meaning of **domestic partner**, see the Legislation Act, s 169.

EXPOSURE DRAFT

- (3) Affidavits of service of the copy of the application and supporting affidavit must accompany the application for grant of representation.

3009 Grant of representation—when notice of intention to apply to be served on public trustee

(SCR o 72 r 16 and r 63; Qld r 598 (2))

- (1) This rule applies if—
- (a) the court has made an order under the Administration and Probate Act, section 88 (Orders to public trustee to collect and administer) for the public trustee to collect and administer an estate; and
 - (b) someone else intends to apply for a grant of representation in the estate.
- (2) At least 7 days before the day the application is filed, the person must give the public trustee—
- (a) notice of the person's intention to apply for a grant of representation in the estate; and
 - (b) any document to accompany the application.
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (3) An affidavit of service of the notice and documents to accompany the application must accompany the application for grant of representation.

EXPOSURE DRAFT

3010 Grant of representation—supporting affidavit for application

(SCR o 72 r 3 (5), r 6, r 12, r 15, r 21 (4); NSW Prob rr 24-r 27; Qld r 602 and r 609; Vic Prob r 2.04, r 3.02 and r 4.04)

- (1) An affidavit made by a person supporting an application by the person for a grant of representation for the estate of a deceased person must state the following:
 - (a) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased person;
 - (b) if the applicant is an individual—that the applicant is an adult;
 - (c) the relationship (if any) of the applicant to the deceased person;
 - (d) if a death certificate for the deceased person is annexed to the affidavit—that the deceased person is the person named in the death certificate;
 - (e) if the application is made, for the first time, more than 6 months after the date of the deceased person's death—the reasons for the delay;
 - (f) whether the deceased person left property in the ACT;
 - (g) whether the deceased person considered that the person's domicile was in the ACT;
 - (h) if the application is made by the applicant as a guardian of a person to whom rule 3122 (Grant of administration—grant to child) applies—evidence that the applicant is the person's guardian;

EXPOSURE DRAFT

- (i) if the application is made by the applicant as a creditor of the deceased person—the following particulars:
 - (i) that the applicant is a creditor of the deceased person;
 - (ii) the amount of the debt owed by the deceased person to the applicant;
 - (iii) the particulars of the debt, together with evidence proving the debt;
- (j) that, if the applicant is granted probate of the will or administration of the estate, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;
- (k) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper;
- (l) brief details of any responses to the publication of the notice from creditors of the estate.

Example for par (h)

the applicant may give evidence that the applicant was elected or assigned under rule 3122 (Grant of administration—grant to child) to be the child's guardian

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 If the deceased person is survived by a domestic partner who is not the applicant or 1 of the applicants for a grant of administration of the deceased person's estate, the supporting affidavit may need to include the statement required by r 3007 (2) (b) (Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin).

EXPOSURE DRAFT

Note 3 If the deceased person is survived by a next of kin who is an adult and is not the applicant or 1 of the applicants for a grant of administration of the deceased person's estate, the supporting affidavit must include the statement required by r 3007 (3) (Grant of representation—notice of intention to apply to be served on non-applicant domestic partner and next of kin).

Note 4 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the applicant is applying for a grant of probate or letters of administration with the will annexed for the estate of the deceased person, the affidavit must also state the following:
- (a) the document accompanying the application and signed in the margin by the applicant and the person taking the affidavit is the last will of the deceased person;
 - (b) if the application is for a grant of probate—the applicant is the executor, or 1 of the executors, named in the will;
 - (c) the will has not been revoked;
 - (d) the applicant is, or is not, aware of the existence of any other document claiming to contain the testamentary intentions of the deceased person;
 - (e) if the applicant is aware of the existence of a document mentioned in paragraph (d)—a description of the document;
 - (f) the steps taken to find out whether there is any other document mentioned in paragraph (d);
 - (g) how the applicant identified the will;
 - (h) the names of the people who attested the will;

EXPOSURE DRAFT

- (i) the names and addresses (if known) of the people named in the will as the executors;
- (j) if the application is not made by the executor or all of the executors of the will—the reason the executor is not, or the other executors are not, applying for probate;
- (k) whether the deceased person married after the will was made and, if so, the date of the marriage and the name of the spouse;
- (l) if the deceased person's marriage ended after the will was made—the date the marriage ended;
- (m) whether the deceased person was an adult when the person made the will or whether the person made the will in accordance with the *Wills Act 1968*, section 8 (Minors—testamentary capacity).

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If the applicant is applying for letters of administration without the will annexed for the estate of the deceased person, the affidavit must state the following:
 - (a) the deceased person did not leave a will;
 - (b) the applicant is, or is not, aware of the existence of any document claiming to contain the testamentary intentions of the deceased person;
 - (c) if the applicant is aware of the existence of a document mentioned in paragraph (b)—a description of the document;
 - (d) the steps taken to find out whether the deceased person left a will and whether there is any other document mentioned in paragraph (b).

EXPOSURE DRAFT

- (4) If the supporting affidavit contains statements of information and belief, the applicant must state the sources of the information and the reasons for the belief.
- (5) If a death certificate is issued for a deceased person under the *Births, Deaths and Marriages Registration Act 1997*, or a corresponding law of another jurisdiction, a certified copy of the certificate must be annexed to the supporting affidavit.

3011 Grant of representation—affidavit of search

(SCR o 72 r 6, r 12 and r 14; Qld r 602; Vic Prob r 2.04 (2) (b) (xii), r 2.05, r 3.02 and r 4.05)

An affidavit of search made by an applicant for a grant of representation for the estate of a deceased person must state that the applicant has searched the registry and made the following findings:

- (a) whether a caveat against the application has been filed and, if so, details of the caveat;
- (b) whether another application for a grant of representation for the estate has been made and, if so, details of the application and the results of the application;
- (c) that representation has not been granted by the court for the estate.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

Division 3.1.3 Application for reseal of foreign grant

3020 Reseal of foreign grant—application

(SCR o 72 r 5)

- (1) An application under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction) must be accompanied by—

- (a) a copy of the grant of probate or administration, or order to collect and administer, sought to be resealed by the court; and
- (b) a supporting affidavit; and

Note Rule 3022 (Reseal of foreign grant—supporting affidavit for application) deals with the contents of the supporting affidavit.

- (c) an affidavit of search; and

Note Rule 3023 (Reseal of foreign grant—affidavit of search) deals with the contents of the affidavit of search.

- (d) anything else required under a territory law.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for an application under the Administration and Probate Act, s 80, the form must be used.

- (2) The copy of the grant or order mentioned in subrule (1) (a) must have been sealed by the court that made it.
- (3) The application and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

EXPOSURE DRAFT

3021 Reseal of foreign grant—notice of intention to apply to be published in newspaper

(SCR o 72 r 4)

- (1) A person intending to make an application under the Administration and Probate Act, section 80 must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.
- (3) The notice must include an address for service for the person.

Note *Address for service* is defined in the dictionary.

3022 Reseal of foreign grant—supporting affidavit for application

(SCR o 72 r 14A; NSW Prob r 28)

- (1) An affidavit made by a person supporting an application by the person under the Administration and Probate Act, section 80 must state the following:
 - (a) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of a deceased person has been granted or made by a court of competent jurisdiction in a reciprocating jurisdiction;
 - (b) the name of the court that made the grant or order and the date when the grant or order was made;
 - (c) whether the applicant is the person to whom the grant was made or for whom the order was made;

- (d) if the applicant is not that person—whether the applicant is authorised, under a power of attorney, by that person to make the application and, if so, the applicant has not been given notice of revocation of the power of attorney;
- (e) whether the deceased person left property in the ACT;
- (f) that, if the application is granted, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;
- (g) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A copy of the grant or order sought to be resealed by the court must be annexed to the affidavit.
- (3) If the supporting affidavit contains statements of information and belief, the applicant must state the sources of the information and the reasons for the belief.

3023 Reseal of foreign grant—affidavit of search

(SCR o 72 r 14A)

An affidavit of search made by a person accompanying an application by the person under the Administration and Probate Act, section 80 in relation to the estate of a deceased person must state that the applicant has searched the registry and made the following findings:

- (a) whether a caveat against the application has been filed and, if so, details of the caveat;

EXPOSURE DRAFT

- (b) whether another application under the Administration and Probate Act, section 80 has been made in relation to the estate and, if so, details of the application and the results of the application;
- (c) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of the deceased person has not been resealed by the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Division 3.1.4 Validity and form of wills

3030 Grant of representation—evidence of proper attestation of will

(SCR o 72 r 7; NSW Prob r 15; Qld r 604)

- (1) This rule applies if a person applies for grant of probate or administration of a will.
- (2) If it appears to the court that the will has been attested in the way required by law, the court may accept the attestation as evidence of the proper making of the will.
- (3) If there is no attestation clause or the attestation clause does not show how the will was made, the applicant must file an affidavit made by a witness who attested the will stating how the will was made.

EXPOSURE DRAFT

- (4) However, if it is not practicable to comply with subrule (3) because, for example, the witnesses who attested the will are dead, the applicant must file an affidavit made by someone else present when the will was made and stating how the will was made.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) If it is not practicable for the applicant to comply with subrule (4) because, for example, no-one else was present when the will was made, the applicant must file an affidavit stating why it is not practicable and, if possible, giving evidence of the handwriting of the witnesses.
- (6) The applicant must also state in the affidavit anything else relevant about the making of the will.

3031 Grant of representation—will by blind or illiterate person

(SCR o 72 r 8; NSW Prob r 16; Qld r 607)

- (1) This rule applies if a person applies for grant of probate or administration of a will that—
- (a) has been made by a blind or apparently illiterate testator; or
 - (b) appears to have been signed by someone else on behalf of the testator; or
 - (c) was made under circumstances that raise doubt about whether the testator knew or approved of the will's contents.
- (2) The applicant must file an affidavit giving evidence that, when the testator signed the will, the testator knew and approved of its contents.

EXPOSURE DRAFT

- (3) If an affidavit mentioned in subrule (2) is made by a witness who attested the will or by someone else present when the will was made, the affidavit must state how the will was made.
- (4) However, unless the court otherwise orders on application by an interested person or on its own initiative, it is not necessary to obtain evidence of the making of a blind or apparently illiterate testator's will if—
 - (a) the will specifically states the testator is blind or apparently illiterate; and
 - (b) the attestation of the witnesses who signed the will acknowledges that the testator knew and approved of the contents of the will.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3032 Grant of representation—alterations in will

(SCR o 72 r 9 (3); NSW Prob r 19; Qld r 605)

- (1) This rule applies if a person applies for grant of probate or administration of a will that appears to have been altered.
- (2) The court may require evidence about the alteration.
- (3) The court must not include the alteration in a grant of representation unless the alteration—
 - (a) was in the will when the will was made; or
 - (b) if made afterwards—was made and attested in a way required by law; or

Note The *Wills Act 1968*, s 12 (Alteration in will) deals with the validity of alterations made after the execution of the will.

EXPOSURE DRAFT

- (c) was made valid by the remaking of the will or a later codicil.
- (4) If it is not shown when the alteration was made, and the words altered can, on inspection, be easily worked out, the altered words may be included in the grant of representation.
- (5) If the erased words may have been of importance, the erasure must be explained by evidence.
- (6) In this rule:
alter includes alter by omission, substitution or addition.

3033 Grant of representation—documents mentioned in or attached to will

(SCR o 72 r 10 and r 11; NSW Prob r 20 and r 21; Qld r 606)

- (1) This rule applies if a person applies for grant of probate or administration of a will.
- (2) If the will mentions another document and raises a question whether the document does or does not form part of the will, the applicant must produce the other document or, if possible, explain its absence.
- (3) The court must not include in a grant of representation a document mentioned in the will unless it appears to the court to have been in existence when the will was made.
- (4) If there is any evidence supporting the inference that any paper may have been attached to the will, the applicant must produce the paper or, if possible, explain its absence.

EXPOSURE DRAFT

3034 Grant of representation—evidence of proper execution of will etc

(SCR o 72 r 9 (1) and (2); NSW Prob r 17 and r 18)

- (1) This rule applies if a person applies for grant of probate or administration of a will and—
 - (a) the court considers that—
 - (i) there is doubt about the proper execution or attestation of the will; or
 - (ii) any circumstances in relation to the making of the will need explanation; or
 - (iii) there is doubt about the date the will was made; or
 - (b) the will is undated.
- (2) The court may, by order, require evidence about the execution, attestation or making of the will, including the date the will was made.
- (3) The court may make an order under subrule (2) on application by an interested person or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.
- (4) The court may make an order under subrule (2) even though the following rules may have been complied with:
 - rule 3030 (Grant of representation—evidence of proper attestation of will)
 - rule 3031 (Grant of representation—will by blind or illiterate person).

3035 Grant of representation—will inoperative or partly inoperative

(SCR o 76 r 13; NSW Prob r 23; Vic Prob r 2.07)

- (1) This rule applies if—
 - (a) a person applies for grant of probate or administration of a will of a deceased person; and
 - (b) it appears to the court that the will is inoperative or partly inoperative.
- (2) The court may require the applicant to file an affidavit stating what, if any, domestic partner, next of kin or other relatives survived the deceased person so far as known and material in law to the right to administer or share in the estate.

Division 3.1.5 Small estates

Note for div 3.1.5

The Administration and Probate Act, pt 4 (Small estates) applies to estates that are worth not more than \$100 000.

3040 Small estates—application for representation

(SCR o 72 r 23 and r 25)

- (1) An application for representation under the Administration and Probate Act, section 75 (Application to registrar for probate or administration) must be made in person to the registrar, and not by letter.
- (2) The application must not be made by a solicitor or agent on behalf of the applicant.

3041 Small estates—production of death certificate

(SCR o 72 r 28)

- (1) An applicant for representation under the Administration and Probate Act, section 75 for the estate of a deceased person must give the registrar a death certificate issued for the deceased person under the *Births, Deaths and Marriages Registration Act 1997* or a corresponding law of another jurisdiction.
- (2) If the applicant cannot give the registrar a death certificate for the deceased person, the applicant must satisfy the registrar of the reasons why.

3042 Small estates—directions by court

(SCR o 72 r 26)

- (1) This rule applies if, while hearing an application for representation under the Administration and Probate Act, section 75, the registrar considers it necessary to obtain directions from the court in relation to the application.
- (2) The application may only continue as an application under the Administration and Probate Act, section 75 with the court's leave.

Division 3.1.6 Administration bonds

3050 Administration bond—requirement for bond

(SCR o 72 r 30)

- (1) As a condition of granting administration of an estate to a person, the court may require 1 or more sureties acceptable to the court to guarantee by bond (an *administration bond*) that they will make good, up to the required amount, any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) However, an administration bond must not be required if administration is granted to—
- (a) a person on behalf of the Territory, the Commonwealth or a State; or
 - (b) the public trustee of the Territory or a State; or
 - (c) a trustee company.
- (3) An administration bond for an estate has effect for the benefit of everyone interested in the administration of the estate as if contained in a deed made by the surety or sureties with each interested person and, if there are 2 or more sureties, as if they had bound themselves jointly and severally.
- (4) The court may, on application by the administrator or on its own initiative, decide that the required amount for an administration bond for an estate is less than the value of the estate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

EXPOSURE DRAFT

(5) In this rule:

required amount, for an administration bond for an estate, means—

- (a) the value of the estate; or
- (b) a lesser amount decided by the court under subrule (4); or
- (c) if the value of the estate is less than \$10 000—a lesser amount decided by the registrar.

3051 Administration bond—dispensing with bond

(SCR o 72 r 30A)

- (1) This rule applies in relation to an estate if—
 - (a) all or any part of the estate passes to the person to whom administration is granted; or
 - (b) all or any part of the estate passes to beneficiaries who are of full legal capacity and the beneficiaries consent, in writing, to the administration bond for the estate being dispensed with.
- (2) The court may, on application by an administrator or beneficiary or on its own initiative, dispense with the administration bond in relation to the estate or part of the estate.
- (3) The application may be made in the application for letters of administration or by application in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application in the proceeding for an order to dispense with an administration bond.

EXPOSURE DRAFT

3052 Administration bond—affidavit of justification

(SCR o 72 r 31A)

- (1) A surety, other than an exempt surety, must justify by affidavit.
Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) A surety that is a corporation must make an affidavit by a proper officer.
- (3) An affidavit by a surety for an administration bond must contain enough information about the surety's financial position to satisfy the registrar that the surety can meet any claim under the bond.
- (4) The registrar may accept an affidavit of justification from a corporation at least once every year instead of requiring an affidavit in every case that the corporation is a surety.
- (5) The registrar may require a surety for an administration bond who justifies by affidavit to give the registrar further information if there is not enough information in the affidavit for the registrar to be satisfied that the surety can meet any claim under the bond.
- (6) The further information must be given in the way the registrar requires, either—
 - (a) by another affidavit; or
 - (b) by the oral examination of the person who made the affidavit of justification on oath before the registrar.

Note **Oath** includes affirmation (see Legislation Act, dict, pt 1).

EXPOSURE DRAFT

(7) In this rule:

exempt surety means—

- (a) an authorised deposit-taking institution; or
- (b) an entity declared by the registrar under rule 3053 (1) to be an exempt surety.

Note *Authorised deposit-taking institution* is defined in the Legislation Act, dict, pt 1 as an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

3053 Administration bond—exempt surety

(SCR o 72 r 32)

- (1) The registrar may declare an entity to be an exempt surety.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

3054 Administration bond—addition or reduction after required but before given

(SCR o 72 r 32A)

- (1) This rule applies if the court requires an administration bond under rule 3050 (Administration bond—requirement for bond) for an estate to be given by a surety or sureties for a particular amount.
- (2) The court may, at any time before the bond has been given by the surety or sureties, on the application of anyone interested in the estate or on its own initiative on the registrar's report, order that the amount be reduced or increased.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

- (3) However, application may not be made if the court has made a decision about the amount under rule 3050 (4).
- (4) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—
 - (a) the court makes an order under subrule (2) that the amount be increased; and
 - (b) the surety or sureties will not guarantee the increased amount; and
 - (c) the administrator does not produce another surety or other sureties to cover the increased amount.
- (5) In this rule:
required amount—see rule 3050 (5).

3055 Administration bond—addition or reduction after given

(SCR o 72 r 32B)

- (1) If an administration bond is given under rule 3050 (Administration bond—requirement for bond) for an estate, the court may, at any time, on the application of anyone interested in the estate or on its own initiative on the registrar's report—
 - (a) require the surety or sureties to give an additional administration bond; or
 - (b) order that the liability of a surety under the bond be reduced by a stated amount.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

EXPOSURE DRAFT

- (2) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—
- (a) the additional administration bond is not given by the surety or sureties; and
 - (b) the administrator does not produce another surety or other sureties to give the additional bond.
- (3) For these rules, an additional administration bond under this rule is taken to be an administration bond under rule 3050.

3056 Administration bond—proceeding on bond

(SCR o 72 r 33)

- (1) A proceeding on an administration bond may only be started with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to start a proceeding on an administration bond.

- (2) Notice of the proceeding must be served on the administrator and surety.

3057 Administration bond—application by surety

(SCR o 72 r 33A)

On application by a surety to an administration bond, the court may grant the relief it considers appropriate if it appears to the court that the following applies:

- (a) the estate is being wasted, or is in danger of being wasted;

- (b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or omission of the person administering the estate.

Note Pt 6.2 (Applications in proceedings) applies to an application for relief under this rule.

3058 Administration bond—reseal of foreign grant

(Administration and Probate Act, s 82 (2))

This division applies, with any necessary changes, to the sealing of a probate, administration, or order to collect and administer an estate, under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction).

Division 3.1.7 Administration by public trustee

3060 Administration by public trustee—application

(SCR o 72 r 60)

- (1) An application by the public trustee under the Administration and Probate Act, section 88 (Orders to public trustee to collect and administer) to collect and administer the estate of a deceased person must be supported by an affidavit stating—
- (a) the person has died, and the date and place of the person's death; and
 - (b) whether the person died with or without a will; and
 - (c) whether the person left real or personal property in the ACT; and

EXPOSURE DRAFT

(d) the names of any surviving domestic partner or next of kin.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 For the meaning of *domestic partner*, see the Legislation Act, s 169.

(2) The affidavit may include anything else the public trustee considers necessary.

3061 Administration by public trustee—renunciation of probate by executors

(SCR o 72 r 61)

(1) This rule applies if the executors of the will of a deceased person want to renounce their rights to apply for probate in favour of the public trustee.

(2) The executors must file a notice of renunciation in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3062 Administration by public trustee—renunciation of letters of administration by entitled people

(SCR o 72 r 62)

(1) This rule applies if—

(a) a person died without leaving a will; and

(b) the people primarily entitled to administration of the deceased person's estate want to renounce their rights to letters of administration in favour of the public trustee.

(2) The people must give the public trustee notice of renunciation.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3063 Administration by public trustee—service of documents on public trustee

(SCR o 72 r 64)

- (1) This rule applies if—
 - (a) the public trustee is administering an estate; and
 - (b) someone else brings a proceeding in a court in relation to the estate; and
 - (c) the public trustee is not a party to the proceeding.
- (2) A sealed or stamped copy of every document filed in the proceeding must be served on the public trustee.

3064 Administration by public trustee—order under Administration and Probate Act, s 95

(SCR o 72 r 64)

- (1) This rule applies if—
 - (a) the court makes an order under the Administration and Probate Act, section 95 (Supreme Court orders against public trustee) calling on the public trustee to show cause; and
 - (b) the application for the order was made without notice to the public trustee.
- (2) The order must state whether evidence to be given by the public trustee under the order is to be given orally or by affidavit.

3065 Administration by public trustee—notification by public trustee

(SCR o 72 r 65)

- (1) This rule applies if—
 - (a) the court makes an order under the Administration and Probate Act, section 95 (Supreme Court orders against public trustee) calling on the public trustee to show cause; and
 - (b) the public trustee files an affidavit in the court in reply.
- (2) The public trustee—
 - (a) need not serve a copy of the affidavit on anyone; but
 - (b) must give the applicant for the order notice that the affidavit has been filed and that the applicant can obtain a copy from the court.

3066 Administration by public trustee—bill of costs

(SCR o 72 r 66)

- (1) The public trustee may refer a bill of costs incurred in relation to the administration of an estate to the registrar of the Supreme Court for assessment.
- (2) Part 2.17 (Costs) applies to the assessment with any necessary changes.

Note The registrar of the Supreme Court issues a certificate of assessment for the amount at which the bill of costs has been assessed (see r 1835 (1) (Costs—registrar’s certificate of assessment)). The certificate of assessment is final when it is signed, sealed and filed (see r 1835 (6) (Costs—registrar’s certificate of assessment)).

Division 3.1.8 Caveats

3070 Definitions—div 3.1.8

(Qld r 623)

In this division:

caveator means a person who files a caveat in the court under this division.

grant of representation, for an estate, includes a resealing by the court of a grant of probate or administration, or of an order to collect and administer, for the estate made by a court of competent jurisdiction of a reciprocating jurisdiction.

3071 Caveat—filing

(SCR o 72 r 52; NSW Prob rr 61-62A; Qld r 627; Vic Prob r 8.01)

- (1) A person claiming to have an interest in an estate may file a caveat in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A caveat may be—
- (a) a caveat against a grant of representation for the estate; or
 - (b) a caveat requiring proof in solemn form of any will of the deceased person; or
 - (c) a caveat against distribution of the estate.
- (3) A caveat mentioned in subrule (2) (a) or (b) may be filed at anytime before a grant of representation is made for the estate.
- (4) The caveat must state the relationship of the caveator to the deceased person or give particulars of the interest claimed.

EXPOSURE DRAFT

- (5) The caveat must give an address for service of the caveator.

Note *Address for service* is defined in the dictionary.

3072 Caveat—period of operation

(SCR o 72 r 52 (1); NSW Prob r 63; Qld r 624 (4); Vic Prob r 8.03 and r 8.05)

- (1) A caveat takes effect when it is filed in the court.
- (2) A caveat remains in force for 6 months unless it is set aside or withdrawn under this division.
- (3) A caveat may be renewed by filing a new caveat in the court.

3073 Caveat—procedure

(SCR o 72 rr 53-58; NSW Prob r 69 and r 70; Qld r 625; Vic Prob r 8.02, r 8.03 (2) and (3), r 8.05 (2) and rr 8.06-8.08)

- (1) Unless the court otherwise orders, nothing may be done on an application for representation to which a caveat applies, whether the application is filed before or after the filing of the caveat, until at least 14 days after service by the registrar of notice under subrule (2) on the caveator.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) If a caveat is filed in the court, whether before or after an application for representation is filed, the registrar must give the caveator and the applicant for representation notice of the filing of the caveat.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The notice—
- (a) must state a date, not later than the end of the 14-day period mentioned in subrule (1), by which the caveator must file a notice to support the caveat; and
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (b) must be given as soon as practicable after the application for representation is filed in the court.
- (4) Within the time stated in the notice under subrule (2), the caveator must file in the court a notice stating the nature of the interest the caveator claims (a ***notice in support***) and serve a stamped copy of it on the applicant for representation.
- (5) If the caveat is filed after the application for representation to which it applies, the caveator may file in the court a notice in support when filing the caveat.
- (6) If a notice in support is not filed in the court before the end of 14 days after the day notice under subrule (2) is served on the caveator, the caveat is taken to have been withdrawn.
- (7) If a notice in support is filed in the court before the end of the 14-day period mentioned in subrule (6), a further step on the application must not be taken unless the caveat is set aside or withdrawn.
- (8) However, the applicant may start a proceeding against the caveator seeking the making of a grant of representation as sought in the application.
- (9) If the applicant starts a proceeding under subrule (8), the originating claim may be served on the caveator at the address for service given in the caveat.

EXPOSURE DRAFT

3074 Caveat—setting aside

(NSW Prob r 69; Qld r 626)

- (1) If—
 - (a) a person has applied or intends to apply for a grant of representation for an estate; and
 - (b) a caveat is in force in relation to the estate;the person may apply to the court for an order setting aside the caveat.
- (2) If the person has applied for a grant of application, the application must be made in that proceeding.

Note Pt 6.2 (Applications in proceedings) applies to the application.
- (3) If the person intends to apply for a grant of representation, the application must be made by originating application, naming the caveator as a defendant.
- (4) The court may set aside the caveat if it considers that the evidence does not—
 - (a) show that the caveator has an interest in the estate or a reasonable prospect of establishing an interest; or
 - (b) raise doubt about whether the grant of representation should be made.
- (5) If the court does not set aside the caveat under subrule (4), the court may give the directions it considers appropriate for the application to be decided quickly, including a direction for the caveator to start a proceeding within a stated time.

- (6) The court may give directions under subrule (5) on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

- (7) If the court gives a direction under subrule (5) for the caveator to start a proceeding with a stated time and the caveator fails to start a proceeding within that time, the caveat is taken to have been withdrawn.

3075 Caveat—withdrawal if no pending proceeding for grant of representation etc

(NSW Prob r 64; Qld r 627; Vic Prob r 8.04)

- (1) This rule applies to a caveat in relation to an estate if—
- (a) an application has not been made for a grant of representation for the estate; or
 - (b) the caveator is the sole applicant for a grant of representation for the estate.
- (2) The caveator may withdraw the caveat by filing a notice of withdrawal in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The caveat is withdrawn on the filing of the notice.

3076 Caveat—leave to withdraw

(NSW Prob r 65; Qld r 627; Vic Prob r 8.04)

- (1) This rule applies to a caveat in relation to an estate if rule 3075 (Caveat—withdrawal if no pending proceeding for grant of representation etc) does not apply to the caveat.

- (2) The caveator may withdraw the caveat only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under a provision of these rules, it may give the leave on the conditions it considers appropriate, including a condition about costs.

- (3) If the court gives leave for the caveat to be withdrawn, the caveat is taken to be withdrawn when the leave is given.

3077 Caveat—effect if filed on day of grant

(Qld r 628)

A caveat does not affect a grant of representation made on the day the caveat is filed, unless it is filed before the grant is sealed.

Note A caveat may be filed any time before a grant of representation is made (see r 3071 (3) (Caveat—filing)).

Division 3.1.9 Revocation of grant

3080 Revocation of grant—application

(SCR o 72 r 58A; NSW Prob r 40 and r 43; Qld r 642; Vic Prob r 11.01 and r 11.02)

- (1) This rule applies if, after probate of a will or administration of an estate has been granted—
- (a) a person interested in the estate wants the grant revoked; or
 - (b) the personal representative wants to retire from the administration.
- (2) The person must apply in the proceeding in which the grant of representation was made for an order to revoke the grant.

Note Pt 6.2 (Applications in proceedings) applies to an application for revocation of a grant.

3081 Revocation of grant—orders

(SCR o 72 r 59; Qld r 642)

- (1) On the hearing of an application for revocation of a grant of representation, the court may make any of the following orders:
 - (a) an order revoking the grant;
 - (b) an order revoking the grant and making a limited grant of representation;
 - (c) an order that the proceeding continue as if—
 - (i) it had been started by originating claim; and
 - (ii) it were a contested proceeding to which division 3.1.10 applied.
- (2) If the court makes an order under subrule (1) (a), rule 39 (Proceeding incorrectly started by originating application) applies to the proceeding as if the proceeding should have been started by originating claim.

3082 Revocation of grant—return of original grant

(SCR o 72 r 59; Qld r 642)

If the court revokes a grant of representation or replaces it with a limited grant of representation, the personal representative must bring the original grant into the registry as soon as practicable after the order is made.

Division 3.1.10 Contested probate proceedings

3090 Definitions—div 3.1.10

(Qld r 629)

In this division:

contested probate proceeding means—

- (a) a proceeding in which the court is asked to pronounce for or against the validity of a will; or
- (b) a proceeding brought in opposition to an application to a grant of representation; or
- (c) a proceeding under the *Wills Act 1968*, section 11A (Validity of will etc not executed with required formalities).

script means any of the following:

- (a) a will;
- (b) a draft of a will;
- (c) documentary instructions for a will made by or at the request of a testator;
- (d) a solicitor's attendance notes containing a client's instructions written down from the client's oral instructions;
- (e) for a will alleged to have been lost or destroyed—another document that is or may be evidence of the contents, or a copy, of the will.

EXPOSURE DRAFT

3091 Contested probate proceedings—starting proceedings

- (1) If a person wants to bring a contested probate proceeding in relation to the estate of a deceased person and a proceeding is not before the court in relation to the estate, the person must bring the proceeding by originating claim.

Note Div 2.2.2 (Originating claims) contains provisions about the content of originating claims, and the filing and service of originating claims.

- (2) If a person wants to bring a contested probate proceeding in relation to the estate of a deceased person and a proceeding is before the court in relation to the estate, the person must bring the proceeding by application in that proceeding.

Note Pt 6.2 (Applications in proceedings) applies to the application.

- (3) If subrule (2) applies and the proceeding in which the contested probate proceeding is brought (the *original proceeding*) was started by originating application, rule 39 (Proceeding incorrectly started by originating application) applies to the original proceeding as if the proceeding should have been started by originating claim.

3092 Contested probate proceedings—originating claim

(Qld r 631 and r 635)

- (1) This rule applies to a contested probate proceeding in relation to an estate that is started by originating claim.
- (2) The plaintiff must describe in the statement of claim the nature of the plaintiff's interest in the estate and the interest in the estate of each defendant named in the originating claim.
- (3) If the relief sought in the originating claim includes the revocation of a grant of representation, the originating claim must name as a defendant each person to whom the grant was made.

3093 Contested probate proceedings—affidavit of scripts

(Qld r 632)

- (1) This rule applies to a contested probate proceeding in relation to the estate of a deceased person that is started by originating claim.
- (2) The plaintiff, and any party who files a notice of intention to respond or defence, must each file in the court an affidavit—
 - (a) either—
 - (i) describing any script of the deceased person of which the person knows; or
 - (ii) if the party does not know of any script of the deceased person—stating the party does not know of any script of the deceased person; and
 - (b) if the party making the affidavit does not have possession of any known script—
 - (i) stating the name and address of the person who has, last had, or is believed to have or last had, possession of the script and the grounds for any belief; or
 - (ii) if the party does not know who has possession of the script—stating that fact.
- (3) The party must ensure any script in the party’s possession is filed as an annexure to the affidavit.
- (4) If the party does not possess the original script, the party must file a copy of the original script in the party’s possession as an annexure to the affidavit.
- (5) The affidavit of a party who files a notice of intention to respond or defence must be filed not later than 14 days after the day the person files the notice of intention to respond or defence.

EXPOSURE DRAFT

- (6) However, if no notice of intention to respond or defence is filed, the plaintiff's affidavit must be filed before the certificate of readiness for the proceeding is filed.

3094 Contested probate proceedings—notice to people with beneficial interests

(Qld r 633)

- (1) This rule applies to a contested probate proceeding in relation to an estate that is started by originating claim.
- (2) The plaintiff must serve notice of the proceeding on anyone else who has a beneficial interest in the estate.

3095 Contested probate proceedings—notice of intention to intervene

(Qld r 634)

- (1) Anyone not named in the originating claim in a contested probate proceeding may give notice of intention to intervene in the proceeding by filing in the court an affidavit showing that the person has an interest in the estate to which the proceeding relates.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The notice must include an address for service for the person.

Note **Address for service** is defined in the dictionary.

- (3) The person must serve a stamped copy of the affidavit on everyone named in the proceeding.

EXPOSURE DRAFT

3096 Contested probate proceedings—grant of representation to be filed

(Qld r 636)

- (1) This rule applies if the originating claim in a contested probate proceeding includes a claim for revocation of a grant of representation.
- (2) If the person to whom the grant of representation was made asks for it to be revoked, the person must file the grant in the court not later than 7 days after the day the originating claim is filed.
- (3) However, if the grant of representation is in the possession of a defendant, the defendant must file the grant in the court not later than 14 days after the day the defendant is served with the originating claim.

Division 3.1.11 Executors, administrators and trustees—accounts and commission

3100 Estate accounts—order requiring examination and passing of accounts

(Qld r 644)

- (1) A beneficiary of an estate may apply to the court for an order requiring the examination and passing of accounts of the executor or administrator of the estate.
- (2) The application must be made in the proceeding in which the grant of representation for the estate was made.
Note Pt 6.2 (Applications in proceedings) applies to the application.
- (3) The application must be accompanied by an affidavit stating the reasons for the application.

EXPOSURE DRAFT

- (4) The court may make the orders it considers appropriate.
- (5) In this rule:
 - beneficiary*, of an estate, includes—
 - (a) a person with a beneficial interest in the estate; and
 - (b) a person with a right to compel the executor or administrator of the estate to complete the administration.

3101 Estate accounts—compliance with order for examination and passing of accounts

(Qld r 645)

- (1) This rule applies if the court makes an order under rule 3100 requiring the examination and passing of accounts of the executor or administrator of an estate.
- (2) Not later than 3 months after the day the order is served on the executor or administrator, the executor or administrator must—
 - (a) file the accounts; and
 - (b) make an appointment with the registrar to have the accounts examined within the 3-month period; and
 - (c) attend the appointment.
- (3) The accounts must be—
 - (a) full and correct; and
 - (b) verified by affidavit.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (4) If the executor or administrator fails to comply with the order, the court may, on application by the beneficiary who applied for the order, direct that the proceeding the court considers appropriate be taken against the executor or administrator.

Note Pt 6.2 (Applications in proceedings) applies to the application.

3102 Estate accounts—application for commission

(Qld r 646)

- (1) If an executor or administrator of an estate applies for the allowance of commission out of the estate, the executor or administrator must file a full and correct account of the administration of the estate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for commission under this rule.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If a trustee applies for an order for the allowance of commission out of the income or proceeds of trust property, the trustee must file a full and correct account of the trustee's administration of the trust property.
- (3) An account mentioned in subrule (1) or (2) must be verified by affidavit.

3103 Estate accounts—notice of filing of accounts etc

(Qld r 647)

- (1) This rule applies if accounts of an estate are to be examined under rule 3101 (Estate accounts—compliance with order for examination and passing of accounts).
- (2) The executor or administrator must, at least 42 days before the date set for examining the accounts, give notice of—

EXPOSURE DRAFT

- (a) the filing of the accounts; and
 - (b) if the executor or administrator intends to apply for the allowance of commission—the intention to apply for the commission; and
 - (c) the date set for examining the accounts.
- (3) The notice must—
- (a) be published in a daily newspaper circulating generally in the ACT; and
 - (b) state that anyone having a claim on the estate or otherwise interested in the estate—
 - (i) may inspect the accounts at the registry; and
 - (ii) may, before a stated date at least 28 days after the date the advertisement is last published, file a notice in the court stating that the person claims to be heard on the examination and passing of the accounts or allowance of commission.
- (4) Not less than 7 days before the date set for examining the accounts, the executor or administrator must file an affidavit in the court stating—
- (a) the notice required by this rule was published in a daily newspaper circulating generally in the ACT; and
 - (b) the date the notice was published; and
 - (c) the name of the newspaper.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

3104 Estate accounts—appearance of interested person at examination

(Qld r 648)

- (1) This rule applies if accounts of an estate are to be examined under rule 3101 (Estate accounts—compliance with order for examination and passing of accounts).
- (2) A person (the *interested person*) having a claim on, or otherwise interested in, the estate may, before the date stated in the notice given under rule 3103, file a notice in the court stating that the person wants to be heard on the examination and passing of the accounts.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The notice must—
 - (a) state the interested person’s address for service; and
Note *Address for service* is defined in the dictionary.
 - (b) be supported by an affidavit stating the nature and ground of any objection or exceptions to the accounts or allowance of commission.
- (4) The interested person must serve a stamped copy of the notice and supporting affidavit on the executor or administrator of the estate.
- (5) The executor or administrator must serve a copy of the accounts on the interested person not later than 7 days after the day the notice and supporting affidavit are served on the executor or administrator.
- (6) The registrar may order the interested person to serve a stamped copy of the notice and supporting affidavit on anyone else who may have a claim on, or otherwise be interested in, the estate.

EXPOSURE DRAFT

3105 Estate accounts—examination

(Qld r 649)

At the examination of accounts of an executor or administrator under this division, the registrar must—

- (a) examine the accounts; and
- (b) hear—
 - (i) the executor or administrator; and
 - (ii) anyone who has filed a notice under rule 3104 in relation to the examination, is present and wants to be heard; and
- (c) inquire into any objection or exception taken to the accounts or allowance of commission to the executor or administrator.

3106 Estate accounts—conduct of examination

(Qld r 650)

- (1) Anyone interested in an estate—
 - (a) may attend before the registrar at the examination of accounts of the estate under this division; but
 - (b) may not object to the passing of the accounts unless the person has filed a notice under rule 3104 (Estate accounts—appearance of interested person at examination).
- (2) However, if no-one files a notice under rule 3104 in relation to the examination, the registrar may pass the accounts on the oath of the executor or administrator alone with appropriate verification.

Note **Oath** includes affirmation (see Legislation Act, dict, pt 1).

- (3) On the taking of the accounts, each payment of more than \$50 must be verified—
- (a) by a proper receipt signed by the person who is claimed to have received the payment; or
 - (b) in the way the registrar considers satisfactory.
- (4) However, the accounts may be passed on the production of a certificate by a properly qualified accountant of the correctness of the accounts if—
- (a) the accounts consist entirely of items of receipts and expenditure paid into and drawn out of the trust account of a solicitor for the executor or administrator; and
 - (b) the trust account has been properly audited by the accountant in a way that discloses in detail the receipts and disbursements and the true position of the estate accounts.
- (5) Also, the registrar may require the accounts to be filed in the way otherwise prescribed by these rules and to be further verified.
- (6) The result of the registrar’s examination of the accounts must be set out in a certificate.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3107 Estate accounts—application for passing accounts etc

(Qld r 650 (7)-(8))

- (1) After the filing in the court of the registrar's certificate under rule 3106 (6) of the results of the examination of accounts of an estate, the executor or administrator—
 - (a) must apply to the court for an order that the accounts be passed; and
 - (b) may apply for an allowance of commission.
- Note* Pt 6.2 (Applications in proceedings) applies to an application under this rule.
- (2) Notice of the application must be served on everyone who—
 - (a) filed a notice under rule 3104 (Estate accounts—appearance of interested person at examination) in relation to the examination; and
 - (b) is not stated in the certificate to have withdrawn the person's objection or exception.

3108 Estate accounts—passing of accounts etc

(Qld r 651)

- (1) On the hearing of an application under rule 3107, the court may order that the accounts be passed with or without amendment.
- (2) The court may also—
 - (a) allow the costs of examining and passing the accounts to be paid out of the estate; and
 - (b) make the order for commission the court considers just; and
 - (c) extend the time for filing and passing further accounts.

3109 Estate accounts—amended or further accounts

(Qld r 652)

The court may require—

- (a) an executor or administrator to amend an account; or
- (b) an executor or administrator to have a further account or amended account examined and passed; or
- (c) a proceeding to be taken on the account, further account or amended account as the court considers appropriate.

3110 Estate accounts—renewal of objection in subsequent proceeding

(Qld r 653)

- (1) This rule applies if—
 - (a) on the examination under this division of an account of an estate, a person made an objection or exception before the registrar that was disallowed or overruled; and
 - (b) the account was passed under this division; and
 - (c) the same account is afterwards directed to be taken in a proceeding.
- (2) The person must not renew the objection or exception against the executor or administrator without the court’s leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

3111 Estate accounts—evidence in subsequent proceeding

(Qld r 654)

- (1) This rule applies if an account is passed under this division and the same account is afterwards directed to be taken in a proceeding.
- (2) The evidence taken before the registrar on the examination of the account may, with all just exceptions, be read on behalf of the executor or administrator on the taking of the account in the proceeding.
- (3) The order passing the account may also be read on behalf of the executor or administrator on the taking of the account in the proceeding, and is evidence on behalf of the executor or administrator of the facts stated in the account.

3112 Estate accounts—general practice to apply

(Qld r 655)

Unless this division otherwise provides, division 2.20.2 (Taking of accounts) applies, with any necessary changes, to the examination and passing of accounts under this division.

3113 Estate accounts—combined executors' and trustees' account

(Qld r 656)

- (1) This rule applies if the same person is an executor and trustee or an administrator and trustee.
- (2) The person may include in the same account a statement of the administration of the property in both capacities.
- (3) However, the person must distinguish the amounts received and disposed of by the person in each capacity.

- (4) If the person is required to give a notice under this division, the notice must indicate that it is given in relation to the estate of the deceased person and the trust.
- (5) A certificate by the registrar of the registrar's examination of the account must set out separately the result of the registrar's examination of the account as far as it relates to the estate and to the trust.

3114 Trustees—allowance of commission in proceeding

- (1) A trustee whose account has been taken in a proceeding in the court may apply to the court in that proceeding for the allowance of commission at any time after the account has been taken.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) Rule 3102 (Estate accounts—application for commission) does not apply to the application.

Division 3.1.12 Miscellaneous

3120 Failure of executor to prove will—Administration and Probate Act, s 25

- (1) This rule applies if the person named as the executor in a will—
 - (a) fails to prove the will, or renounce probate, within 3 months after the later of the following:
 - (i) the date of the testator's death;
 - (ii) the executor turning 18 years old; or
 - (b) is unknown or cannot be found.

(2) A person interested in the estate, or a creditor of the estate, may apply to the court for orders under this rule.

(3) The application must be made by originating application, unless the application is made in a proceeding that has already started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.

(4) The application must be supported by an affidavit filed with the application.

(5) The applicant must serve a stamped copy of the application and supporting affidavit on the person named as executor in the will.

(6) On application under this rule, the court may make the order for administration of the estate, and any other orders, the court considers just.

3121 Failure by executor, administrator or trustee to comply with beneficiary's request etc

(Qld r 643)

(1) This rule applies if an executor, administrator or trustee fails to comply with a written request from a beneficiary or another executor, administrator or trustee—

(a) to apply for and take all necessary steps to register the transmission of any interest in property; or

(b) if the executor, administrator or trustee has or is entitled to a legal interest in property—to convey or transfer the interest to the person entitled to it; or

EXPOSURE DRAFT

- (c) to pay or hand over any legacy or residuary bequest to the person entitled to it; or
 - (d) to do anything else the executor, administrator or trustee is required or allowed by law to do in relation to the estate.
- (2) The beneficiary, or other executor, administrator or trustee, may apply to the court for orders under this rule.
- (3) The application must be made by originating application, unless the application is made in a proceeding that has already started.
- Note 1* Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.
- Note 2* Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.
- (4) The application must be supported by an affidavit filed with the application.
- (5) The applicant must serve a stamped copy of the application on the executor, administrator or trustee who failed to comply with the request.
- (6) On application under this rule, the court may make the orders the court considers just.

3122 Grant of administration—grant to child

(SCR o 72 r 20; NSW Prob r 29; Qld r 639; Vic Prob r 5.01)

- (1) This rule applies if—
- (a) a person is under 18 years; and
 - (b) either—
 - (i) is the sole executor of a will; or

(ii) would be entitled to a grant of administration on intestacy.

- (2) The court may grant administration with the will attached, or administration on intestacy, to the person's guardian.

Note The court may make an order under r (2) on any conditions it considers appropriate (see r 6901 (Orders may be made on conditions)).

- (3) When the person is an adult, the court may, on the person's application, grant administration with the will attached, or administration on intestacy, to the person.
- (4) In a family with a child at least 7 years old and a child younger than 7 years old, an elected guardian may act for all the children without being assigned as a guardian by the court.

3123 Election and assignment of guardians

(SCR o 72 r 20; NSW Prob r 30 and r 31; Vic Prob r 5.01)

- (1) A child 7 years old or older may elect a guardian.
- (2) A court may assign a guardian for a child when a guardian has not been, or may not be, elected.

3124 Order about administration of real estate—Administration and Probate Act, s 51

(SCR o 72 r 36)

- (1) This rule applies if an application has been made for an order under the Administration and Probate Act, section 51 (Supreme Court may make special order) in relation to the administration of a deceased person's real estate.
- (2) Notice of the application must be served personally on each party with a beneficial interest in the real estate.

3125 Assessment of costs—Administration and Probate Act, s 71

Part 2.17 (Costs) applies, with all necessary changes, to the assessment of costs for the Administration and Probate Act, section 71 (Limits of professional charges for obtaining probate etc).

3126 Administration and probate book

(Administration and Probate Act, s 125)

- (1) The registrar must keep an administration and probate book.
- (2) The administration and probate book—
 - (a) must be kept in accordance with the directions of the court; and
 - (b) may be kept in electronic form.
- (3) The registrar must record in the administration and probate book—
 - (a) all grants of probate and administration; and
 - (b) all elections and orders to collect; and
 - (c) the passing of accounts of, and allowance of commission to, all executors and administrators.
- (4) The administration and probate book must set out—
 - (a) the dates of the grants, elections and orders; and
 - (b) the names of testators and intestates; and
 - (c) the place and time of their deaths; and
 - (d) the names and descriptions of executors and administrators; and
 - (e) any other information that the court directs.

EXPOSURE DRAFT

- (5) The registrar may record any other information in the administration and probate book.
- (6) The book kept under the Administration and Probate Act, section 125 immediately before the commencement of this rule is taken to be, or form part of, the administration and probate book.
- (7) Subrule (6) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (8) Subrules (6) and (7) and this subrule expire on the day they commence.

3127 Proved wills to be kept by court

(Administration and Probate Act, s 125A and s 125B)

The original of any will filed in the court must be kept by the court.

Note 1 Rule 2901 (Copies of documents from registrar) deals with obtaining copies of documents (including wills) filed in a proceeding.

Note 2 Rule 2903 (Inspection of registry files) deals with the inspection of registry files.

EXPOSURE DRAFT

Part 3.2 Adoption

Division 3.2.1 Adoption—general

3150 Definitions—pt 3.2

(SCR o 76 r 1)

In this part:

Adoption Act means the *Adoption Act 1993*.

adoption proceeding means a proceeding on an application for an adoption order.

amendment order means an order of the court under the Adoption Act, section 41 (Amendment etc of adoption condition) amending or setting aside a condition of an adoption order.

chief executive means the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility).

discharging order means—

- (a) an order of the court under the Adoption Act, section 26 (1) (Discharge of adoption order) discharging an adoption order; or
- (b) an order of the court under the Adoption Act, section 52 (1) (Discharge of interim order) discharging an interim order.

dispensing order means an order of the court under the Adoption Act, section 35 (1) (Dispensing with consent) dispensing with the requirement for consent of a person to the adoption of a child.

EXPOSURE DRAFT

order for access to identifying information means an order of the court under the Adoption Act, section 75 (3) (Application to court for identifying information in absence of consent) or section 76 (3) (Other person's right to identifying information).

3151 Terms used in Adoption Act

(SCR o 76 r 1A)

A term used in the Adoption Act has the same meaning in this part.

Note For example, the following terms are defined in the Adoption Act, s 4 (1):

- adoption order
- child
- interim order
- principal officer
- private adoption agency.

3152 Application—pt 3.2

This part applies to a proceeding in the Supreme Court under the Adoption Act.

Division 3.2.2 Adoption orders

3155 References to *applicants*—div 3.2.2

(SCR o 76 r 2)

For this division, if an application for an adoption order is made on behalf of the proposed adoptive parent or parents by the chief executive or the principal officer of a private adoption agency, the application is taken to have been made by the proposed adoptive parent or parents jointly.

3156 Adoption order—application

(SCR o 76 r 3)

- (1) An application for an adoption order may be made—
 - (a) by the proposed adoptive parent or parents; or
 - (b) on behalf of the proposed adoptive parent or parents, by—
 - (i) the chief executive; or
 - (ii) the principal officer of a private adoption agency.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must be—
 - (a) supported by an affidavit in accordance with rule 3157; and
 - (b) accompanied by the documents required under rule 3158.

3157 Adoption order—supporting affidavit for application

(SCR o 76 r 5)

- (1) An affidavit supporting an application for an adoption order must be made by—
 - (a) the applicant; or
 - (b) for a joint application—each applicant jointly.
- (2) The affidavit must include a statement of the following:
 - (a) the following particulars about the applicant:
 - (i) full name;
 - (ii) usual place of residence;
 - (iii) occupation;

EXPOSURE DRAFT

- (iv) domicile;
- (v) date and place of birth;
- (vi) state of health;
- (vii) financial circumstances;
- (b) for a joint application—
 - (i) the length of the applicants' relationship; and
 - (ii) the stability of the relationship and the applicant's commitment to the relationship;
- (c) the following information about the applicant's children (if any), whether birth children or adopted children:
 - (i) sex and date of birth;
 - (ii) the state of health of any living child;
 - (iii) if any child has died—the date of death;
- (d) the likelihood of any children being born to the applicant in the future;
- (e) the relationship (if any) to the applicant of the child sought to be adopted;
- (f) the period (if any) that the child to be adopted has been living with the applicant;
- (g) the full name to be given to the child to be adopted;
- (h) the amount and nature of any payment or reward in relation to the proposed adoption that the applicant has made, given or received, or agreed to make, give or receive;
- (i) whether the applicant has ever been refused an adoption order;

EXPOSURE DRAFT

- (j) whether an adoption order or interim order in the applicant's favour has been discharged;
 - (k) if an arrangement has been made, or is to be made, for the child to be adopted to be brought from a place outside Australia for the purpose of the adoption—particulars of that arrangement, together with a statement about the matters mentioned in the Adoption Act, section 20 (2) (a) to (c) (Overseas child);
 - (l) if the child to be adopted is an Aboriginal child—that fact, together with a statement about the matters mentioned in the Adoption Act, section 21 (2) (a) and (b) (Aboriginal child);
 - (m) any conditions under the Adoption Act, section 40 (Adoption order subject to certain conditions) sought by anyone in relation to the adoption.
- (3) If the affidavit is made by 2 people jointly, a reference in subrule (2) to the applicant is a reference to each of them.

3158 Adoption order—documents accompanying application
(SCR o 76 r 6)

- (1) The following documents must accompany an application for an adoption order:
- (a) any instrument of consent to the adoption, together with an affidavit verifying the making of the instrument;
 - (b) any dispensing order in relation to the application;
 - (c) the child's birth certificate, together with—
 - (i) any document identifying the child as the person to whom the certificate relates; or

- (ii) an affidavit or written statement by the chief executive that the chief executive has made reasonable inquiries and believes that the child is the person to whom the certificate relates;
 - (d) if the child to be adopted has been, or is to be, brought from a place outside Australia for the purpose of the adoption—any other documents necessary to support the application;
 - (e) if the child to be adopted is an Aboriginal child—any other documents necessary to support the application.
- (2) Any other document relevant to a matter stated in the affidavit supporting the application may be filed with the application.
 - (3) If it is impracticable to obtain a birth certificate of the child to be adopted, the applicant or applicants must state why—
 - (a) in the affidavit supporting the application; or
 - (b) if the applicant is the chief executive or the principal officer of a private adoption agency—in the report under the Adoption Act, section 19 (1) (a) (Criteria for court’s discretion).
 - (4) If a document filed under this rule is not in English, the applicant or applicants must file with the document a written English translation of the document.
 - (5) The translation mentioned in subrule (4) must be certified, in writing, by the person making it to be a correct translation of the document.
 - (6) The certificate of the person making the translation must also state the person’s full name and address and qualifications for making the translation.

EXPOSURE DRAFT

(7) In this rule:

birth certificate, of a child, means a document that is—

- (a) the official certificate of birth of the child; or
- (b) any other written record of the birth of the child.

document includes—

- (a) a copy of an original document verified as a true copy by a person having custody of the original; or
- (b) a copy of an entry in an official register verified as a true copy by a person having custody of the register; or
- (c) an extract from a record in an official register issued under the Convention Concerning the Issue of Certain Extracts from Civil Status Records to be sent Abroad signed at Paris on 27 September 1956.

3159 Adoption order—service of application on chief executive
(SCR o 76 r 4)

If the applicant for an adoption order is not the chief executive or the principal officer of a private adoption agency, the applicant must serve stamped copies of the following documents on the chief executive not later than 28 days before the return date for the application:

- (a) the application;
- (b) the affidavit under rule 3157 supporting the application;
- (c) each document accompanying the application under rule 3158.

EXPOSURE DRAFT

3160 Adoption order—notice of intention to oppose

(SCR o 76 r 7)

- (1) A person served under the Act, section 22 (Notice of application for adoption order) with notice of an application for an adoption order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice is served on the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The chief executive may oppose an application for an adoption order by filing in the court a notice of opposition not later than 10 days after the day the application is served on the chief executive.
- (3) A person who files a notice of opposition to an application for an adoption order must serve a stamped copy of the notice on—
 - (a) if the notice is filed by the chief executive—each person required to be served with notice of the application for the adoption order under the Adoption Act, section 22; or
 - (b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the chief executive.

Division 3.2.3 Orders for dispensing with consent to adoption

3170 Dispensing order—application

(SCR o 76 r 10)

- (1) An application for a dispensing order must be made in the adoption proceeding in relation to which the dispensing order is sought.

Note Pt 6.2 (Applications in proceedings) applies to the application.

EXPOSURE DRAFT

- (2) The application must be supported by an affidavit setting out the circumstances claimed to justify making the dispensing order, including any circumstances mentioned in the Adoption Act, section 35 (1) (a) to (d) (Dispensing with consent).
- (3) The supporting affidavit must be made by—
 - (a) the applicant for the dispensing order; or
 - (b) for a joint application—each applicant jointly.
- (4) The application for a dispensing order must be made at the same time as the application for an adoption order unless the Adoption Act, section 35 (3) applies.

3171 Dispensing order—service of application

(SCR o 76 r 11)

An applicant for a dispensing order must serve stamped copies of the application and supporting affidavit on the following people not later than 28 days before the return date for the application:

- (a) each person interested in the adoption proceeding to which the application for a dispensing order relates;
- (b) if the application for a dispensing order is made by someone other than the chief executive—the chief executive;
- (c) if the court considers it to be in the interests of justice—anyone nominated by the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

3172 Dispensing order—notice of intention to oppose

(SCR o 76 r 12)

- (1) A person served with an application for a dispensing order under rule 3171 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A person who files a notice of opposition to an application for a dispensing order must serve a stamped copy of the notice on—
- (a) if the notice is filed by the chief executive—each person required to be served with the application for the dispensing order under rule 3171 (a) and (c); or
- (b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the chief executive.

Division 3.2.4 Amendment of adoption order

3180 Amendment order—application

(SCR o 76 r 14)

- (1) An application for an amendment order must be made in the adoption proceeding in relation to which the amendment order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (2) The application must be—
- (a) supported by an affidavit setting out the details of the amendment sought and the circumstances the applicant claims justify the amendment order; and
 - (b) accompanied by the report from the chief executive required under the Adoption Act, section 41 (2) (Amendment etc of condition).

3181 Amendment order—service of application

(SCR o 76 r 15)

An applicant for an amendment order must serve stamped copies of the application and supporting affidavit on each person interested in the application not later than 28 days before the return date for the application.

3182 Amendment order—notice of intention to oppose

(SCR o 76 r 16)

- (1) A person served with an application for an amendment order under rule 3181 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A person who files a notice of opposition to an application for an amendment order must serve a stamped copy of the notice on the applicant for the amendment order.

EXPOSURE DRAFT

Division 3.2.5 Discharge of interim orders and adoption orders

3190 Discharging order—application

(SCR o 76 r 17)

- (1) An application for a discharging order must be made in the adoption proceeding in relation to which the discharging order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must be supported by an affidavit setting out the circumstances the applicant claims justify making the discharging order, including any claim that an interim order, the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means.

3191 Discharging order—service of application

(SCR o 76 r 18)

A notice of an application for a discharging order served under the Adoption Act, section 26 (5) (Discharge of adoption order) must be accompanied by a copy of the affidavit supporting the application.

3192 Discharging order—notice of intention to oppose

(SCR o 76 r 19)

- (1) A person served under the Adoption Act, section 26 (5) with notice of an application for a discharging order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice of application is served on the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (2) A person who files a notice of opposition to an application for a discharging order must serve a stamped copy of the notice on the applicant for the discharging order.

Division 3.2.6 Access to identifying information

3200 Order for access to identifying information—application

(SCR o 76 r 20)

An application for an order for access to identifying information must be made in the adoption proceeding in relation to which the order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3201 Order for access to identifying information—service of application

(SCR o 76 r 21)

An applicant for an order for access to identifying information must serve stamped copies of the application on—

- (a) the chief executive; and
- (b) anyone—
 - (i) whose approval would be sufficient under the Adoption Act, division 5.3 (Identifying information) to entitle the applicant to the identifying information; and
 - (ii) who has refused approval.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

3202 Order for access to identifying information—notice of intention to oppose

(SCR o 76 r 22)

- (1) A person served with an application for an order for access to identifying information may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A person who files a notice of opposition to an application for an order for access to identifying information must serve a stamped copy of the notice on the applicant for the order.

Division 3.2.7 Adoption proceedings—general procedures

3210 Adoption proceedings—service of applications

(SCR o 76 r 25)

- (1) A stamped copy of an application for an order under the Adoption Act must be served personally.
- (2) However, a stamped copy of an application may be served on—
 - (a) the chief executive by giving the stamped copy to a member of the staff of the chief executive’s office; and
 - (b) the principal officer of a private adoption agency by giving the stamped copy to a member of the staff of the agency.

Note See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

EXPOSURE DRAFT

Part 3.3 Commercial arbitration

3250 Meaning of *Commercial Arbitration Act*—pt 3.3

(SCR o 88 r 1)

In this part:

Commercial Arbitration Act means the *Commercial Arbitration Act 1986*.

3251 Terms defined in Commercial Arbitration Act

A term defined in the Commercial Arbitration Act has the same meaning in this part.

Note 1 For example, the following terms are defined in the Commercial Arbitration Act, s 4:

- arbitration agreement
- arbitrator
- award
- court
- party.

Note 2 In particular, ***court*** is defined in the Commercial Arbitration Act, s 4 (1) as follows:

court means—

- (a) the Supreme Court; or
- (b) in relation to—
 - (i) an arbitration agreement providing that the Magistrates Court shall have jurisdiction under this Act; or
 - (ii) an arbitration agreement the parties to which have agreed in writing that the Magistrates Court shall have jurisdiction under this Act (the lastmentioned agreement being in force);

the Magistrates Court.

3252 Commercial arbitration—application

(SCR o 88 r 3)

A proceeding under the Commercial Arbitration Act must be started by originating application.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to the originating applications.

Note 3 Pt 6.2 (Applications in proceedings) deals with applications in proceedings. An **application** in a proceeding includes an application to the court about the proceeding, whether made during the proceeding or after judgment is given in the proceeding.

3253 Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 38 (4) (b)

(SCR o 88 r 4 and r 6 (2) (a), (d) and (e))

(1) An application for leave to appeal to the Supreme Court under the Commercial Arbitration Act, section 38 (4) (b) (Judicial review of awards) must include, or be accompanied by, a statement of—

- (a) the nature of the case; and
- (b) the questions involved; and
- (c) the reasons why leave should be given.

Note The Commercial Arbitration Act, s 38 (4) (b) provides that an appeal may be brought under s 38 (2) by a party to an arbitration agreement with the court's leave (subject to s 40).

- (2) The application must be made not later than 21 days after—
- (a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the applicant; or
 - (b) in any other case—the day notice of the award is given to the applicant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

3254 Commercial arbitration—appeal under Commercial Arbitration Act, s 38

(SCR o 88 r 6 (1) and (3))

- (1) An appeal to the Supreme Court mentioned in the Commercial Arbitration Act, section 38 (4) (a) (Judicial review of awards) must be started not later than 21 days after—
- (a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the appellant; or
 - (b) in any other case—the day notice of the award is given to the appellant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) An appeal to the Supreme Court mentioned in the Commercial Arbitration Act, section 38 (4) (b) must be started not later than 21 days after the day leave is given by the court.

3255 Commercial arbitration—application under Commercial Arbitration Act, s 39

(SCR o 88 r 5)

- (1) A proceeding under the Commercial Arbitration Act, section 39 (1) (Determination of preliminary point of law by Supreme Court) must be started not later than 21 days after the day the consent, or consents, mentioned in that subsection is or are given.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) A decision by the court to hear or not to hear an application under the Commercial Arbitration Act, section 39 (1) (a) must be given by order.

3256 Commercial arbitration—application for order under Commercial Arbitration Act, s 42 (1) or s 43

(SCR o 88 r 6 (2) (b)-(e))

- (1) This rule applies in relation to an application for an order—
 - (a) under the Commercial Arbitration Act, section 42 (1) (Power to set aside award) to set an award aside; or
 - (b) under the Commercial Arbitration Act, section 43 (Court may remit matter for reconsideration) to remit any matter.
- (2) The application must be made not later than 21 days after—
 - (a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the appellant; or

- (b) in any other case—the day notice of the award is given to the appellant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

3257 Commercial arbitration—payment into court

(SCR o 88 rr 6A-6D)

- (1) A party to an arbitration agreement (the *respondent*) may at any time pay an amount into court in satisfaction of a claim to which the agreement applies of another party to the agreement (the *claimant*).
- (2) A respondent cannot plead a defence of tender before the arbitration was started unless the respondent has—
 - (a) paid the amount tendered into court under rule 1000 (Payment into court—amount) as applied by subrule (3); or
 - (b) filed a bond for payment of the amount to the registrar under rule 1002 (Payment into court—bond) as applied by subrule (3); or
 - (c) filed a security accepted by the registrar securing payment of the amount to the registrar under rule 1003 (Payment into court—security) as applied by subrule (3).
- (3) Part 2.10 (Payment into court) applies, with necessary changes, in relation to the payment into court as if—
 - (a) the arbitration were a proceeding; and
 - (b) the respondent were a defendant who has paid an amount into court in a proceeding; and
 - (c) the claimant were the plaintiff; and

- (d) the other parties to the agreement were other parties to the proceeding.
- (4) However—
- (a) rule 1007 (2) (Payment into court—costs on acceptance by plaintiff) applies unless the arbitrator or umpire otherwise directs; and
- (b) for rule 1009 (1) (Payment into court—payment out of remaining amount), the amount may also be paid out in accordance with a certificate of the arbitrator or umpire.

3258 Commercial arbitration—examination of witnesses

(SCR o 88 r 7)

Part 6.10 (Evidence) applies in relation to the examination of a witness in a proceeding under the Commercial Arbitration Act as if the witness were a witness for the purposes of a trial and all other necessary changes were made.

3259 Commercial arbitration—decision to refuse application for order in application in proceeding

(SCR o 88 r 8)

The court may refuse to make an interlocutory order under the Commercial Arbitration Act, section 47 (General power of court to make interlocutory orders) if the court considers that the arbitrator or umpire has power to make the order applied for.

3260 Commercial arbitration—application for leave to enforce award

(SCR o 88 r 9)

- (1) An application for leave under the Commercial Arbitration Act, section 33 (Enforcement of award) to enforce an award—
 - (a) must be supported by an affidavit that states—
 - (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 home or business address of the person against whom it is sought to enforce the award or, if the person is a corporation, its last-known registered office; and
 - (b) may be made without giving notice to anyone.
- (2) If leave is given, any party to the award may enter judgment in terms of the award.

3261 Commercial arbitration—evidence of award for purposes of enforcement

(SCR o 88 r 10)

The *International Arbitration Act 1974* (Cwlth), section 9 (Evidence of awards and arbitration agreements) applies in a proceeding in which leave of the court is sought for enforcement of an award under the Commercial Arbitration Act, section 33 (Enforcement of award) as that section of the *International Arbitration Act 1974* (Cwlth) applied in a proceeding in which enforcement of a foreign award were sought under the *International Arbitration Act 1974* (Cwlth).

3262 Commercial arbitration—endorsement and service of order for enforcement

(SCR o 88 r 11)

- (1) An order under the Commercial Arbitration Act, section 33 (Enforcement of award) giving leave to enforce an award must—
 - (a) be endorsed with a statement that the person on whom the order is served may, before the end of 5 days after the day the order is served, apply to have the order set aside; and
 - (b) be served on the person against whom it is sought to enforce the award.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.
- (2) An order does not operate to enable an award to be enforced until—
 - (a) the end of the period mentioned in subrule (1); and
 - (b) if the person against whom it is sought to enforce the award applies, within the period mentioned in subrule (1), to have the order set aside—the application is decided.

EXPOSURE DRAFT

Part 3.4 Corporations Act and ASIC Act

3270 Rules for proceedings under Corporations Act or ASIC Act

The rules in schedule 6 apply to a proceeding in the Supreme Court under the Corporations Act or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

EXPOSURE DRAFT

Part 3.5 Cross-vesting

3300 Definitions—pt 3.5

(SCR O 78 r 2; FCR o 10A r 1; Qld r 51; Vic Misc r 13.02)

In this part:

Cross-vesting Act means the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

cross-vesting law means any law of the Commonwealth or a State or Territory (including the ACT) relating to the cross-vesting of jurisdiction, and includes the Cross-vesting Act.

special federal matter—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).

3301 Terms used in Cross-vesting Act

(NSW SCR pt 74 r 4)

A term used in the Cross-vesting Act has the same meaning in this part.

Note For example, the following terms are defined in the Cross-vesting Act, dictionary:

- ACT matter
- judgment
- party
- proceeding
- State
- Territory.

3302 Application—pt 3.5

(Qld r 52; Vic Misc r 13.01)

- (1) This part applies only to the Supreme Court.
- (2) This part applies to a proceeding to which a cross-vesting law applies.

3303 Cross-vesting—application for transfer or removal of proceedings

(SCR o 78 r 3 and r 5; FCR o 10A r 3; NSW SCR pt 74 r 8)

- (1) An application under a cross-vesting law for the transfer of a proceeding pending in the court must be made by application in the proceeding.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) An application under a cross-vesting law, section 8 for an order removing a proceeding from an ACT court (other than the Supreme Court) or a tribunal to the Supreme Court must be made by originating application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3304 Cross-vesting—application by Attorney-General

(SCR o 78 r 4 (2); FCR o 10A r 4 (2); NSW SCR pt 74 r 7; Qld r 58; Vic Misc r 13.04)

- (1) This rule applies if the Attorney-General of the Commonwealth, a State or Territory applies to the court under a cross-vesting law for the transfer of a proceeding pending in the court.

- (2) The application may be made without the Attorney-General becoming a party to the proceeding.

3305 Cross-vesting—removal of proceedings

(SCR o 78 r 5; Qld r 59; Vic Misc o 13 r 13.05)

- (1) This rule applies if the court makes an order under a cross-vesting law, section 8 removing a proceeding from another ACT court or a tribunal to the court.
- (2) The court may give a direction that could have been given by the court or tribunal in which the proceeding was pending.

3306 Cross-vesting—relying on jurisdiction under cross-vesting laws

(SCR o 78 r 6 (1) and (2); FCR o 10A r 5; NSW SCR pt 74 r 8; Qld r 53, r 54 and r 56; Vic Misc r 13.06)

- (1) This rule applies if a party to a proceeding relies on a provision of a cross-vesting law.
- (2) The party must include in the process by which the cross-vesting law is relied on a statement—
- (a) identifying the provision of the cross-vesting law relied on; and
 - (b) identifying each claim or ground of defence for which the provision of the cross-vesting law is relied on; and
 - (c) the grounds on which the provision is relied on.
- (3) If a matter to be decided in the proceeding is a special federal matter, the statement mentioned in subrule (2) must also—
- (a) identify the matter as a special federal matter; and
 - (b) state the grounds on which it is a special federal matter.

3307 Cross-vesting—service

(SCR o 78 r 6 (3)-(5); Qld r 55)

- (1) Despite part 6.8 (Service), an originating process by which a cross-vesting law is relied on may be served outside the ACT.
- (2) If a defendant served outside the ACT under subrule (1) does not file a notice of intention to respond or defence, the plaintiff must not take a further step in the proceeding unless the court gives leave to proceed.
- (3) The court must not give leave to proceed unless it is satisfied that—
 - (a) jurisdiction under a cross-vesting law is being relied on; and
 - (b) the court is a convenient court in which to decide the matter.
- (4) An application for leave to proceed must be made by application in the proceeding or it may be included in the application for directions under rule 3308.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to proceed.

- (5) An order giving leave to proceed does not prevent the court from later transferring the proceeding to another court.

3308 Cross-vesting—directions

(SCR o 78 r 6 (1) (b) and r 8; FCR o 10A 5 (1) (b) and r 7; NSW SCR pt 74 r 8 and r 9; Qld r 56; Vic Misc r 13.06 (1) (b), r 13.08 and r 13.09)

- (1) The first party in a proceeding to rely on a cross-vesting law must apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

- (2) If a plaintiff is required to apply for directions, the plaintiff must make and serve the application not later than 7 days after the day the first notice of intention to respond or defence is served on the plaintiff.
- (3) If a defendant is required to apply for directions, the defendant must make and serve the application not later than 7 days after the day the process by which the cross-vesting law is relied on is served.
- (4) If a proceeding is transferred to the court from another court, the plaintiff must, not later than 14 days after the day the order for the transfer is made, apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

- (5) If the plaintiff does not comply with subrule (4)—
 - (a) another party may apply for directions; or
 - (b) the court may call the parties before it on its own initiative.
- (6) On hearing an application for directions, the court must give the directions or make the decisions about the conduct of the proceeding that it considers appropriate.
- (7) At the trial or hearing of the proceeding, the court may amend or set aside a direction made on application for directions.

3309 Cross-vesting—procedure following transfer of proceeding from court

(SCR o 78 r 7 (1); FCR o 10A r 6 (1); Qld r 57 (1); Vic Misc r 13.07)

- (1) This rule applies if the court makes an order transferring a proceeding to another court under a cross-vesting law.
- (2) The registrar must send to the other court all documents filed in the court and a sealed copy of orders made in the proceeding.

3310 Cross-vesting—procedure following transfer of proceeding to court

(SCR o 78 r 7 (2) and (3); FCR o 10A r 6 (2) and (3); Qld r 57 (2); Vic Misc r 13.07)

- (1) This rule applies if a proceeding is transferred to the court from another court under a cross-vesting law.
- (2) The registrar must—
 - (a) give a distinguishing number or other unique identifier to the proceeding; and
 - (b) record in the cause book—
 - (i) the distinguishing number or other unique identifier given to the proceeding; and
 - (ii) the date when the proceeding was sent to the court; and
 - (iii) any other information that the court directs.

3311 Cross-vesting—application of another jurisdiction’s written law

(SCR o 78 r 8; FCR o 10A r 7; NSW SCR pt 74 r 9; Vic Misc r 13.08)

- (1) This rule applies if a party to a proceeding wants to have a written law of another State or Territory applied under the Cross-vesting Act, section 11 (1) (b) (Conduct of proceedings) in the proceeding in deciding a right of action arising under the written law of the other State or Territory.
- (2) The party’s pleadings must include a statement identifying the right of action and the written law under which it arises.

3312 Cross-vesting—application of another jurisdiction’s rules of evidence and procedure

(SCR o 78 r 8; FCR o 10A r 7; NSW SCR pt 74 r 9; Vic Misc r 13.08)

- (1) This rule applies if a party to a proceeding wants to have rules of evidence and procedure, other than those of the court, applied under the Cross-vesting Act, section 11 (1) (c) in dealing with a matter to be decided in the proceeding.
- (2) The party’s pleadings must include a statement identifying the rules that the party wants applied.

EXPOSURE DRAFT

Part 3.6 Electoral matters

Division 3.6.1 Electoral matters—general

3350 Definitions—pt 3.6

(SCR O 79 r 1)

In this part:

election application means an application under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) disputing the validity of an election made in accordance with the Electoral Act, section 258 (Form of application).

Electoral Act means the *Electoral Act 1992*.

3351 Terms used in Electoral Act

A term used in the Electoral Act has the same meaning in this part.

Note For example, the following terms are defined in the Electoral Act, s 250 (Definitions—pt 16):

- application
- Court of Disputed Elections
- election
- proceeding.

Also, the following terms are defined in the Electoral Act, dictionary:

- Assembly
- ballot paper
- commissioner
- newspaper.

EXPOSURE DRAFT

3352 Application—pt 3.6

This part applies only to the Supreme Court when exercising its jurisdiction as the Court of Disputed Elections.

Note The Electoral Act, s 252 (1) (Court of Disputed Elections) provides that the Supreme Court has jurisdiction to hear and decide—

- (a) applications disputing the validity of elections; and
- (b) questions referred to the Supreme Court by resolution of the Assembly relating to the eligibility of people who have been declared elected to be members of the Assembly or vacancies in the membership of the Assembly.

That Act, s 252 (2) provides that, when exercising jurisdiction under s 252 (1), the Supreme Court is to be known as the Court of Disputed Elections.

3353 Election application etc originating application

(SCR o 79 r 2)

- (1) To remove any doubt, these rules apply to an election application as if the application were an originating application.
- (2) These rules apply in relation to a reference to the court under the Electoral Act, division 16.4 (Eligibility and vacancies) as if a statement under the Electoral Act, section 276 (Speaker to state case) setting out a question referred by the Assembly were an originating application.
- (3) These rules apply to an election application or a statement mentioned in subrule (2)—
 - (a) subject to the Electoral Act and this part; and
 - (b) with any necessary changes.

EXPOSURE DRAFT

Division 3.6.2 Disputed elections

3355 Disputed election—deposit as security for costs

(SCR o 79 r 3)

For the Electoral Act, section 260 (1) (Deposit as security for costs), the amount an applicant must deposit with the registrar as security for costs is \$1 000.

3356 Disputed election—public notice of election application

(SCR o 79 r 4)

- (1) This rule applies if a person files an election application in the court.
- (2) After filing the election application, the applicant must—
 - (a) publish a copy of the application in the gazette; and
 - (b) publish a notice of the filing of the application in a newspaper.

Note The applicant must publish a copy of the application in the gazette, and a notice of the filing of the application in a newspaper, as soon as possible after filing the application (see Legislation Act, s 151B).

- (3) The notice must state—
 - (a) the applicant's name, the date of filing and the declaration sought; and
 - (b) as briefly as practicable, the facts relied on to invalidate the election.

EXPOSURE DRAFT

3357 Disputed election—parties to proceeding

(SCR o 79 r 5)

The parties to a proceeding under the Electoral Act, division 16.3 (Disputed elections) are—

- (a) the applicant; and
- (b) each other person who—
 - (i) is entitled under the Election Act, section 262 (Parties to application under div 16.3) or section 263 (Withdrawal and abatement of application) to appear in the proceeding; and
 - (ii) files a notice of intention to respond or defence.

Note For provisions about when a notice of intention to respond or defence must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

3358 Disputed election—particulars of contested ballot papers

(SCR o 79 r 6)

- (1) This rule applies if an election application—
 - (a) seeks a declaration that—
 - (i) a person who has been declared elected was not duly elected; or
 - (ii) a person who has not been declared elected was duly elected; and
 - (b) states a claim or objection to ballot papers or a class of ballot papers.

- (2) Not later than 7 days before the return date for the election application, each party to the proceeding must file, and serve on each other party—
- (a) a list of the ballot papers or classes of ballot papers intended to be claimed or objected to; and
 - (b) if the ballot papers are being objected to—a statement of the grounds for the objection.
- (3) If a party does not include a ground for an objection in the party’s statement mentioned in subrule (2) (b), the party may only rely on the ground with the court’s leave.

Examples of conditions for an order under this rule

- 1 conditions about amendment of the statement and service of the amended statement
- 2 conditions about adjournment and costs

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

Note 3 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3359 Disputed election—countercharges

(SCR o 79 r 7)

- (1) This rule applies if a respondent to an election application to which rule 3358 applies intends to oppose the election application on a ground not mentioned in the party’s statement (if any) under that rule.

- (2) Not later than 7 days after the day the respondent files a notice of intention to respond or defence, the respondent must—
- (a) file in the court a statement of the grounds on which the respondent intends to rely in opposing the election application; and
 - (b) serve a stamped copy of the statement on the applicant.
- Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.
- (3) The statement must set out the facts the respondent relies on with sufficient particularity to identify the ground on which the respondent opposes the election application.

3360 Disputed election—voting in Antarctica

(SCR o 79 r 8)

- (1) This rule applies if a matter mentioned in an election application relates to voting in Antarctica.
- (2) The commissioner must—
- (a) file the statement prepared under the Electoral Act, section 175 (c) (Proceedings at close of poll) in relation to the election concerned; and
 - (b) serve a stamped copy of the statement on each other party.
- (3) The commissioner must comply with subrule (2)—
- (a) if the commissioner is the applicant—not later than 7 days after the day the election application is filed in the court; or
 - (b) in any other case—not later than 7 days after the day the election application is served on the commissioner.

EXPOSURE DRAFT

3361 Disputed election—time of trial etc

(SCR o 79 r 9)

- (1) The trial of an election application must be held at a time and place set by the court.
- (2) If the court makes an order setting the time and place for the trial, the applicant must, not later than 14 days before the trial date—
 - (a) serve a stamped copy of the order on each other party; and
 - (b) publish notice of the trial in a newspaper.
- (3) An order setting the time and place of the trial may be amended by the court from time to time.

3362 Disputed election—substitution of applicant

(SCR o 79 r 10)

- (1) This rule applies if—
 - (a) the court is deciding whether to give leave under the Electoral Act, section 263 (Withdrawal and abatement of application) for the withdrawal of an election application; or
 - (b) the sole applicant, or the last survivor of several applicants, for an election application dies before the trial of the application.
- (2) The court may order that someone else be substituted as the applicant if the other person—
 - (a) is entitled to dispute the validity of the election on similar grounds to the applicant; and
 - (b) agrees to be substituted as the applicant.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

- (3) If the court makes an order under subrule (2), the proceeding continues as if the person substituted had been the applicant.

3363 Disputed election—withdrawal of respondent

(SCR o 79 r 11 (1))

For the Electoral Act, section 263 (9) (a) (Withdrawal and abatement of application), the respondent's notice of intention not to oppose an election application must be filed in the court.

3364 Disputed election—substitution of respondent

(SCR o 79 r 11 (2))

For the Electoral Act, section 263 (9) (e) (Withdrawal and abatement of application), the period within which a notice of intention to respond or defence must be filed by a person wanting to become a respondent is 7 days after the day when notice that a person has ceased to be a respondent is published in a newspaper in accordance with the Electoral Act, section 263 (9) (d) (i).

3365 Disputed election—inspection of list of applications

(SCR o 79 r 12)

For the Electoral Act, section 264 (Hearing of applications), a copy of the list of election applications may be inspected during the office hours of the registry.

Note Rule 6300 (1) (Office hours) provides that the registry is to be open between 9.15 am and 4.15 pm on each day other than a Saturday, Sunday or public holiday in the ACT under the *Holidays Act 1958*.

Division 3.6.3 Questions referred by Legislative Assembly

3400 Question referred—parties to proceeding

(SCR o 79 r 13)

A person is a party to a proceeding under the Electoral Act, division 16.4 (Eligibility and vacancies) if the person—

- (a) is entitled under the Electoral Act, section 277 (Parties to a referral) to appear in the proceeding; and
- (b) the person files a notice of intention to respond or defence.

Note For provisions about when a notice of intention to respond or defence must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

Division 3.6.4 Electoral matters—general procedure

3405 Electoral matters—better particulars

(SCR o 79 r 14)

The court may order a party to a proceeding under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) to give another party particulars, or better particulars, of a matter alleged by the party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order for particulars, or better particulars.

Part 3.7 Foreign and interstate confiscation orders—registration

Division 3.7.1 Foreign confiscation orders— registration

3450 Definitions—div 3.7.1

(SCR o 81 r 1)

In this division:

foreign confiscation order means—

- (a) any of the following orders within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 3 (1):
 - (i) a foreign forfeiture order;
 - (ii) a foreign pecuniary penalty order;
 - (iii) a foreign restraining order; or
- (b) a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth), section 4.

register means the register of foreign confiscation orders kept under rule 3452.

3451 Application—div 3.7.1

This division applies only in relation to the Supreme Court.

EXPOSURE DRAFT

3452 Foreign confiscation orders—register

(SCR o 81 r 2)

- (1) The registrar must keep a register of foreign confiscation orders.
- (2) The register—
 - (a) must be kept in accordance with the directions of the court; and
 - (b) may be kept in electronic form.

3453 Foreign confiscation orders—registration

(SCR o 81 r 3)

A foreign confiscation order, or an amendment of a foreign confiscation order, is registered when a copy of the order or amendment is included in the register.

Note The *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), s 34A (5) (Registration of foreign confiscation orders), and the *International War Crimes Tribunals Act 1995* (Cwlth), s 45 (2) (Registration of order) provide for foreign confiscation orders (and amendments) to be registered in the Supreme Court of a State or Territory where the property (or part of the property) that is the subject of the order is believed to be located. Registration is required by those provisions to be in accordance with the rules of court.

3454 Foreign confiscation orders—proceedings for registration

(SCR o 81 r 4 (1)–(5))

- (1) An application for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, must—
 - (a) be made by originating application; and

- (b) if the application relates to a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995*—be accompanied by an affidavit by the plaintiff setting out particulars necessary to enable the court to comply with that Act, section 45 (1).

Note Section 45 (1) requires the court, on registration of the order, to direct the Commonwealth director of public prosecutions to give notice of registration ‘to specified persons...the court has reason to believe may have an interest in the property [that is the subject of the order]’.

- (2) The person against whom the foreign confiscation order was made must be named as the defendant to the application.
- (3) The application may be made without notice to anyone unless the court otherwise orders.
- (4) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the foreign confiscation order or amendment in closed court and in the absence of the applicant.
- (5) If the court makes an order for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, the applicant must serve on the respondent—
- (a) a sealed copy of the order for registration; and
 - (b) a sealed copy of the registered foreign confiscation order or registered amendment of a foreign confiscation order.

EXPOSURE DRAFT

3455 Foreign confiscation orders—when registration cancelled

(SCR o 81 r 4 (6))

The registration of a foreign confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

**Division 3.7.2 Interstate confiscation orders—
registration**

3460 Definitions—div 3.7.2

(SCR o 82 r 1)

In this division:

interstate confiscation order means any of the following within the meaning of the *Confiscation of Criminal Assets Act 2003*:

- (a) an interstate restraining order;
- (b) an interstate automatic forfeiture decision;
- (c) an interstate civil forfeiture order;
- (d) an interstate conviction forfeiture order.

register means the register of interstate confiscation orders kept under rule 3461.

3461 Interstate confiscation orders—register

(SCR o 82 r 2)

- (1) The registrar must keep a register of interstate confiscation orders.
- (2) The register—
 - (a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

3462 Interstate confiscation orders—registration

(SCR o 82 r 3)

An interstate confiscation order, or an amendment of an interstate confiscation order, is registered when a copy of the order or amendment is included in the register.

Note The *Confiscation of Criminal Assets Act 2003*, s 137 provides for interstate confiscation orders (and amendments) to be registered in court if the property (or part of the property) is situated in the ACT. They may be registered in the Supreme Court or the Magistrates Court (see that Act, s 238, s 240 and s 241). Registration is required to be in accordance with the procedure of the relevant court (see that Act, s 137 (5)).

3463 Interstate confiscation orders—proceedings for registration

(SCR o 82 r 4 (1)–(4))

- (1) An application for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, must be made by originating application.
- (2) The person against whom the interstate confiscation order was made must be named as the defendant to the application.
- (3) The application may be made without notice to anyone unless the court otherwise orders.
- (4) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the interstate confiscation order or amendment in closed court and in the absence of the applicant.

EXPOSURE DRAFT

- (5) If the court makes an order for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, the applicant must serve on the respondent—
- (a) a sealed copy of the order for registration; and
 - (b) a sealed copy of the registered interstate confiscation order or registered amendment of an interstate confiscation order.

3464 Interstate confiscation orders—when registration cancelled

(SCR o 82 r 4 (5))

The registration of an interstate confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

3465 Interstate confiscation orders—filing of amendments etc

(SCR o 82 r 5)

For the *Confiscation of Criminal Assets Act 2003*, section 141 (1) (b), details of any amendment of an interstate confiscation order, or any direction of the entity that made an interstate confiscation order, may be given to the court only by filing in the court a copy of the amendment or direction sealed by the entity that made the order or gave the direction or otherwise authenticated to the court's satisfaction.

Note Section 141 (1) provides that unless details of these amendments or directions are given to the court in accordance with the procedures of the court, the registration of the order may be cancelled.

Part 3.8 Foreign judgments—reciprocal enforcement

3470 Definitions—pt 3.8

(SCR o 74A r 1; Qld r 947A)

In this part:

Foreign Judgments Act means the *Foreign Judgments Act 1991* (Cwlth).

judgment means a judgment to which the Foreign Judgments Act, part 2 applies.

3471 Terms used in Foreign Judgments Act

(SCR o 74A r 1A)

A term used in the Foreign Judgments Act has the same meaning in this part.

3472 Application—pt 3.8

(Qld r 947C)

This part applies only in relation to the Supreme Court.

3473 Foreign judgment—application for registration

(SCR o 74A r 6 (1); Qld r 947D)

- (1) An application for registration of a judgment is made by filing in the court—
 - (a) a copy of the judgment certified by the original court; and

- (b) if the certified copy of the judgment is not English—a translation of the judgment authenticated by affidavit; and
 - (c) the supporting affidavit required by rule 3474.
- (2) Part 6.2 (Applications in proceedings) does not apply to an application.
- (3) An application for registration of a judgment may be made without notice to anyone or on written notice given to the judgment debtor.
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (4) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

3474 Foreign judgment—evidence in support of application for registration

(SCR o 74A r 4; Qld r 947E)

- (1) The supporting affidavit for an application for registration of a judgment must state the following particulars:
- (a) the full name and last-known address of the judgment creditor and judgment debtor;
 - (b) that the Foreign Judgments Act, part 2 applies to the judgment;
 - (c) the regulation under the Foreign Judgments Act that extends that Act, part 2 in relation to the judgment;
 - (d) the nature of the causes of action to which the judgment relates;

EXPOSURE DRAFT

- (e) that a regulation has not been made under the Foreign Judgments Act, section 13 applying the section to the country of the original court;
- (f) that the judgment has not been completely satisfied or, if the judgment has been partly satisfied, the amount for which it remains unsatisfied;
- (g) that there is no reason why the judgment could not be enforced in the country of the original court;
- (h) the costs of registration of the judgment incurred by the applicant;
- (i) if the judgment creditor wants the judgment to be registered in a currency other than Australian currency—the rate of exchange prevailing on the day the affidavit is made;
- (j) if it is more than 6 years after the day the judgment was entered—whether there has been a proceeding by way of appeal against the judgment and, if so, the date of the last judgment in the proceeding;
- (k) if interest is payable on the judgment under the law of the country of the original court and the interest is not stated in the judgment—the rate of interest;
- (l) if the judgment is a judgment of a court of Papua New Guinea—the amount (if any) payable under the judgment that is recoverable Papua New Guinea income tax or non-recoverable tax;

EXPOSURE DRAFT

- (m) if the judgment is a judgment of a court of New Zealand—that it was not given in a proceeding, or part of a proceeding, in which a matter for decision arose under the *Commerce Act 1986* (New Zealand), section 36A, section 98H or section 99A.
- (2) The person making the affidavit may state the particulars mentioned in subrule (1) as the belief of the person, giving the source of the person’s information and the grounds of the person’s belief.

3475 Foreign judgment—security for costs of application for registration

(SCR o 74A r 10; Qld r 947F)

The court may order that a judgment creditor who has applied for registration of a judgment give security for the costs of any proceeding that may be brought under the Foreign Judgments Act, section 7 to set aside registration of the judgment.

3476 Foreign judgment—order for registration

(SCR o 74A r 5; Qld r 947G)

The court may order the registration of a judgment on application in accordance with this part.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

3477 Foreign judgment—register

(Qld r 947H)

The registrar must keep a register of registered judgments.

3478 Foreign judgment—registration

(SCR o 74A r 11; Qld r 947I)

- (1) If the court orders that a judgment be registered, the registrar must register the judgment by entering in the register of foreign judgments the following particulars of the judgment:
 - (a) the full name and last-known address of the judgment creditor and judgment debtor;
 - (b) the amount payable under the judgment after deducting any amount paid in part satisfaction of the judgment;
 - (c) any interest that, under the law of the country of the original court, has become payable under the judgment up to the time of registration.
- (2) The registrar must also record the following details in the register:
 - (a) the reasonable costs of, or incidental to, registration of the judgment;
 - (b) any special directions contained in the order for registration.

3479 Foreign judgment—notice of registration

(SCR o 74A r 6; Qld r 947J)

- (1) The judgment creditor under a registered judgment must, not later than 28 days after the day the judgment is registered, serve—
 - (a) notice of the registration on the judgment debtor; and
Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
 - (b) a sealed copy of the order for registration; and
 - (c) a stamped copy of the affidavit filed under rule 3474 (1) (c).

- (2) Unless the court otherwise orders, the notice and accompanying documents must be served personally.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3480 Notice of registration—affidavit of service to be filed

(SCR o 74A r 7; Qld r 947K)

An affidavit of service of the notice of registration of a judgment and accompanying documents must be filed in the court before any step is taken to enforce the judgment.

3481 Registration of judgment—application to set aside

(SCR o 74A r 8; Qld r 947L)

An application to set aside the registration of a judgment must—

- (a) be made within the period stated in the order for registration of the judgment; and
- (b) be supported by an affidavit setting out the specific grounds on which the application is made.

Note Pt 6.2 (Applications in proceedings) applies to the application.

3482 Foreign judgment—enforcement

(Qld r 947M)

- (1) The form of enforcement order used in relation to the enforcement of a registered judgment must be amended, in a way approved by the registrar, by stating—
- (a) that the judgment is a registered judgment; and
 - (b) the date of, and the amount payable under, the judgment.

- (2) If a registered judgment is enforced, the registrar must, as soon as practicable after the return of the enforcement order to the court, enter details of the enforcement in the register of registered judgments.

3483 Australian judgment—certificate for foreign registration

(Qld r 947N)

- (1) An application under the Foreign Judgments Act, section 15 (Issue of certificates of judgments obtained in Australian courts) in relation to a judgment that has been given in an Australian court may be made without notice to anyone.
- (2) The application must be made—
- (a) in the proceeding in which the judgment was obtained; and
 - (b) by filing—
 - (i) a draft of the certificate sought; and
 - (ii) a supporting affidavit.
- (3) Part 6.2 (Applications in proceedings) does not apply to the application.
- (4) The supporting affidavit must include all information that would enable the certificate to be issued.
- (5) For the Foreign Judgments Act, section 15 (1) (b), the certificate must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for the certificate.

EXPOSURE DRAFT

- (6) An application under subrule (1) may be made without notice to anyone or on written notice given to the judgment debtor.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (7) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

EXPOSURE DRAFT

Part 3.9 Habeas corpus

3500 Definitions—pt 3.9

(SCR o 55 r 43 (1); Qld r 586)

In this part:

custody includes confinement.

defendant means the person named as the defendant in—

- (a) a writ of habeas corpus; or
- (b) an application for a writ of habeas corpus.

writ of habeas corpus includes an order for the production of a person in custody for the purpose of examination or trial.

3501 Application—pt 3.9

(Qld r 587)

This part applies only to the Supreme Court.

3502 Habeas corpus—application and service

(SCR o 55 r 43 (1); Qld r 588 and r 591)

- (1) A proceeding for a writ of habeas corpus must be started by originating application.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a writ of habeas corpus.

- (2) However, if an application for a writ of habeas corpus in relation to a proceeding is made during the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).
 - (3) The application must be supported by an affidavit.
 - (4) The affidavit may—
 - (a) be made by someone else on behalf of the person in custody; and
 - (b) contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.
- Note* The hearsay rule does not apply to evidence in an application in a proceeding if the party adducing the evidence also adduces evidence of its source (see Commonwealth Evidence Act, s 75 (Exception: interlocutory proceedings)).
- (5) The application need not be served on anyone unless the court otherwise orders on its own initiative.

3503 Habeas corpus—parties

(Qld r 590)

An application for a writ of habeas corpus may be made by the person in custody or by someone else.

3504 Habeas corpus—procedure on application etc

(SCR o 55 r 44 (1), r 45 and r 49; Qld r 592)

- (1) On the hearing of an application for a writ of habeas corpus, the court may—
 - (a) order the release or other disposition of the person in custody; or

- (b) order the issue of a writ of habeas corpus directed to the defendant and to anyone else and give directions about the course to be taken under the writ; or
 - (c) dismiss the application.
- (2) If a writ of habeas corpus is issued—
- (a) the person to whom the writ is directed must bring the person in custody before the court as directed in the writ; and
 - (b) unless the court otherwise orders, a sealed copy of the writ, the application for the writ and supporting affidavits must be served personally on everyone to whom the writ is directed.
- Note 1* See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).
- Note 2* The documents must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).
- Note 3* Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.
- (3) However, if a writ of habeas corpus is directed to the person in charge of the place where the person is in custody, a document mentioned in subrule (2) (b) may be served—
- (a) by sending a copy by prepaid post to the place where the person is in custody, addressed to the person in charge of the place; or
 - (b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or
 - (c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

EXPOSURE DRAFT

- (d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.
- (4) The court may, pending the return of the writ of habeas corpus, make an order about the custody of the person in custody.

3505 Habeas corpus—return of writ

(SCR o 55 r 48; Qld r 593)

On the return of a writ of habeas corpus, the court may do any of the following:

- (a) receive further evidence in support of the application for release from custody;
- (b) allow a person to whom the writ is directed to show cause why the person should not be released from custody;
- (c) if it considers the person's custody is unlawful—order the person's release or other disposition;
- (d) set aside the writ;
- (e) if the evidence presented to the court suggests someone else has custody of the person in custody—order another writ issue directed to the other person;
- (f) make an order or give directions about the disposal of the proceeding, or about the person in custody, it considers appropriate.

EXPOSURE DRAFT

Part 3.10 Judicial review

3550 Definitions—pt 3.10

(SCR o 87 r 1; QldJRA s 3; Qld r 564)

In this part:

certiorari order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of certiorari.

Judicial Review Act means the *Administrative Decisions (Judicial Review) Act 1989*.

judicial review application means—

- (a) an application for a statutory order of review; or
- (b) an application for prerogative relief; or
- (c) an application for a statutory order of review and prerogative relief; or
- (d) an application mentioned in rule 3561 (Judicial review—application for statutory order of review and prerogative relief etc); or
- (e) an application in relation to which an order is made under rule 3562 (Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review).

prerogative injunction means an injunction mentioned in rule 3554 (3) (c) (Judicial review—relief previously granted by prerogative writ).

EXPOSURE DRAFT

prerogative order means an order mentioned in rule 3554 (2) (Judicial review—relief previously granted by prerogative writ).

prerogative relief means a prerogative order, and includes a prerogative injunction.

prohibition order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of prohibition.

statutory order of review means an order on an application made—

- (a) under the Judicial Review Act, section 5 (Applications for review of decisions) in relation to a decision to which that Act applies; or
- (b) under the Judicial Review Act, section 6 (Applications for review of conduct related to making of decisions) in relation to conduct engaged in, or proposed to be engaged in, for the purpose of making a decision to which that Act applies; or
- (c) under the Judicial Review Act, section 7 (Applications for failures to make decisions) in relation to a failure to make a decision to which that Act applies.

3551 Terms defined in Judicial Review Act

A term defined in the Judicial Review Act has the same meaning in this part.

Note For example, the Judicial Review Act defines the following terms:

- conduct engaged in (for the purpose of making a decision) (see s 3C)
- decision to which this Act applies (see dict)
- failure to make (a decision) (see s 3A)
- making (a decision) (see s 3A)
- statement of reasons (for a decision) (see dict).

EXPOSURE DRAFT

3552 Application—pt 3.10

(Qld r 565)

This part applies only to the Supreme Court.

3553 Judicial review—prerogative writs abolished

(QldJRA s 41 and s 42; SA r 98.01; Vic r 56.01)

- (1) The prerogative writs of mandamus, prohibition and certiorari are no longer to be issued by the Supreme Court.
- (2) Informations in the nature of *quo warranto* are abolished.

3554 Judicial review—relief previously granted by prerogative writ

(QldJRA s 41 and s 42; SA r 98.01; Vic r 56.01)

- (1) If, before the commencement of these rules, the court had jurisdiction to grant any relief by way of a writ of mandamus, prohibition or certiorari, or on an information in the nature of *quo warranto*, the court continues to have jurisdiction to grant the relief.
- (2) However, the court may grant the relief only by making an order under these rules in the nature of, and to the same effect as, the relief that would have been available before the commencement of these rules.
- (3) For example, if—
 - (a) someone acts in an office in which the person is not entitled to act; and
 - (b) an information in the nature of *quo warranto* would, but for rule 3553 (2) (Judicial review—prerogative writs abolished), lie against the person;

EXPOSURE DRAFT

the court may—

- (c) grant an injunction restraining the person from acting in the office; and
- (d) declare the office to be vacant.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3555 Judicial review—other jurisdiction not excluded

(SA r 98.01 (4))

The existence of prerogative relief under this part does not exclude any other jurisdiction of the court to grant relief.

Note The Judicial Review Act, s 8 (1) (Effect of Act on other rights) provides that the rights given to someone under that Act, ss 5-7 to seek an order for review are additional to the person's rights to seek a review in another way.

3556 Judicial review—application

(SCR o 87 r 3 and r 3A; QldJRA s 43 (1); Qld r 566 and r 567; Vic r 56.01 (2)-(4); SA r 98.01 (1))

- (1) A statutory order of review or prerogative relief must be sought by way of judicial review by originating application.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a statutory order of review or prerogative relief.

- (2) The application must state—
- (a) briefly, but specifically, the grounds relied on in support of the relief sought; and
 - (b) if the grounds of the application include an allegation of fraud or bad faith—particulars of the fraud or bad faith on which the plaintiff relies; and
 - (c) if the application is an application for prerogative relief and the grounds of the application include an allegation of a mistake or omission in an order or proceeding—particulars of the mistake or omission on which the plaintiff relies.

Note Rule 60 (3) (Originating application—content etc) provides that the originating application must state specifically the orders or other relief sought in the proceeding.

- (3) A person must be included as a defendant to the application if the decision to which the application relates was made by an entity authorised to make the decision and the person—
- (a) was a party to the proceeding before the entity; and
 - (b) would be affected by the relief sought in the application or is interested in maintaining the decision.

Note For an application for a statutory order of review, the Judicial Review Act, s 12 (Application to be made a party to a proceeding) provides that a person interested in a decision, conduct or failure in relation to which an application has been made to the Supreme Court under that Act may apply to the Supreme Court to be made a party to the application.

- (4) If the application relates to an order of a judicial officer of a court or member of a tribunal, the application must name as defendant the court or tribunal and not the judicial officer or member personally.
- (5) The application must be accompanied by a supporting affidavit.

EXPOSURE DRAFT

3557 Judicial review—time for starting proceeding

(QldJRA s 46; Vic r 56.02; SA r 98.06)

- (1) This rule applies in relation to an application for prerogative relief.
Note For an application for a statutory order of review, see the Judicial Review Act, s 10 (Period in which application for order of review must be made).
- (2) The application must be filed in the court not later than 60 days after the day when the grounds for the grant of the relief sought first arose.
- (3) If the relief sought is in relation to any order, conviction or other proceeding, the day when the grounds for the grant of the relief first arose is taken to be the day of the making of the order, conviction or other proceeding.
- (4) The court may extend the time mentioned in subrule (2) only in special circumstances.
Note Rule 6351 (Time—extending and shortening by court order) authorises the extending of time.

3558 Judicial review—declaration or injunction

(QldJRA s 43 (2) and (3) and s 47 (1); SA r 98.01 (3) and r 98.11 (5))

- (1) A declaration or injunction (other than a prerogative injunction) may also be sought in an application for prerogative relief if appropriate, having regard to—
 - (a) the nature of the matters in relation to which relief may be sought; and
 - (b) the nature of the entities against whom relief may be sought; and
 - (c) all the other circumstances of the case.

- (2) The court may make the declaration or grant the injunction sought instead of, or in addition to, the prerogative relief if it considers it appropriate, having regard to the matters mentioned in subrule (1).
- (3) However, if the court considers that—
- (a) the declaration or injunction mentioned in subrule (1) should not be granted in the application for prerogative relief; and
 - (b) the relief may have been granted if it had been sought in a proceeding started by another originating process at the time of starting the application for prerogative relief;

the court may, instead of refusing the application, order the proceeding to continue as if it had been started in the way mentioned in paragraph (b).

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights).

3559 Judicial review—other prerogative relief etc

(QldJRA s 47 (2); SA, r 98.02 and r 98.08)

On an application for prerogative relief—

- (a) any prerogative relief, declaration or injunction may be sought instead of, or in addition to, any other prerogative relief, declaration or injunction if it relates to the same matter; or
- (b) the court may grant the prerogative relief, declaration or injunction it considers the most appropriate available, even if it is not included in the application.

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights) and s 11 (Application for order of review not limited to grounds in application).

EXPOSURE DRAFT

3560 Judicial review—additional orders

(QldJRA s 47 (3) and (4); SA r 98.05 (4) and (5) and r 98.11 (3) and (4))

- (1) If—
- (a) the relief sought in an application for prerogative relief is a certiorari order in relation to an order of an entity; and
 - (b) the court is satisfied that there are grounds for setting the order aside;

the court may, in addition to setting aside the order, remit the matter to the entity for further consideration, with any directions (including, for example, the setting of time limits for further consideration, and for preparatory steps in the further consideration) the court considers appropriate.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the relief sought in an application for prerogative relief is a certiorari order or prohibition order in relation to an order made in a proceeding, the court may—
- (a) by order, suspend the operation of the order, either indefinitely or until further order of the court; or
 - (b) order a stay of the proceeding until—
 - (i) the application is decided; or
 - (ii) another time that the court orders.

Note For statutory orders of review, see the Judicial Review Act, s 16 (Stay of proceedings) and s 17 (Powers of Supreme Court in relation to applications for order of review).

3561 Judicial review—application for statutory order of review and prerogative relief etc

(Qld r 568)

- (1) This rule applies if the following relate to the same matter:
 - (a) an application for a statutory order of review;
 - (b) an application for—
 - (i) prerogative relief; or
 - (ii) prerogative relief and a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction).
- (2) The applications may be made in a single application.

Note See the Judicial Review Act, s 8 (Effect of Act on other rights).

3562 Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review

(Qld r 569)

- (1) This rule applies if—
 - (a) an application is made under this part for a statutory order of review in relation to—
 - (i) a decision; or
 - (ii) conduct engaged in, or proposed to be engaged in, for the purpose of making a decision; or
 - (iii) a failure to make a decision; and

- (b) the court considers—
 - (i) the decision is not a decision to which this Act applies as defined in the Judicial Review Act, dictionary; and
 - (ii) prerogative relief or a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction) may have been granted in relation to the decision, conduct or failure if it had been sought in an application for prerogative relief at the time of starting the application for a statutory order of review.
- (2) The court may, instead of refusing the application, order the proceeding to continue as if it had been started as an application for prerogative relief.

3563 Judicial review—filing and serving statements

(SCR o 87 r 4; Qld r 570 and r 572)

- (1) On the filing of a judicial review application in relation to a decision by a person (the *decision-maker*), or as soon afterwards as practicable, the plaintiff must file copies of any of the following documents in the plaintiff's possession, unless a copy of the document has been filed previously in the proceeding:
 - (a) a statement made by the decision-maker of the terms of the decision;
 - (b) either—
 - (i) for an application for a statutory order of review—a statement under the Judicial Review Act, section 13 (Reasons for decision may be obtained) or the *Administrative Appeals Tribunal Act 1989*, section 26 (Person affected by decision may obtain reasons for decision); or

- (ii) any other statement given by or on behalf of the decision-maker purporting to be a statement of reasons for the decision.
- (2) The plaintiff must serve a stamped copy of each statement filed by the plaintiff under subrule (1) on each person on whom a copy of the judicial review application is served.

Note 1 See r 62 (When originating application must be served) and r 64 (Originating application—filing and service of supporting affidavits).

Note 2 If a defendant objects to the competency of an application for a statutory order of review, the defendant may file a conditional notice of intention to respond under r 111 (Conditional notice of intention to respond).

3564 Judicial review—setting directions hearing

(Qld r 571)

On the filing of a judicial review application—

- (a) the court must set a date for a directions hearing; and
- (b) the registrar must tell the parties the date set for the directions hearing.

3565 Judicial review—directions hearing

(SCR o 87 r 6; Qld r 573; SA r 98.05 (6) and (7))

- (1) At a directions hearing under this part, the court may give any direction about the conduct of the proceeding it considers appropriate.
- (2) Without limiting subrule (1), the court may consider, and give directions in relation to, the following matters:
- (a) discovery and interrogatories;

- (b) inspection of property;
- (c) admissions of fact or documents;
- (d) defining the issues by pleadings or otherwise;

Note Pt 2.6 (Pleadings) applies to a proceeding started by an originating application only if the court orders the plaintiff to file and serve a statement of claim.

- (e) the standing of affidavits as pleadings;
- (f) including parties;
- (g) service of documents;
- (h) amendments;
- (i) the filing of affidavits.

Note The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

- (3) Without limiting subrule (1), the court may—
 - (a) order that an agreed bundle of documents be prepared by the parties; or
 - (b) order the service or exchange of expert reports; or
 - (c) order that a party serve a copy of the application on the Attorney-General; or
 - (d) order that a party give notice of the application to the people, and in the way, the court directs; or
 - (e) adjourn the directions hearing; or
 - (f) set a date for hearing; or

- (g) set a date after which the parties are directed to arrange with the registrar a date for hearing.
- (4) The court may at any time amend or revoke a direction or order made under this rule.
- (5) The court may amend or revoke a direction or order made under this rule on application by a party or on its own initiative.
- Note* Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction or order.
- (6) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A **territory law** includes these rules (see Legislation Act, s 98).

3566 Judicial review directions hearings—costs

(PD 1/90)

Unless the court otherwise orders, costs incurred by a party to a proceeding in relation to a directions hearing under this part are costs in the cause.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3567 Judicial review—directions to be sought at directions hearing

(Qld r 579)

At a directions hearing under this part, each party must, as far as practicable, apply for any direction about or for the proceeding that the party requires.

3568 Judicial review—power of the court to stay or dismiss applications in certain circumstances

(SCR o 87 r 7; QldJRA s 48; SA r 98.05 (3))

- (1) The court may, by order, stay or dismiss a judicial review application, or a claim for relief in a judicial review application, if the court considers that—
 - (a) it would be inappropriate—
 - (i) for the proceeding in relation to the application or claim to be continued; or
 - (ii) to grant the application or claim; or
 - (b) no reasonable basis for the application or claim is disclosed; or
 - (c) the application or claim is frivolous or vexatious; or
 - (d) the application or claim is an abuse of the court’s process.

Note The registrar may also reject a document that is filed if it does not comply with these rules (see r 6140 (Rejecting documents—noncompliance with rules etc) or if it is an abuse of the court’s process or is frivolous or vexatious (see r 6142 (Rejecting documents—abuse of process etc)).

- (2) A power of the court under this rule may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.
- (3) The court may make an order under this rule on application by a party to the proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.

- (4) The court may receive evidence on the hearing of an application for an order under this rule.

3569 Judicial review—additional requirements for certiorari order

(SCR o 55 r 8; Qld r 580; Vic 56.01 (5); SA r 98.11 (2))

A certiorari order may be granted only if—

- (a) a copy of the order, warrant, conviction, inquisition or record relevant to the proceeding, verified by an affidavit, has been filed in the court; or
- (b) the failure of the plaintiff to file the copy has been explained to the court's satisfaction.

3570 Judicial review—no proceeding in relation to things done under mandamus order

(SCR o 55 r 29; Qld r 581; SA r 98.12)

A proceeding must not be started or continued against someone in relation to anything done in obedience to an order of the court for relief in the nature of mandamus.

Part 3.11 Legal profession

Division 3.11.1 Legal profession—general

3600 Definitions—pt 3.11

In this part:

admission means admission to the legal profession under the Legal Profession Act.

application for admission means an application under the Legal Profession Act, section 26 (1).

Legal Profession Act means the *Legal Profession Act 2006*.

3601 Terms used in Legal Profession Act

(SC(ALP)R r 4 (2))

A term used in the Legal Profession Act has the same meaning in this part.

Note For example, the following terms are defined in the Legal Profession Act, dictionary:

- admissions board
- admission to the legal profession
- bar council
- compliance certificate (see s 30)
- conviction (see s 13 (1))
- law society council
- local roll
- suitability matters (for an individual) (see s 11).

EXPOSURE DRAFT

3602 Application—pt 3.11

This part applies only in relation to the Supreme Court.

Division 3.11.2 Admission of local lawyers

3605 Admission—approved academic qualifications (Legal Profession Act, s 21 (5))

(SC(ALP)R r 5)

The academic qualifications approved for admission to the legal profession in the ACT are—

- (a) the completion of a course of studies that qualifies a person for admission to the degree of Bachelor of Laws at the Australian National University or the University of Canberra or the degree of Juris Doctor at the University of Canberra; and
- (b) the passing, whether or not as part of a course mentioned in paragraph (a), of examinations, approved by the court, in courses in the following areas of law:
 - (i) criminal law and procedure;
 - (ii) the law of torts;
 - (iii) the law relating to contracts;
 - (iv) the law relating to property, both real (including the law relating to Torrens system land) and personal;
 - (v) equity, including trusts;
 - (vi) company law;
 - (vii) administrative law;

EXPOSURE DRAFT

- (viii) constitutional law of—
 - (A) the Commonwealth; and
 - (B) the Territory, a State or the Northern Territory;
- (ix) civil procedure;
- (x) evidence;
- (xi) professional conduct and the maintenance of trust accounts.

3606 Admission—approved practical legal training requirements (Legal Profession Act, s 21 (5))

(SC(ALP)R r 6)

The legal training requirements approved for admission to the legal profession in the ACT are satisfactory completion of the course of professional training in law in the Legal Workshop within the Faculty of Law of the Australian National University.

3607 Admission—evidence of completion of courses

(SC(ALP)R r 7)

For rule 3605 (Admission—approved academic qualifications (Legal Profession Act, s 21 (5))) and rule 3606 (Admission—approved practical legal training requirements (Legal Profession Act, s 21 (5))), a person is taken not to have completed, or satisfactorily completed, a course or passed an examination unless the appropriate officer of the university that conducted the course or examination gives a written certificate that the person has completed, or satisfactorily completed, the course or passed the examination.

EXPOSURE DRAFT

3608 Admission—application for admission

(SC(ALP)R rr 9-12)

- (1) An application for admission must be made by originating application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must be supported by—
- (a) an affidavit by the applicant; and
 - (b) at least 3 affidavits of character.
- (3) The applicant must file with the application 2 copies of the application and the affidavits mentioned in subrule (2).
- (4) The applicant's affidavit must—
- (a) state whether the applicant has been convicted of an offence in Australia or a foreign country; and
 - (b) if the applicant has been convicted of an offence in Australia or a foreign country—state particulars of the offence and the court by which, and the date when, the person was convicted; and
 - (c) whether the person has been convicted of an offence in Australia or a foreign country, and if so—
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;

Note The admission rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed.

EXPOSURE DRAFT

- (d) state whether there are other suitability matters relevant to the applicant's fitness for admission; and
- (e) state an address in Australia that is the applicant's address for service.

Note **Address for service** is defined in the dictionary.

- (5) An affidavit of character by a person must state—
 - (a) how long the person has known the applicant; and
 - (b) the circumstances in which the person has known the applicant; and
 - (c) whether there is or has been any professional or business relationship between the person and the applicant and, if so, the nature of the relationship; and
 - (d) whether the person is related to the applicant by blood, affinity or adoption; and
 - (e) the person's opinion about the fame and character of the applicant.
- (6) The court may direct that further evidence about an applicant's fame and character be given in support of the application.

3609 Admission—when application must be made

(SC(ALP)R r 12)

An application for admission must be made not later than 14 days before the day the application is to be heard.

3610 Admission—hearing days

(SC(ALP)R r 8)

- (1) Unless the Chief Justice otherwise directs, applications for admission may be heard—
 - (a) on the third Friday in February, June, August and October; and
 - (b) on the third Friday in April or, if that day is Good Friday, on the second Friday in April; and
 - (c) on the second Friday in December; and
 - (d) on any other days that the Chief Justice decides.
- (2) Applications for admission may also be heard on any other day that the Chief Justice decides.

3611 Admission—compliance certificate (Legal Profession Act, s 30 (2))

The admissions board must do the things required under the Legal Profession Act, section 30 (2) in relation to an application for admission not later than 7 days after the day the admissions board makes decides to give a compliance certificate to the applicant for admission.

3612 Admission—objection by bar council or law society council

(SC(ALP)R r 13)

- (1) This rule applies if the bar council or law society council intends to object to an application for admission.

- (2) Not later than 4 days before the day the application is to be heard, it must serve on the applicant—
 - (a) notice of its intention to object and the grounds for the objection; and
 - (b) a copy of each affidavit it intends to use in support of its objection.
- (3) After serving a notice under subrule (2), the bar council or law society council must file in the court a copy of—
 - (a) the notice; and
 - (b) each affidavit it intends to use in support of its objection.

3613 Admission—appearance by bar council or law society council

(SC(ALP)R r 14)

- (1) The bar council or law society council must, if asked by the court, appear and be heard on the hearing of an application for admission.
- (2) The bar council or law society council may, on its own initiative, appear and be heard on the hearing of an application for admission, otherwise than for the purpose of objecting to the admission of the applicant.

3614 Admission—applicant’s duty of frankness

(SC(ALP)R r 15)

In addition to complying with the requirements of this division, an applicant for admission must bring to the attention of the court anything that is relevant to the applicant’s fitness for admission.

3615 Admission—entry on local roll

After a person is admitted, the registrar must enter on the local roll—

- (a) the person's name; and
- (b) the date of the person's admission.

EXPOSURE DRAFT

Part 3.12 Small Claims Court

Division 3.12.1 Small Claims Court—preliminary

3700 Definitions—pt 3.12

(MC(CJ)R s 394)

In this part:

court means the Small Claims Court.

debt declaration, for a proceeding, means an order declaring that—

- (a) the plaintiff is or is not indebted to the defendant; or
- (b) the plaintiff is or is not indebted to the defendant in a stated amount; or
- (c) the plaintiff is or is not indebted to the defendant in an amount that is more than a stated amount.

nuisance application means an originating application claiming relief for nuisance.

restoration order means an order made under rule 3773 (Small Claims Court—restoration of proceeding).

trespass application means an originating application claiming relief for trespass to land.

3701 Application—pt 3.12

This part applies to a proceeding in the court.

3702 Small Claims Court—application of ch 2 generally

(MC(CJ)R s 395)

- (1) Except as provided by this rule, chapter 2 does not apply to a proceeding in the court.
- (2) The applied civil rules apply, with any necessary changes, to a proceeding in the court.
- (3) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- part 2.18 (Enforcement)
- part 2.19 (Interpleader proceedings)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

Division 3.12.2 Small Claims Court—starting proceeding

3705 Small Claims Court—assistance to members of public

(MC(CJ)R s 403)

The registrar or a member of the staff of the Magistrates Court must, if asked, explain to anyone the procedures of the court to assist the person participate in a proceeding in the court.

3706 Small Claims Court—who may start and carry on a proceeding

(MC(CJ)R s 484 and s 488)

- (1) A person may start and carry on a proceeding in the court—
- (a) in person; or
 - (b) by a solicitor acting for the person; or
 - (c) if the person is a corporation—by an officer or employee of the corporation authorised by the corporation to represent it.

Note Rule 275 (1) (Person with legal disability—litigation guardian to start proceeding etc) provides that a person with a legal disability may start or defend and carry on a proceeding only by the person’s litigation guardian.

- (2) An officer or employee mentioned in subrule (1) (c) must file with the first document that is filed in the court for the corporation in the proceeding—
- (a) an affidavit stating—
 - (i) the position the person holds in the corporation; and
 - (ii) that the person has been authorised by the corporation to represent the corporation in the proceeding; and
 - (iii) that the authority has not been revoked; and
 - (iv) that the person is aware that the person may be liable to pay some or all of the costs of the proceeding; and

- (b) a copy of an instrument authorising, or evidencing the authorisation of, the person to represent the corporation in the proceeding.

Note An *instrument* is defined in the Legislation Act, s 14 as any writing or other document. *Writing* and *document* are defined in the Legislation Act, dict, pt 1.

3707 Small Claims Court—originating application etc

(MC(CJ)R s 404)

- (1) A proceeding in the court may be started by—
- (a) an originating application; or
 - (b) if the proceeding is for a common boundaries determination—
an application in accordance with the *Common Boundaries Act 1981*, and not by originating application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A proceeding starts on the day the application under subrule (1) is filed in the court.
- (3) The application must state—
- (a) the nature of the claim and the relief sought; and
 - (b) any claim for interest up to the day of judgment; and
 - (c) the plaintiff's address for service.

Note *Address for service* is defined in the dictionary.

EXPOSURE DRAFT

3708 Small Claims Court—single application for each matter

(MC(CJ)R s 405)

- (1) A person may file only 1 originating application in relation to a claim for relief arising out of a single cause of action.
- (2) A person may file only 1 application in relation to a claim for relief arising out of a single fence under the *Common Boundaries Act 1981*.

3709 Small Claims Court—claim for interest

(MC(CJ)R s 407 and s 454 (1))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if interest is claimed in a proceeding up to the day of judgment—
 - (a) under a contractual agreement between the parties to the proceeding; or
 - (b) for a debt or liquidated amount.
- (3) The claim for interest—
 - (a) must state the period or periods for which interest is claimed; and
 - (b) must state the amount or amounts for which interest is claimed; and
 - (c) may state the rate or rates at which interest is claimed.
- (4) If a rate is not claimed under subrule (3) (c), the rate is taken to be the rate applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

EXPOSURE DRAFT

**3710 Small Claims Court—service of originating application
etc**

(MC(CJ)R s 408)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 18 deals with the service of an application under that Act.

- (2) If an originating application is filed in the court, the registrar must—
- (a) give the plaintiff a written notice summarising the possible courses of action open to the plaintiff in the proceeding, and when a conference or inquiry may be directed; and
 - (b) serve on the defendant—
 - (i) a sealed copy of the application; and
 - (ii) a written notice summarising the possible courses of action open to the defendant in the proceeding and when a conference or inquiry may be directed.

- (3) A person authorised by the registrar to serve an originating application must—
- (a) if the application is served by post under rule 6412 (Service of originating process by post—Magistrates Court)—complete and file in the court a certificate of postal service for the application; or

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (b) if the application is served otherwise than by post under rule 6412—file in the court an affidavit of service not later than 14 days after the day the application is served; or

EXPOSURE DRAFT

- (c) if service is attempted but the application is not served—endorse on the originating application the reason for non-service, sign the endorsement and return the application to the registrar not later than 14 days after the day service is attempted.

3711 Small Claims Court—response to originating application

(MC(CJ)R s 410, s 411 (1) and (4))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) The defendant may file a response to an originating application not later than—
- (a) 21 days after the day the application is served on the defendant; or
- (b) any shorter period directed by the registrar under rule 3713 (Small Claims Court—response to nuisance application or trespass application).

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If a defendant files a response, the registrar must serve a sealed copy of the response on the plaintiff.

3712 Small Claims Court—counterclaim and set-off

(MC(CJ)R s 453)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) The defendant may make a counterclaim in a response instead of filing a separate originating application.

- (3) The defendant may rely on set-off (whether or not of an ascertained amount) as a response to all or part of the plaintiff's claim for relief, whether or not it is also included as a counterclaim.
- (4) A counterclaim or set-off must not exceed \$10 000.
- (5) If the defendant's total entitlement to any set-offs and in relation to any counterclaim exceeds \$10 000, the defendant may—
 - (a) abandon the excess by limiting the total amount to \$10 000; or
 - (b) apply to transfer the proceeding to the Magistrates Court under rule 3762 (Small Claims Court—transfer of proceeding to Magistrates Court).

3713 Small Claims Court—response to nuisance application or trespass application

(MC(CJ)R s 411 (2) and (3))

- (1) This rule applies to a nuisance application or trespass application.
- (2) The registrar may, on written application by the plaintiff, order that any response to the application be filed less than 21 days after the day the application is served.
- (3) The registrar must make an order under subrule (2) only if satisfied that the order is necessary or desirable to avoid unreasonable hardship to the plaintiff.
- (4) If the registrar makes an order under subrule (2), the registrar must serve a sealed copy of the order on the defendant.

EXPOSURE DRAFT

3714 Small Claims Court—amendment

(MC(CJ)R s 409)

The court may, at any stage of a proceeding, on application by a party or on its own initiative, amend a document in the proceeding in any way the court considers appropriate.

Division 3.12.3 Small Claims Court—admission of liability

3720 Application of div 3.12.3—common boundary applications

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3721 Small Claims Court—admission of liability

(MC(CJ)R s 412 and s 415)

- (1) A defendant to a proceeding may, in a response filed in the court—
- (a) admit liability for all or part of the plaintiff’s claim for relief; and
 - (b) state any conditions on which liability is admitted, for example, time for payment or payment by instalments.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the defendant admits liability under subrule (1), the plaintiff may accept the admission of liability by filing in the court a notice accepting liability not later than 21 days after the day the response is served on the plaintiff.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If the plaintiff accepts the defendant's admission of liability, the court must enter judgment for the plaintiff by consent, subject to the conditions (if any) on which the defendant admitted liability.
- (4) If the court enters judgment under subrule (3), the registrar must—
- (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).

3722 Small Claims Court—payment into court

(MC(CJ)R s 413)

- (1) If a defendant in a proceeding admits liability to pay an amount to the plaintiff, the defendant may pay the amount into court.
- (2) If the amount paid into court is the amount claimed by the plaintiff, and the plaintiff's claim for relief does not ask for any other order, the court must enter judgment for the plaintiff for the amount.
- (3) If the court enters judgment under subrule (2), the registrar must pay the amount paid into court to the plaintiff.
- (4) If the amount paid into court is not the amount claimed by the plaintiff, or the plaintiff's claim for relief asks for another order, the amount must stay in court until the court otherwise orders.

EXPOSURE DRAFT

Division 3.12.4 Small Claims Court—no response to claim

3725 Small Claims Court—default judgment

(MC(CJ)R s 417)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the defendant in a proceeding—
 - (a) does not file a response to the originating application in accordance with rule 3711 (2); or
 - (b) files a response to the application but later withdraws the response by written notice filed in the court.
- (3) The plaintiff may file in the court an application for default judgment not later than 1 year and 21 days after the day the originating application was served on the defendant.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) If the plaintiff applies for default judgment under subrule (3), the court must—
 - (a) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the plaintiff against the defendant; or
 - (b) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the plaintiff against the defendant for damages to be assessed or the orders sought to be decided.

EXPOSURE DRAFT

- (5) If subrule (4) (a) applies, the registrar must—
- (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.
- Note* For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).
- (6) If subrule (4) (b) applies, the registrar must—
- (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order; and
 - (c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and
 - (d) tell the parties the date set for the inquiry not later than 10 days before the date set.
- Note* For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).
- (7) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3).
- (8) The court may enter default judgment under this rule in favour of the plaintiff without a hearing.

EXPOSURE DRAFT

3726 Small Claims Court—striking out application

(MC(CJ)R s 418)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) An originating application is taken to be struck out at the end of 1 year and 22 days after the day the application is filed in the court if—
 - (a) a response has not been filed; and
 - (b) judgment has not been entered or the application has not otherwise been disposed of.
- (3) A plaintiff whose application is struck out under this rule may file a new originating application not later than 1 year after the day it is struck out.
- (4) For any time limit (including a limitation period), an originating application that is started under subrule (2) is taken to have started on the day the originating application that was struck out under subrule (1) was filed.

Division 3.12.5 Small Claims Court—disputed claim

3730 Small Claims Court—disputed claim

(MC(CJ)R s 410 and s 416)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if a defendant in a proceeding—
 - (a) files a response in the court in accordance with rule 3711 (2) denying liability for the plaintiff’s claim for relief; or

- (b) files a response in accordance with rule 3711 (2) admitting liability for the plaintiff's claim for relief, but—
 - (i) any amount paid into court under rule 3722 is less than the amount claimed by the plaintiff; and
 - (ii) the plaintiff does not accept the defendant's admission of liability in accordance with rule 3721 (2).
- (3) The registrar must—
 - (a) set a date for a conference between the parties; and
 - (b) tell the parties the date set for the conference not later than 10 days before the date set.
- (4) However, if the registrar is satisfied that a conference will not help the resolution of the issues in dispute between the parties, the registrar may—
 - (a) set a date for an inquiry; and
 - (b) tell the parties the date set for the inquiry not later than 10 days before the date set.

Division 3.12.6 Small Claims Court—conferences

3740 Application—div 3.12.6

(MC(CJ)R s 419)

This division applies if—

- (a) a proceeding is set down for a conference under rule 3730 (3) or another territory law; or

Note A **territory law** includes these rules (see Legislation Act, s 98).

EXPOSURE DRAFT

- (b) the court orders a conference to be held in accordance with a restoration order, or at any stage of the proceeding; or
- (c) an application under the *Common Boundaries Act 1981* is set down for a conference; or
- (d) a territory law provides that a conference be held.

3741 Small Claims Court conference—setting conference date

- (1) This rule applies if the court orders a conference to be held.
- (2) The registrar must—
 - (a) set a date for the conference; and
 - (b) tell the parties the date set for the conference not later than 10 days before the date set.

3742 Small Claims Court conference—changing time or place of

(MC(CJ)R s 421 and s 424)

- (1) The court may change the time or place of a conference if it considers the change appropriate.
- (2) The court may adjourn a conference if satisfied a party to the proceeding, or the party's representative, has a reasonable reason for not being able to attend the conference.
- (3) If the court changes the time or place of, or adjourns, a conference, the registrar must tell the parties about the change or adjournment.

3743 Small Claims Court conference—representation

(MC(CJ)R s 422)

A party to a proceeding may be represented at a conference by someone else.

3744 Small Claims Court conference—who may attend

(MC(CJ)R s 423)

Only the following people may attend a conference:

- (a) a party to the proceeding;
- (b) a representative of a party to the proceeding;
- (c) the registrar or any officer or member of the staff of the Magistrates Court;
- (d) anyone authorised in writing by the Chief Magistrate to attend the conference, or to attend conferences generally;
- (e) anyone authorised in writing by the Attorney-General to attend the conference, or to attend conferences generally.

3745 Small Claims Court conference—failure to attend

(MC(CJ)R s 428)

- (1) This rule applies to a party to a proceeding if—
 - (a) the registrar tells the party the date set for a conference; and
 - (b) the party fails to attend the conference, either personally or by a representative; and
 - (c) the court is not satisfied the party has a reasonable excuse for failing to attend the conference.
- (2) If this rule applies to the plaintiff, or all parties to the proceeding, the court must dismiss the application.

- (3) If this rule applies to a defendant, but does not apply to the plaintiff, the court must—
- (a) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the plaintiff against the defendant; or
 - (b) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the plaintiff against the defendant for damages to be assessed or the orders sought to be decided.
- (4) If subrule (2) or (3) (a) applies, the registrar must—
- (a) serve a sealed copy of the order dismissing the application or the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.
- Note* For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).
- (5) If subrule (3) (b) applies, the registrar must—
- (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order; and
 - (c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and
 - (d) tell the parties the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).

EXPOSURE DRAFT

3746 Small Claims Court conference—procedure

(MC(CJ)R s 420, s 425 and s 426)

- (1) At a conference in a proceeding, the court may—
 - (a) decide what are the real issues in dispute between the parties; and
 - (b) by conciliation, help the parties reach an agreement on conditions the court considers just; and
 - (c) if an adjournment of the conference is likely to help the parties reach an agreement—adjourn the conference on the conditions the court considers appropriate; and
 - (d) if the issues in dispute cannot be resolved—ensure the parties to do everything reasonable and necessary for an inquiry to take place as soon as practicable.
- (2) If the issues in dispute are resolved between the parties at the conference, the parties may file a consent judgment in accordance with rule 3780 (Small Claims Court order—consent judgment).
- (3) If the issues in dispute are not resolved at the conference, and the court is satisfied there is no reasonable possibility of the parties reaching an agreement about the issues in dispute, the court must—
 - (a) estimate the time required for an inquiry; and
 - (b) adjourn the conference.
- (4) If subrule (3) applies, the registrar must—
 - (a) set a date for the inquiry; and
 - (b) tell the parties the date set for the inquiry not later than 10 days before the date set.

EXPOSURE DRAFT

Division 3.12.7 Small Claims Court—inquiries

3750 Application—div 3.12.7

(MC(CJ)R s 429)

- (1) This division applies if—
 - (a) a proceeding has been set down for an inquiry under this part or another territory law; or
 - (b) an application under the *Common Boundaries Act 1981* has been set down for an inquiry; or
 - (c) a territory law provides that an inquiry be held.

Note A **territory law** includes these rules (see Legislation Act, s 98).

3751 Small Claims Court inquiry—constitution

(MC(CJ)R s 430)

A magistrate or referee sitting alone must preside at an inquiry.

3752 Small Claims Court inquiry—changing time or place of

(MC(CJ)R s 437)

- (1) The court may change the time or place of an inquiry if it considers the change appropriate.
- (2) The court may adjourn an inquiry if satisfied that an adjournment is necessary in the interests of justice.
- (3) If the court changes the time or place of, or adjourns, an inquiry, the registrar must tell the parties about the change or adjournment.

EXPOSURE DRAFT

3753 Small Claims Court inquiry—representation

(MC(CJ)R s 434)

A party to a proceeding may be represented at an inquiry by someone else.

3754 Small Claims Court inquiry—failure to attend

(MC(CJ)R s 441)

- (1) This rule applies to a party to a proceeding if—
 - (a) the registrar tells the party the date set for an inquiry; and
 - (b) the party fails to attend the inquiry, either personally or by a representative; and
 - (c) the court is not satisfied the party has a reasonable excuse for failing to attend the inquiry.
- (2) If this rule applies to the plaintiff, or all parties to the proceeding, the court may dismiss the application.
- (3) If this rule applies to a defendant, but does not apply to the plaintiff, the court may enter default judgment for the plaintiff against the defendant.
- (4) If this rule applies to a defendant, but does not apply to the plaintiff, in an application in a proceeding, the court may make the orders sought in the application.
- (5) If the court makes an order under this rule, the registrar must—
 - (a) serve a sealed copy of the order on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).

EXPOSURE DRAFT

3755 Small Claims Court inquiry—procedure

(MC(CJ)R s 431 and 433)

- (1) At an inquiry, the court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.
- (2) Evidence in an inquiry must not be given on oath.
Note **Oath** includes affirmation (see Legislation Act, dict.)
- (3) However, the court may require a witness to give evidence on oath if the court considers it necessary or desirable for properly deciding the application.
- (4) The court must otherwise adopt procedures that it considers appropriate for an inquiry to be finalised promptly and with as little formality as possible.

3756 Small Claims Court inquiry—investigators

(MC(CJ)R s 432)

- (1) For an inquiry, the court may appoint an investigator to investigate any question of fact arising in a proceeding.
- (2) An appointment under subrule (1) must state—
 - (a) particulars of the question to be investigated; and
 - (b) any conditions on which the appointment is made.
- (3) An investigator appointed under subrule (1) must—
 - (a) investigate any question of fact mentioned in the appointment; and
 - (b) file a written report on the question in the court.
- (4) The court may accept, amend or reject all or part of the investigator's report, as the court considers appropriate.

- (5) The court may decide the remuneration of an investigator.
- (6) The Territory must pay the investigator's remuneration.
- (7) However, the court may order a party to pay a proportion of the remuneration.
- (8) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

Division 3.12.8 Small Claims Court—transfer of proceedings between courts

3760 Application of div 3.12.8—common boundary applications

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3761 Small Claims Court—transfer of proceedings from Magistrates Court

(MC(CJ)R s 439)

- (1) The Magistrates Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Magistrates Court be transferred to the Small Claims Court.
Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (2) The Magistrates Court may make an order under subrule (1) only if satisfied that—
 - (a) the proceeding could have been started in the Small Claims Court; and

EXPOSURE DRAFT

- (b) transferring the proceeding to the Small Claims Court would not be unfair to any party to the proceeding.
- (3) If the Magistrates Court makes an order under subrule (1) in relation to a proceeding—
 - (a) this part applies as if, for any step taken in the proceeding under chapter 2 (Civil proceedings generally), the corresponding step under this part had been taken in the proceeding; and
 - (b) any evidence given in the proceeding in the Magistrates Court is taken to have been given in the Small Claims Court.
- (4) Rule 3770 (Small Claims Court—applications in proceedings) does not apply to an application under this rule.

3762 Small Claims Court—transfer of proceeding to Magistrates Court

(MC(CJ)R s 438)

- (1) The Small Claims Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Small Claims Court be transferred to the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) and r 3770 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (2) The Small Claims Court may make an order under subrule (1) only if satisfied that transferring the proceeding to the Magistrates Court would not be unfair to any party to the proceeding.
- (3) If the Small Claims Court makes an order under subrule (1) in relation to a proceeding—

- (a) chapter 2 (Civil proceedings generally) applies as if, for any step taken in the proceeding under this part, the corresponding step under that chapter had been taken in the proceeding; and
- (b) any evidence given in the proceeding in the Small Claims Court is taken to have been given in the Magistrates Court.

Division 3.12.9 Small Claims Court—general provisions

3770 Small Claims Court—applications in proceedings

(MC(CJ)R s 436)

- (1) This rule applies to an application in a proceeding under this part, other than an application in a proceeding under the *Common Boundaries Act 1981*.

Note 1 An **application** in a proceeding is defined in r 6006 (Application—pt 6.2)

Note 2 Part 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) If an application to which this rule applies is filed in the court, the registrar must—
 - (a) set a date for an inquiry in relation to the application; and
 - (b) serve a stamped copy of the application on each other party to the proceeding not later than 3 days before the date set for the inquiry; and
 - (c) tell the parties the date set for the inquiry.
- (3) Part 6.2 (Applications in proceedings) does not apply in relation to service of the application or of the supporting material (if any) for the application.

EXPOSURE DRAFT

3771 Small Claims Court—discontinuance of proceeding

(MC(CJ)R s 440)

- (1) The plaintiff may, at any stage of a proceeding, discontinue the proceeding by filing a notice of discontinuance in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If the plaintiff discontinues the proceeding, the registrar must—
- (a) serve a stamped copy of a notice of discontinuance on the other parties to the proceeding; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).

3772 Small Claims Court—dismissal for abuse of process

(MC(CJ)R s 442)

- (1) The court may, at any stage of a proceeding, dismiss all or part of the proceeding, if it considers the proceeding to be—

- (a) frivolous, scandalous, unnecessary or vexatious; or
- (b) otherwise an abuse of the process of the court.

- (2) The court may make an order under subrule (1) on the application of a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) and r 3770 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (3) The court may receive evidence in an inquiry for an order under subrule (1).

- (4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3773 Small Claims Court—restoration of proceeding

(MC(CJ)R s 443)

- (1) On application by a party to a proceeding, the court may order that the proceeding be restored (a *restoration order*) if—
- (a) the proceeding has been dismissed under—
 - (i) rule 3745 (2) (Small Claims Court conference—failure to attend); or
 - (ii) rule 3754 (2) (Small Claims Court inquiry—failure to attend); or
 - (b) the proceeding has been discontinued under rule 3771 (Small Claims Court—discontinuance of proceeding); or
 - (c) default judgment has been entered in the proceeding under—
 - (i) rule 3725 (4) (Small Claims Court—default judgment); or
 - (ii) rule 3745 (3) (Small Claims Court conference—failure to attend); or
 - (iii) rule 3754 (3) (Small Claims Court inquiry—failure to attend); or
 - (d) consent judgment has been entered in the proceeding under—
 - (i) rule 3721 (3) (Small Claims Court—admission of liability); or

EXPOSURE DRAFT

(ii) rule 3780 (Small Claims Court order—consent judgment).

Note Pt 6.2 (Applications in proceedings) and r 3770 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (2) If the court makes a restoration order in a proceeding, the court may also make any of the following orders:
- (a) an order setting aside a judgment, including a judgment entered by default or by consent;
 - (b) an order for the payment of costs;
 - (c) an order staying a proceeding until costs are paid;
 - (d) an order setting aside any proceeding taken to enforce a judgment set aside under this rule;
 - (e) any order the court considers appropriate for the future conduct of the proceeding, including an order that a conference be held between the parties, or an order about the priority of an inquiry in a proceeding;
 - (f) any other order the court considers just.
- (3) The court may set aside a consent judgment only if any of the following apply in relation to the application for judgment or the entry of judgment:
- (a) fraud;
 - (b) duress;
 - (c) suppression of relevant information or evidence;
 - (d) false evidence or information given and relied on;
 - (e) change of circumstances;

EXPOSURE DRAFT

- (f) impracticability of enforcement;
 - (g) any other ground the court considers just.
- (4) If the court does not make a restoration order on an application under subrule (1), the court may make any order for costs it considers appropriate.
- (5) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3774 Small Claims Court—costs

(MC(CJ)R s 456)

- (1) The court must not make an order in relation to costs in a proceeding, except in accordance with this part.
- (2) A judgment in favour of a party must include an order that the party liable for the judgment pay to the party entitled to the judgment—
- (a) the amount of any fee paid by the party entitled to the judgment; and
 - (b) any expenses incurred by the party entitled to the judgment in relation to the proceeding, other than the costs of representation by a lawyer.
- (3) The court may make an order for costs (other than the costs of representation by a lawyer) in favour of a party to a proceeding (the *first party*) against another party to the proceeding (the *second party*) for expenses unnecessarily incurred by the first party because of any act or omission of the second party.
- (4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

EXPOSURE DRAFT

Division 3.12.10 Small Claims Court—orders

3780 Small Claims Court order—consent judgment

(MC(CJ)R s 425 and s 451)

- (1) A party to a proceeding may file a draft consent judgment at any time before judgment is entered by the court if—
 - (a) the parties to the proceeding agree on the judgment; and
 - (b) the judgment is signed by, or on behalf of, each party to the proceeding; and
 - (c) the judgment is witnessed by the registrar, a lawyer or a justice of the peace.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If a consent judgment is filed under this rule the court must enter judgment in accordance with the draft consent judgment.
- (3) If subrule (2) applies, the registrar must—
 - (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3773 (Small Claims Court—restoration of proceeding).

EXPOSURE DRAFT

3781 Small Claims Court order—counterclaim or set-off

(MC(CJ)R s 453 (2))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if—
 - (a) the defendant relies on set-off or makes a counterclaim; and
 - (b) the set-off or counterclaim is successful; and
 - (c) the total amount of any successful set-off and counterclaim exceeds the amount for which the plaintiff is otherwise entitled to judgment.
- (3) The court must enter judgment for the defendant for the amount of the excess.

3782 Small Claims Court order—to perform work etc

(MC(CJ)R s 457)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the court enters judgment in a proceeding.
- (3) The court may order a defendant in the proceeding either to—
 - (a) perform work, or do something else, to rectify a defect in goods or services related to the plaintiff's claim for relief in accordance with any conditions the court considers appropriate; or
 - (b) pay an amount to the plaintiff.

EXPOSURE DRAFT

- (4) Alternatively, the court may order a defendant in the proceeding—
- (a) to pay an amount to the plaintiff; and
 - (b) either to—
 - (i) perform work, or do something else, to rectify a defect in goods or services related to the plaintiff’s claim for relief in accordance with any conditions the court considers appropriate; or
 - (ii) pay a further amount to the plaintiff.

3783 Small Claims Court order—payment on condition work performed etc

(MC(CJ)R s 458)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the court enters judgment in a proceeding requiring—
 - (a) a party (the *first party*) to pay an amount into court; and
 - (b) another party (the *second party*) to perform work, or do something else, to rectify a defect in goods or services.
- (3) The court may include in the judgment a condition that the registrar is not to pay the amount out of court until the second party has performed the work or otherwise complied with the judgment.

3784 Small Claims Court order—detention of goods

(MC(CJ)R s 217 and s 459)

- (1) This rule applies to a proceeding in relation to the detention of goods.
- (2) The court may give judgment for the plaintiff against the defendant, in accordance with the plaintiff's claim for relief, for either—
 - (a) the return of the goods to the plaintiff, or the retention of the goods by the defendant and payment to the plaintiff of the value of the goods; or
 - (b) payment to the plaintiff of the value of the goods.
- (3) If the court gives judgment for the return of goods, it may state a date before which the return must take place.
- (4) If the court gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the plaintiff's application, order the defendant to pay the value of the goods to the plaintiff.

Note Pt 6.2 (Applications in proceedings) and r 3770 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (5) If the court gives judgment under subrule (2) (a), and the plaintiff subsequently applies for an order under this subrule, the court may make an order for the return of the goods to the plaintiff without the option of the defendant retaining the goods and paying their value.
- (6) In this rule:

value, of the goods, means the value assessed by, or in accordance with the directions of, the court.

EXPOSURE DRAFT

3785 Small Claims Court order—nuisance application

(MC(CJ)R s 463 (d))

- (1) The court may grant the same relief on a nuisance application as the Supreme Court may grant in a proceeding for nuisance.
- (2) Subrule (1) is subject to this part.

3786 Small Claims Court order—trespass application

(MC(CJ)R s 460)

- (1) The court may grant the same relief on a trespass application as the Supreme Court may grant in a proceeding for trespass to land.
- (2) Subrule (1) is subject to this part.

3787 Small Claims Court order—debt declaration

(MC(CJ)R s 461)

The court may make a debt declaration in a proceeding for a debt declaration.

3788 Small Claims Court order—joint liability

(MC(CJ)R s 464)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 19 deals with apportionment of liability for orders made in relation to an application under that Act.

- (2) This rule applies if—
 - (a) 2 or more people are jointly liable in relation to a cause of action in a proceeding; and
 - (b) 1 or more, but not all, of the people jointly liable are served with the originating application.

EXPOSURE DRAFT

- (3) The court may enter judgment in relation to the cause of action against any 1 or more of the people served with the originating application, and the judgment may be enforced against anyone against whom judgment is entered.
- (4) If judgment is entered in relation to the cause of action against 1 or more, but not all, of the people jointly liable in relation to the cause of action—
 - (a) the liability of the people jointly liable against whom judgment is not entered (the *other people*) is not discharged by the judgment or any enforcement of the judgment; and
 - (b) the people against whom judgment is entered (the *judgment parties*) and the other people are, as between the judgment parties on the one hand and the other people on the other hand, liable severally but not jointly; and
 - (c) if there are 2 or more other people—the other people are jointly liable as between themselves; and
 - (d) if the judgment is satisfied or partly satisfied—the liability of the other people is discharged to the extent to which the judgment is satisfied.
- (5) Subrule (4) does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.
- (6) This rule does not apply to a proceeding to which the *Civil Law (Wrongs) Act 2002*, section 107F (Proportionate liability for apportionable claims) applies.

EXPOSURE DRAFT

3789 Small Claims Court order—notice

(MC(CJ)R s 465)

- (1) This rule applies if the court makes an order affecting a person in the person's absence.
- (2) The registrar must serve a sealed copy of the order on the person.

3790 Small Claims Court order—payment of amount

(MC(CJ)R s 467)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, provides for orders to be made in relation to the payment of an amount (see s 5 (2) (e), s 7 (3) (e) and s 12 (3) (e)).

- (2) If an amount is payable under an order, the person liable to pay must pay the amount into court.
- (3) The registrar must pay an amount paid into court to the person entitled to the payment.
- (4) Subrule (3) is subject to any condition included in a judgment under rule 3783 (3) (Small Claims Court order—payment on condition work performed etc).

3791 Small Claims Court order—other orders

(MC(CJ)R s 462)

- (1) The court may, in a proceeding—
 - (a) make any order it considers necessary in exercising its jurisdiction under another territory law; or
 - (b) any other order it considers appropriate.

Part 3.13 Workers compensation

Division 3.13.1 Workers compensation proceedings—general

3880 Definitions—pt 3.13

(WCR dict)

In this part:

arbitration means arbitration under the Workers Compensation Act.

case management meeting means a case management meeting held under rule 3945 (1).

claim includes a matter or question arising under the Workers Compensation Act to be decided by arbitration.

conciliation means conciliation under the Workers Compensation Act.

contractor—see the Workers Compensation Act, section 13 (Subcontracting).

injury notice—see the Workers Compensation Act, section 123 (The notice for an injury).

prescribed scale of costs means the scale of costs in schedule 4 (Scale of costs).

principal—see the Workers Compensation Act, section 13 (Subcontracting).

representative, for a party to an arbitration, means a lawyer or other person who represents the party.

EXPOSURE DRAFT

third-party respondent—see rule 3901 (Arbitration—including other parties).

Workers Compensation Act means the *Workers Compensation Act 1951*.

3881 Terms used in Workers Compensation Act

A term used in the Workers Compensation Act has the same meaning in this part.

Note For example, the following terms are defined in the Workers Compensation Act, dictionary:

- dependant
- employer (see s 5 etc)
- injured worker (see s 86)
- insurer
- medical referee
- registered agreement
- self-insurer.

3882 Application—pt 3.13

(WCR r 5)

This part applies only in relation to—

- (a) the Magistrates Court; and
- (b) an injury to which the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, applies.

Note With some exceptions (see Workers Compensation Act, s 234 (now expired)), the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, does not apply to injuries that happened before the commencement of the amending Act ie 1 July 2002.

3883 Workers compensation proceedings—application of ch 2 generally

(WCR r 64)

- (1) Except as provided by this rule, chapter 2 does not apply to a proceeding under this part.
- (2) The applied civil rules apply, with any necessary changes, to a proceeding under this part.
- (3) Part 2.18 (Enforcement) applies, with any necessary changes, to a proceeding for enforcement of, or the recovery of money payable under, an award of the court or a registered agreement as if it were a judgment of the court.
- (4) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- part 2.17 (Costs)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

EXPOSURE DRAFT

Division 3.13.2 Workers compensation—applications for arbitration

Note for div 3.13.2

The *Workers Compensation Regulation 2002*, div 6.2 deals with conciliation. A conciliation of a matter in issue arising from a worker's claim for compensation (other than rejection of the claim by an insurer) must be held before arbitration of the matter (see s 38). The *Workers Compensation Regulation 2002*, pt 7 provides for a committee rather than the court to arbitrate matters in certain cases (see esp s 51).

3885 Application for arbitration—Commercial Arbitration Act not apply

(WC Reg s 49)

The *Commercial Arbitration Act 1986* does not apply to an arbitration.

3886 Application for arbitration—by worker

(WCR r 9)

- (1) An injured worker may ask that a claim be decided by arbitration by filing an application in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must state briefly, but specifically, the claim to be arbitrated.

EXPOSURE DRAFT

3887 Application for arbitration—by dependant or estate of deceased worker

(WCR r 10)

- (1) A dependant, or the personal representative, of a deceased worker may ask that a claim be decided by arbitration by filing an application in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must—
- (a) contain details of each dependant on whose behalf the application is made; and
 - (b) state briefly, but specifically, the claim to be arbitrated; and
 - (c) be accompanied by a certified copy of—
 - (i) the worker’s death certificate; and
 - (ii) the birth certificate of each dependant.
- (3) In this rule:
dependant includes a person claiming to be a dependant.

3888 Application for arbitration—by employer or insurer

(WCR r 11)

- (1) An employer or insurer may ask that a claim be decided by arbitration by filing an application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must state briefly, but specifically, the claim to be arbitrated.

3889 Application for arbitration—when application may be filed

(WC Reg s 48)

An injured worker or the worker’s employer may file an application for the arbitration of—

- (a) a matter in issue arising from the worker’s claim for compensation only if—
 - (i) the worker or employer has asked a conciliator to help the parties reach agreement on the matter; and
 - (ii) the parties have attended the conciliation; and
 - (iii) either the matter was not resolved at the conciliation or the conciliator decided that the matter was not suitable for conciliation; or
- (b) the insurer’s rejection of the worker’s claim for compensation.

3890 Application for arbitration—injury notice and medical evidence

(WCR r 12)

- (1) An application for arbitration filed in the court must be accompanied by—
 - (a) if available to the applicant—a copy of the injury notice in relation to the claim; and
 - (b) a copy of all available medical evidence the applicant intends to rely on.
- (2) If no injury notice was given in relation to the claim, the application must contain details of why no notice was given.

3891 Application for arbitration—copies

(WCR r 13)

When filing an application for arbitration in the court, the applicant must also file—

- (a) 1 copy for each respondent; and
- (b) for each respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3892 Application for arbitration—service on respondent

(WCR r 14)

- (1) An applicant for arbitration must serve a sealed copy of the application on each respondent not later than 14 days after the day the application is filed in the court.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) The applicant must file in the court an affidavit of service of the application on a respondent unless the respondent has filed an answer.
- (3) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the applicant must serve a sealed copy of the order with the application.

3893 Application for arbitration—service on insurer

(WCR r 15)

- (1) An employer (other than a self-insurer) who is a respondent to an application for arbitration must serve a copy of the application on the employer's insurer not later than 7 days after the day the employer is served with the application.

- (2) An employer included as a third-party respondent must serve a copy of the notice including the employer on the employer's insurer not later than 7 days after the day the employer is served with the notice.

Note Rule 3901 deals with including other parties.

3894 Application for arbitration—answer by respondent or third-party respondent

(WCR r 16)

- (1) A respondent to an application for arbitration may file an answer.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The answer must be filed not later than 28 days after the day the respondent is served with the application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (3) A third-party respondent may file an answer to the third-party notice including the respondent not later than 28 days after the day the respondent is served with the notice.

Note Rule 3901 deals with including other parties.

- (4) When filing an answer in the court, the respondent must also file—

- (a) 1 copy for the applicant; and
- (b) 1 copy for each other respondent; and
- (c) for each other respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

**3895 Application for arbitration—liability and particulars
subject to answer**

(WCR r 39)

- (1) An answer to an application for arbitration must admit or deny each claim and admit or deny each particular set out in the application.
- (2) If no admission or denial of a claim or particular is made, the claim or particular is taken to be admitted.
- (3) If a respondent worker does not file an answer, subrule (2) does not apply to a particular denying, completely or partly, liability to pay compensation.
- (4) If a respondent employer wishes to deny a claim or particular, but has not done so in an answer, the court may—
 - (a) allow the respondent to raise a matter the respondent should have included, or given notice of, in an answer; or
 - (b) adjourn the arbitration to a stated time or for a stated period to allow the respondent to file an answer.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

3896 Application for arbitration—service of answer

(WCR r 17)

- (1) A respondent must serve a sealed copy of the answer on the applicant and each other respondent.

Note The answer must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

- (2) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the respondent must serve a sealed copy of the order with the answer.

Division 3.13.3 Workers compensation—parties for arbitration

3900 Arbitration—necessary parties

(WCR r 28)

- (1) A person whose participation is necessary for the court to completely and finally decide all matters in issue in an arbitration must be included as a party in the arbitration.

Example

If both a principal and a contractor, or more than 1 employer, may be liable in relation to the compensable injury, each of them must be included as a respondent.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The court may require a person to be included as a party.

Example

If, for an application on behalf of dependants of a deceased worker, a dependant fails to join in the application, the dependant may be included as a respondent.

- (3) Each party other than the applicant is a respondent.
- (4) The court may decide a claim even if a person is incorrectly included or not included as a party.

EXPOSURE DRAFT

3901 Arbitration—including other parties

(WCR r 29)

- (1) An applicant may include someone else as a party to an arbitration by naming the person in the application.
- (2) A respondent may include someone else as a party to an arbitration (a *third-party respondent*) by filing a third-party notice.

Example

If a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease, a respondent employer claiming to be entitled to contribution from another employer may include the other employer as a third-party respondent.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (3) A party including a person as a third-party respondent must, not later than 14 days after the day the party files the notice—
 - (a) serve a sealed copy of the notice, the application for arbitration and any answer filed in the arbitration, on the person; and
 - (b) serve a sealed copy of the notice on each other party to the arbitration.
- (4) The court may, at any time, order a party who has included a person as a party in an arbitration to—
 - (a) serve on the person any document in the arbitration; or
 - (b) file and serve on the person and each other party an affidavit setting out the basis on which the person has been included.

EXPOSURE DRAFT

3902 Arbitration—person may apply to be included as party

(WCR r 30)

A person may apply to the court to be included as a party to an arbitration.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3903 Arbitration—party may apply to be removed as party

(WCR r 31)

A party to an arbitration may apply to the court to be removed as a party.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3904 Arbitration—employer not respondent in certain applications by dependant or personal representative

(WCR r 32)

- (1) This rule applies if—
 - (a) a dependant, or the personal representative, of a deceased worker asks that a claim be decided by arbitration; and
 - (b) the amount of compensation payable to the dependants of the deceased worker is not an issue in the arbitration.

- (2) The employer is not a respondent in the arbitration if the employer has paid the amount of compensation—
- (a) to the applicant; or
 - (b) into court to be dealt with as the court directs.

Division 3.13.4 Workers compensation— representation in arbitrations

3910 Arbitration—party may be represented

(WCR r 34)

- (1) A party to an arbitration may be represented by—
- (a) a lawyer; or
 - (b) with leave of the court—
 - (i) if the party is an injured worker—a member of the party's family; or
 - (ii) an employee of the party; or
 - (iii) if the party is a corporation—a director or officer of the corporation; or
 - (iv) if the party is a member of an organisation—an officer or member of the organisation; or
 - (v) in special circumstances, anyone else.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave.
- (2) A person who represents a party with the court's leave must file in the court an authority to act signed by the party.

EXPOSURE DRAFT

- (3) The court may allow a person other than a lawyer to claim travelling expenses for representing a party in an arbitration.

Note A lawyer representing a party may claim costs and reasonable disbursements, see r 3990(Workers compensation costs—generally).

- (4) Also, the court may allow a worker, or a member of the worker’s family who represents the worker, an allowance for time spent at the arbitration.

Division 3.13.5 Workers compensation—listing procedure for arbitrations

3915 Arbitration listing procedure—certificate of readiness

(MCPD 1/2000 par 5 and 6)

- (1) If a party to an arbitration is ready for arbitration, the party must—
- (a) complete and sign a certificate of readiness for the party; and
 - (b) serve a copy of the completed and signed certificate on each other party to the arbitration to be completed and signed by each other party.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) Each party who is served with a certificate of readiness must—
- (a) if the party is ready for arbitration—complete and sign the certificate for the party and return it to the party who served it; or
 - (b) if the party is not ready for arbitration—return the unsigned certificate to the party who served it.

- (3) If a certificate of readiness is filed in the court for an application for arbitration, the court must include the application in a callover list.
- (4) The registrar must tell the parties the date set for the callover.
- (5) At the callover the court may set a hearing date for the arbitration.

3916 Arbitration listing procedure—certificate of readiness not signed

(MCPD 1/2000 par 8)

- (1) This rule applies if—
 - (a) a party to an arbitration has served a certificate of readiness under rule 3915 (1); and
 - (b) another party to the arbitration has failed to complete and sign the certificate, and return the completed and signed certificate to the first party, within 21 days after the day the certificate was served on the other party.
- (2) The first party may apply to the court for an order that the application be placed in the callover list, even though the certificate of readiness has not been filed in the court.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (3) On an application under subrule (2), the court—
 - (a) must decide whether the application is ready for arbitration; and
 - (b) may—
 - (i) give the directions it considers appropriate to have the application made ready for arbitration; or

EXPOSURE DRAFT

- (ii) order that the application be placed in the callover list, even though a certificate of readiness has not been filed; or
 - (iii) adjourn the application.
- (4) If the court orders that an application be placed in the callover list even though a certificate of readiness has not been filed, the court must include the application in a callover list.
 - (5) The registrar must tell the parties the date set for the callover.
 - (6) At the callover the court may set a hearing date for the application.

Division 3.13.6 Workers compensation—medical reports for arbitrations

3920 Arbitration—service of medical reports

(MCPD 1/2000, par 18 and 20)

- (1) Each party to an arbitration must, not later than 28 days before the hearing date for the arbitration, serve on each other party to the arbitration a copy of all medical reports then available to the party—
 - (a) on which the party intends to rely at the arbitration; or
 - (b) obtained from a doctor whom the party intends to call at the arbitration.
- Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.
- (2) If, after serving an a medical report under subrule (1), a party obtains a further report from the same doctor, the party must—
 - (a) serve the further report not later than 3 days after the day the party obtains the report; or

EXPOSURE DRAFT

- (b) not serve the report and tell the other parties that the party does not intend to rely on the reports of that doctor already served.
 - (3) A doctor's report must not be tendered, and is not admissible, in the arbitration unless it has been served in accordance with this rule, except with—
 - (a) the court's leave; or
 - (b) the agreement of all parties to the arbitration.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.
- (4) The court must not give leave under subrule (3) (a) unless satisfied that—
 - (a) there are exceptional circumstances that justify giving leave; or
 - (b) the doctor's report only updates an earlier version of a doctor's report that has been served in accordance with this rule.
 - (5) This rule applies subject to any order of the court.

3921 Arbitration—all medical reports to be served

(MCPD 1/2000 par 19)

If a party to an arbitration serves a medical report from a doctor, the party must serve every medical report from that doctor obtained by the party.

EXPOSURE DRAFT

3922 Arbitration—doctor’s evidence to be covered by medical report

(MCPD 1/2000 par 23)

Except with the court’s leave or as otherwise agreed by all the parties to an arbitration, the oral evidence in chief of a doctor is not admissible unless a doctor’s report served in accordance with rule 3920 (Arbitration—service of medical reports) contains the substance of the matters sought to be adduced in evidence.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

3923 Arbitration—medical reports admissible as evidence of opinion etc

(MCPD 1/2000 par 21)

A medical report served under rule 3920 (Arbitration—service of medical reports) is admissible as evidence of—

- (a) the author’s opinion; and
- (b) if the author’s direct oral evidence of a fact on which the opinion was formed would be admissible as evidence of that fact without further evidence (whether oral or otherwise)—that fact.

3924 Arbitration—requiring attendance of doctor for cross-examination etc

(MCPD 1/2000 par 22)

- (1) This rule applies if a medical report is served under rule 3920 (Arbitration—service of medical reports) by a party to an arbitration.

- (2) Another party to the arbitration may, by notice served on the party who served the medical report, require the doctor who prepared the report to attend the arbitration to be cross-examined on the report.
- (3) The notice must be served not later than 14 days after the day the report is served on the other party.

3925 Arbitration—tender of medical reports

- (1) A party to an arbitration who is served with a medical report under rule 3920 (Arbitration—service of medical reports) may tender the report.
- (2) If the doctor who prepared the report is required under rule 3924 (Arbitration—requiring attendance of doctor for cross-examination etc) to attend the arbitration, the report must not be tendered or otherwise used in the proceeding by any party unless—
 - (a) the doctor attends as required to be cross-examined on the report; or
 - (b) the doctor has died; or
 - (c) the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.
- (3) If the doctor is cross-examined on the report, the party using the report may re-examine the doctor.

EXPOSURE DRAFT

Division 3.13.7 Workers compensation—medical referees for arbitrations

3930 Arbitration—party may apply for medical referee etc

(WCR r 44; WC Reg s 54)

- (1) The court may, on application by a party to an arbitration or on its own initiative, ask a medical referee to—
 - (a) help the court to assess a medical matter during an arbitration; or
 - (b) report on a medical matter during, or arising from, the arbitration.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application under this subrule.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) An application must set out the reasons for the application.

Note Rule 6008 (Application in proceeding—filing and service) deals with service of the application.

3931 Arbitration—number of medical referees

(WC Reg s 55)

- (1) The same medical referee must help the court throughout an arbitration.
- (2) However, another medical referee may help the court if the medical referee is unavailable for any reason.

3932 Arbitration—notice of request to medical referee

(WCR r 45)

If the court, on the application of a party to an arbitration or its own initiative, decides to ask a medical referee to help the court assess, or to report on, a medical matter in an arbitration, the registrar must tell each party, in writing, about the decision.

3933 Arbitration—assessment of worker by medical referee

(WCR r 46)

- (1) If a medical referee is to do a medical assessment of an injured worker for an arbitration, the court may order the worker to undergo the assessment.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

Note 2 The *Workers Compensation Regulation 2002*, div 3.1 deals with how a medical assessment must be done.

- (2) If an order is made under this rule, the registrar must tell each other party to the arbitration, in writing, about the order.

3934 Arbitration—medical referee to review medical evidence etc

(WC Reg s 14)

- (1) This rule applies if a medical referee is asked under rule 3930 (Arbitration—party may apply for medical referee etc) to help the court assess, or report on, a medical matter in an arbitration.
- (2) The medical referee must—
 - (a) review the medical evidence about the injured worker; and
 - (b) review any relevant approved medical guidelines or clinically relevant research about the worker's injury; and

- (c) apply the referee’s clinical expertise to the review under paragraphs (a) and (b); and
 - (d) do a medical assessment of the worker, unless the referee considers it unnecessary.
- (3) In this rule:

approved medical guidelines—see the *Workers Compensation Regulation 2002*, dictionary.

clinically relevant research—see the *Workers Compensation Regulation 2002*, section 6.

medical evidence—see the *Workers Compensation Regulation 2002*, dictionary.

3935 Arbitration—medical referee’s report

(WC Reg s 15)

- (1) A medical referee’s report for an arbitration must state—
- (a) the results of the referee’s assessment of the aetiology or diagnosis of, or the prognosis or recommended medical treatment for, the worker’s injury; and
 - (b) if the referee’s assessment differs from the medical evidence about the worker’s injury—
 - (i) how the assessment differs and why; and
 - (ii) why the referee’s assessment is preferable; and

EXPOSURE DRAFT

- (c) if the referee considered it unnecessary to assess the worker—why the referee did not consider it necessary.

Example of why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

3936 Arbitration—medical referee's report to be given to parties

(WCR r 47)

If a medical referee prepares a report for an arbitration, the registrar must give a copy of the report to each party to the arbitration.

3937 Arbitration—court may decide claim without medical referee report

(WCR r 48)

This division does not prevent the court from deciding a claim without the help of, or a report from, a medical referee.

Division 3.13.8 Workers compensation—case management meeting for arbitrations

3945 Arbitration—case management generally

(WCR r 20)

- (1) The court must hold a case management meeting with the parties to each application for arbitration.

- (2) The purpose of the case management meeting is—
 - (a) to assess the likelihood of the parties settling the claim before the arbitration is heard; and
 - (b) to give directions for the arbitration.

3946 Arbitration—time of case management meeting

(WCR r 21)

- (1) The registrar must—
 - (a) set a time and place for the case management meeting for an arbitration; and
 - (b) tell the parties to the arbitration the time and place set.
- (2) If practicable, the registrar must set a time for the case management meeting after—
 - (a) each respondent’s answer is filed; and
 - (b) each party to the arbitration has served its medical reports under rule 3920 (Arbitration—service of medical reports).
- (3) The registrar may require the parties to sign and file a certificate of readiness under rule 3915 (Arbitration listing procedure—certificate of readiness) before setting a time for the case management meeting.

3947 Arbitration—attendance at case management meeting

(WCR r 22)

- (1) Unless the court otherwise orders, the injured worker (or, for a claim by a dependant, the dependant or personal representative) must attend a case management meeting.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) If the injured worker or dependant is represented, the representative must also attend the case management meeting.
- (3) Each other party must be represented at the case management meeting.
- (4) A party's representative at the case management meeting must—
 - (a) have authority to negotiate a settlement on behalf of the party;
or
 - (b) be able to obtain instructions to negotiate a settlement on behalf of the party during the meeting.
- (5) This rule does not prevent the court from directing a party to attend the case management meeting.

3948 Arbitration—parties must make genuine effort to settle at case management meeting

(WCR r 23)

- (1) The parties must make a genuine effort to settle the claim at a case management meeting.
- (2) If the court is satisfied that a party did not make a genuine effort, the court may take this into account when making an order for costs.

3949 Arbitration—settling of claim at case management meeting

(WCR r 24)

If, at a case management meeting, the court considers there are reasonable prospects for the parties to settle the claim, the court—

- (a) must promote the settlement of the claim (at the meeting or by referral to other dispute resolution mechanisms); and

- (b) may adjourn the arbitration to a stated time or for a stated period to allow the parties to negotiate a settlement.

3950 Arbitration—settling of claim unlikely at case management meeting

(WCR r 25)

- (1) If, at a case management meeting, the court considers it unlikely that the parties will settle the claim, the court must give directions about how the arbitration will be conducted.
- (2) In deciding what directions to give, the court must try to facilitate—
 - (a) hearing the claim as quickly as practicable; and
 - (b) keeping costs as low as practicable.
- (3) The court may give directions on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.
- (4) Without limiting rule 6016 (Application in proceeding—oral applications), an application may be made orally, unless the court otherwise orders on its own initiative.

3951 Arbitration—record of terms of settlement at case management meeting

(WCR r 27)

If agreement is reached at a case management meeting, the parties must record the agreement in writing in the way required by the registrar.

Division 3.13.9 Workers compensation—conduct of arbitration

3955 Conduct of arbitration—date

(WCR r 38)

The registrar must—

- (a) set a date for an arbitration in accordance with the directions (if any) of the court; and
- (b) tell the parties the date set.

3956 Conduct of arbitration—burden of proof on party asserting fact

(WCR r 40)

The burden of proof of a fact that is not admitted in an arbitration is the same whether the applicant is an employer or insurer, an injured worker, or a dependant, or personal representative, of a deceased worker.

3957 Conduct of arbitration—directions about third-party respondents

(WCR r 41)

- (1) A party may apply for directions about the procedure to decide a question between a respondent and a third-party respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

- (2) The court may give the directions it considers appropriate.
- (3) Without limiting subrule (2), the court may—

- (a) give the third-party respondent leave to answer the applicant’s claim against the respondent; or
 - (b) give directions about the extent to which the third-party respondent is to be liable to or be bound by an award in the arbitration.
- (4) This rule does not affect an applicant’s claim against a respondent.

3958 Conduct of arbitration—directions and orders if remedy against employer and stranger

(WCR r 42)

- (1) This rule applies to an arbitration if—
- (a) the injury to the applicant worker happened in circumstances mentioned in the Workers Compensation Act, section 183 (Remedies against employer and stranger); and
 - (b) a respondent to the application claims that, if compensation is paid under the Workers Compensation Act to the applicant, the respondent is entitled to be indemnified by a person under that section.

- (2) The respondent may file a notice of claim naming the person.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The respondent must serve a sealed copy of the notice on the person.

Note The copy of the notice must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

- (4) If this rule applies, the court may make the orders it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

EXPOSURE DRAFT

- (5) Without limiting subrule (4), the court may give the person leave to answer the applicant's claim against the respondent.
- (6) If the person wishes to dispute the notice, the person may appear at the arbitration.
- (7) Without limiting subrule (4), the court may, under the subrule, order that the person is not entitled in any future proceeding between the respondent and the person to dispute the validity of the award of the court on the arbitration.
- (8) If the person does not appear at the arbitration, the person is taken to admit the validity of the award of the court on the arbitration.
- (9) With the consent of the respondent and the person, the court may, under subrule (4)—
 - (a) if the person's liability to indemnify the respondent is admitted—make an order for the respondent against the person, to be enforced only after payment is made by the respondent under the award; or
 - (b) order that the question of the person's liability to indemnify the respondent be settled by arbitration between the respondent and the person (the *later arbitration*) after the arbitration between the applicant and the respondent.
- (10) If the court makes an order mentioned in subrule (9) (b), the court may make the orders it considers appropriate in relation to the later arbitration.
- (11) Without limiting subrules (4) and (10), the court may make any order it considers appropriate about costs between the respondent and the other person in the arbitration or the later arbitration.

EXPOSURE DRAFT

3959 Conduct of arbitration—procedure if no provision made
(WCR r 43)

- (1) If, in relation to a claim, a procedure is not provided for in this part, the court may apply chapter 2 of these rules to the extent that they provide for the procedure, as if they formed part of this part.
- (2) This rule is subject to any direction of the court.

Division 3.13.10 Workers compensation—submission to award and payments into court

3965 Arbitration—payment into court generally
(WCR r 49)

If a party to an arbitration pays an amount of compensation into court, the registrar must tell each other party to the arbitration, in writing, about the payment.

3966 Arbitration—admission of liability to claim by worker
(WCR r 50)

- (1) This rule applies to the arbitration of a claim if the application is by a worker.
- (2) An employer may, before the day set for the arbitration, act under subrule (3) or (4).
- (3) The employer may file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of the amount of weekly compensation stated in the notice.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) The employer may—
 - (a) file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of a lump sum amount of compensation stated in the notice that is sufficient to cover the employer’s liability on the claim; and
 - (b) pay the amount into court.
- (5) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3967 Arbitration—admission of liability to claim for deceased worker

(WCR r 51)

- (1) This rule applies to the arbitration of a claim if the application is by a dependant, or the personal representative, of a deceased worker.
- (2) An employer may, before the day set for the arbitration—
 - (a) file in the court a notice stating that the employer admits liability; and
 - (b) pay into court an amount sufficient to cover the employer’s liability on the claim.
- (3) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3968 Arbitration—denial and submission to award or payment by employer

(WCR r 52)

- (1) An employer who is a party to an arbitration may, before the day set for the arbitration—

- (a) file in the court a notice stating that—
 - (i) the employer does not admit liability on the claim; or
 - (ii) the employer submits to an award of the court for the payment of the amount of weekly compensation stated in the notice but does not admit liability on the claim; and
 - (b) pay into court—
 - (i) an amount sufficient to cover the liability the employer would have on the claim if the employer did not deny liability; or
 - (ii) the amount stated in the notice.
- (2) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3969 Arbitration—acceptance of payment by worker
(WCR r 53)

- (1) This rule applies if a notice is filed under rule 3966 (Arbitration—admission of liability to claim by worker) in relation to a claim by a worker.
- (2) The worker may accept the amount of compensation in satisfaction of the worker’s claim by giving written notice of the acceptance to the employer and registrar.
- (3) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3966.

EXPOSURE DRAFT

3970 Arbitration—acceptance of payment for deceased worker

(WCR r 54)

- (1) This rule applies if an employer files a notice under rule 3967 (Arbitration—admission of liability to claim for deceased worker) in relation to a claim made by a dependant, or the personal representative, of a deceased worker.
- (2) The applicant dependant or personal representative may accept the amount of compensation in satisfaction of the claim by giving written notice of the acceptance to the employer, registrar and any other party.
- (3) If a respondent other than the employer is willing to accept the amount of compensation in satisfaction of the claim, the respondent may accept the amount of compensation in the same way as the applicant dependant or personal representative.
- (4) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3967.

3971 Arbitration—payment on worker’s acceptance

(WCR r 55)

- (1) This rule applies if a worker accepts payment of an amount under rule 3969.
- (2) The court may order payment of the amount to the worker or the application of the amount for the worker’s benefit.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The court may order the employer to pay any costs of the worker properly incurred before the receipt of the notice about the employer's submission or payment (including in relation to the notice of the submission or payment and to its acceptance).

3972 Arbitration—payment on dependant's etc acceptance

(WCR r 56)

- (1) This rule applies if an applicant dependant or personal representative and each respondent other than the employer accepts payment of an amount under rule 3970.
- (2) Further proceedings against the employer are stayed and—
- (a) if the applicant dependant or personal representative and other respondents (the *other parties*) agree about the apportionment and application of the amount—the court may make an award for the apportionment and application of the amount; or
- (b) in any other case—the arbitration may proceed as between the other parties.
- (3) The court may order the employer to pay any costs of the other parties properly incurred before the employer receives notice about the submission or payment (including in relation to the notice of the submission or payment and to its acceptance).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

EXPOSURE DRAFT

3973 Arbitration—no prompt acceptance of submission or payment

(WCR r 57)

- (1) This rule applies if a party given a notice under rule 3966, rule 3967 or rule 3968 does not accept the amount of compensation mentioned in the notice within a reasonable time after receiving the notice.
- (2) The party may accept the amount at any time before the arbitration starts.
- (3) However, if the party accepts the amount, the party is liable to pay the costs the court is satisfied were reasonably incurred by the employer after the day the employer filed the notice or made the payment into court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (4) The court may order that the costs payable by a party under subrule (3) be set off against any costs payable to the party, or be deducted from any amount awarded to the party.

3974 Arbitration—award not greater than submission or payment

(WCR r 58)

- (1) This rule applies if—
 - (a) an employer to an arbitration has submitted to an award, or paid an amount into court, and given notice under rule 3966, rule 3967 or rule 3968; and
 - (b) the award on arbitration is not more than the amount submitted to or paid.

- (2) The employer is not liable to pay any costs that the employer would have been liable to pay if the amount submitted to or paid into court had been accepted.
- (3) The court may—
 - (a) order that any costs incurred by the employer after giving notice under rule 3966, rule 3967 or rule 3968 be paid by any party who has not accepted the amount submitted to or paid; and
 - (b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.
- (4) The court may also—
 - (a) order that any costs incurred by a party who accepted the amount submitted to or paid after receiving the notice be paid by any other party who has not accepted the amount; and
 - (b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

Division 3.13.11 Workers compensation—awards

3980 Arbitration—award

(WCR r 59)

- (1) If the court makes findings in support of an award in favour of a party on an arbitration, the party must prepare draft terms of the award for making by the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

EXPOSURE DRAFT

- (2) The party preparing draft terms of the award must, not later than 7 days after the day the court makes the findings, give a copy of the draft terms to each other party to the arbitration.
- (3) Each other party to the arbitration must, not later than 7 days after the day the party receives a copy of the draft terms—
 - (a) endorse the party's agreement on the draft terms; or
 - (b) object to the draft terms.
- (4) If the draft terms of the award are agreed, the draft terms must be given to the registrar for making by the court.
- (5) A party objecting to the terms must ask the registrar to list the matter before the court.

Note The party must, as soon as possible, ask the registrar to list the matter (see Legislation Act, s 151B (Doing things for which no time is fixed)).

- (6) After the award is made by the court, the registrar must serve a sealed copy of the award on each party to the arbitration.
- (7) The court may at any time correct a clerical error in an award made on an arbitration.

3981 Arbitration—setting aside or amending award

(WCR r 60)

- (1) The court may, by order, set aside or amend an award made on arbitration if satisfied that—
 - (a) the award was obtained by fraud or other improper means; or
 - (b) a person included in the award as a dependant is not a dependant; or

EXPOSURE DRAFT

(c) a person who is a dependant is not included in the award.

Note Pt 6.2 (Applications is proceedings) applies to an application for an order, directions or leave under this rule.

- (2) The court may give the directions it considers appropriate about the conduct of a proceeding to set aside or amend an award.
- (3) The court may give an application under subrule (2) on application by a party or on its own initiative.
- (4) In setting aside or amending an award, the court may make any order it considers just.
- (5) An application to set aside or amend an award must not be made more than 6 months after the date of the award without the court's leave.
- (6) The court may give leave only if the failure to make the application not later than 6 months after the date of the award was because of mistake, absence of the party from the ACT, or another reasonable reason.

Division 3.13.12 Workers compensation—registered agreements

3985 Registered agreement—application for registration

(WCR r 61 and r 62)

- (1) This rule applies to an agreement under the Workers Compensation Act, part 4.7 (Registration of agreements for compensation).

- (2) A person who is a party to the agreement may apply to the court for registration of the agreement by filing a copy of the agreement in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If the person is also a party to an arbitration about the matter in the agreement, the party may apply to the court for registration of the agreement by filing a copy of the agreement or handing it to the court at the arbitration.
- (4) The copy of the agreement filed or handed to the court must be signed by the injured worker, the injured worker's representative and each other party or the party's representative.
- (5) Part 6.2 (Applications in proceedings) does not apply to the application to register the agreement.
- (6) Unless the court otherwise orders on its own initiative, the application to register must be dealt with without a hearing and in the absence of the parties.
- (7) However, at any time before registering an agreement, the court may require a party to provide additional information.
- (8) If the court registers the agreement, the registrar must give a sealed copy of the registered agreement, endorsed with the date of registration, to—
- (a) each party to the agreement; and
 - (b) if applicable, any party to the arbitration who is not a party to the agreement.

EXPOSURE DRAFT

3986 Registered agreement—application for amendment or cancellation

(WCR r 63)

- (1) A party to a registered agreement may apply to the court to amend or cancel the agreement under the Workers Compensation Act, section 81 (Cancellation or amendment of registered agreements) by filing an application in the court.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) The court may give the directions it considers appropriate about the conduct of the proceeding.
- (3) The court may give directions under subrule (2) on application by a party or on its own initiative.

Division 3.13.13 Workers compensation—costs

3990 Workers compensation costs—generally

(WC Reg s 57)

- (1) The successful party to an arbitration or related proceeding is entitled to be paid party and party costs (including reasonable disbursements) by the unsuccessful party, unless the court otherwise orders.
- (2) However, the court must not award the costs of, or incidental to, an arbitration or related proceeding (including reasonable disbursements) against someone claiming compensation honestly in the arbitration or proceeding.

- (3) The costs of, and incidental to, an arbitration or related proceeding are payable at $\frac{2}{3}$ of the prescribed scale of costs, unless the court otherwise orders.
- (4) Disbursements are payable in full.

3991 Workers compensation costs—claim against arbitration award

(WC Reg s 58)

- (1) This rule applies if a worker is paid an amount of compensation on arbitration.
- (2) The worker's lawyer or the lawyer's agent may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the court awards the lawyer or agent the costs.
- (3) Costs to be awarded to the lawyer or the lawyer's agent—
 - (a) are payable at $\frac{2}{3}$ of the prescribed scale of costs, unless the court otherwise orders; and
 - (b) must be assessed.

Division 3.13.14 Workers compensation—appeals

3995 Appeal—order of Supreme Court

(WCR r 65)

- (1) This rule applies if an order is made by the Supreme Court on an appeal from a decision or award of the Magistrates Court in an arbitration.
- (2) A party may file a sealed copy of the order in the Magistrates Court.

- (3) If the order has effect as a decision or award in favour of a party, the decision or award must be recorded by the registrar of the Magistrates Court as if it were a decision or award of that court.
- (4) If the order requires an award be made in favour of a party, the Magistrates Court must make the award.
- (5) If the judgment directs a re-hearing or further hearing of the arbitration, the registrar of the Magistrates Court must—
 - (a) set a date for directions; and
 - (b) tell the parties the date for directions.
- (6) Generally, the Magistrates Court must make any direction, decision or award that is necessary to give effect to the order.

EXPOSURE DRAFT

Chapter 4 Criminal proceedings

Part 4.1 Criminal proceedings—general

Division 4.1.1 Criminal proceedings—application of ch 2

4000 Criminal proceedings—application of ch 2 generally (SCR o 80 r 3; MCR s 8)

(1) In this rule:

applied civil rules means the following:

- division 2.14.2 (Failure to comply with rules or order)
- rule 1904 (Security for costs—effect of order).

(2) The applied civil rules apply to a criminal proceeding as if—

- (a) a reference to a *proceeding* were a reference to a criminal proceeding; and
- (b) any other necessary changes were made.

EXPOSURE DRAFT

Division 4.1.2 Criminal proceedings—service

4005 Meaning of *accused person* for div 4.1.2—bail applications

(SCR o 80 r 4)

In this division:

accused person includes—

- (a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—a person who is an accused person for that division; and
- (b) for any other application in relation to bail—a convicted person.

Note See also r 4700, def *accused person*.

4006 Criminal proceedings—application of pt 6.8

(SCR o 80 r 5)

The following rules do not apply to a criminal proceeding:

- (a) rule 6421 (Service by filing);
- (b) rule 6437 (Service on detainees);
- (c) rule 6438 (Service if no-one found at party's address for service);
- (d) rule 6461 (Informal service); and
- (e) rule 6469 (Change of address for service).

EXPOSURE DRAFT

4007 Criminal proceedings—service on accused person by filing if no address for service

(SCR o 80 r 6)

- (1) This rule applies if an accused person in a criminal proceeding—
 - (a) is not in custody; and
 - (b) is not represented by a solicitor.
- (2) If the accused person does not have an address for service, a document for which personal service is not necessary may be served on the person by—
 - (a) filing it; and
 - (b) sending a copy by prepaid post addressed to the accused person at the person's last-known address.

Note *Address for service* is defined in the dictionary.

- (3) A document filed under subrule (2) (a) must have endorsed on its first page a statement that it is filed under this rule.

4008 Criminal proceedings—service if no-one found at accused person's address for service

(SCR o 80 r 7)

- (1) This rule applies if—
 - (a) an accused person in a criminal proceeding—
 - (i) is not in custody; and
 - (ii) is not represented by a solicitor; and
 - (iii) has an address for service; and
 - (b) no-one can be found at the address.

EXPOSURE DRAFT

- (2) Any document in the proceeding (including a document for which personal service is otherwise necessary) may be served on the accused person by leaving a copy at the person's address for service.

Note *Address for service* is defined in the dictionary.

4009 Criminal proceedings—service of documents when unrepresented accused person in custody

(SCR o 80 r 8)

- (1) This rule applies if an accused person in a criminal proceeding—
- (a) is in custody; and
 - (b) is not represented by a solicitor.
- (2) A document required or allowed to be served by the accused person for the proceeding may be served on the registrar for service by the registrar on another party to the proceeding.
- (3) A document required or allowed to be served on the accused person for the proceeding may be served by leaving the document with the person in charge of the place where the person is in custody.
- (4) If a document mentioned in subrule (3) is served by the registrar, the document may be served—
- (a) by sending a copy by prepaid post to the place where the accused person is in custody, addressed to the person in charge of the place; or
 - (b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or
 - (c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

EXPOSURE DRAFT

- (d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

Division 4.1.3 Enforcement

4020 Enforcement of fines

(MCR s 18, s19 and s 20)

- (1) Part 2.18 (Enforcement) applies, with any necessary changes, to a fine as if the fine were a money order.
- (2) In this rule:

fine—see *Magistrates Court Act 1930*, section 146.

4021 Enforcement—failure of individual to comply with subpoena etc

(SCQA s 93I; Qld s 901 and r 903)

- (1) This rule applies if an individual fails to comply with—
- (a) a subpoena; or
- (b) an order requiring attendance to give evidence or produce a document or thing before—
- (i) the court; or
- (ii) an officer, examiner or anyone else who has authority to take evidence for the court.
- (2) The court may make an order for the issue of a warrant to an enforcement officer for—
- (a) the arrest of the individual; and

EXPOSURE DRAFT

- (b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and
- (c) the detention in custody of the individual until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.
- (4) This rule does not limit any other power of the court.

Note 1 Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

Note 2 See r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

4022 Enforcement—failure of corporation to comply with subpoena etc

(SCQA s 93J; Qld r 902 and r 903)

- (1) This rule applies if a corporation fails to comply with—
 - (a) a subpoena; or
 - (b) an order requiring attendance to give evidence or produce a document or thing before—
 - (i) the court; or
 - (ii) an officer, examiner or anyone else who has authority to take evidence for the court.

- (2) The court may make an order for the issue of a warrant to an enforcement officer for—
- (a) the arrest of a named senior officer of the corporation; and
 - (b) the production of the senior officer as required by the subpoena or order for the purpose of the proceeding; and
 - (c) the detention in custody of the senior officer until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.
- (4) This rule does not limit any other power of the court.

Note 1 Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

Note 2 See r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt).

EXPOSURE DRAFT

Part 4.2 Magistrates Court criminal proceedings

Division 4.2.1 Magistrates Court criminal proceedings—preliminary

4300 Meaning of *accused person*—pt 4.2

In this part:

accused person means a person against whom an information is laid.

4301 Application—pt 4.2

This part applies to a criminal proceeding in the Magistrates Court.

Division 4.2.2 Magistrates Court criminal proceedings—setting aside orders

4310 Magistrates Court order made in absence of party may be set aside—general

(MCR s 10 (1) and (2))

- (1) This rule applies if a party does not appear in a criminal proceeding and an order is made.
- (2) However, this rule does not apply if the accused person—
 - (a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and
 - (b) did not withdraw the plea before the order was made; and

EXPOSURE DRAFT

(c) did not appear in the proceeding.

- (3) On application by the party who did not appear, the court may set aside the order.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4311 Magistrates Court order made in absence of accused person may be set aside—summons for prescribed offence

(MCR s 10 (3))

- (1) This rule applies to an order made against an accused person in the person's absence if—
- (a) the person was served with a summons under the *Magistrates Court Act 1930*, section 116B (Service of summons for prescribed offence); and
 - (b) any of the following subparagraphs apply:
 - (i) the person did not return the notice of intention to defend form or the plea of guilty form to the registrar before the day when the person was required by the summons to appear before the court;
 - (ii) the court has previously, in the absence of the person, adjourned the hearing under the *Magistrates Court Act 1930*, section 116E (3) (Procedure if plea of guilty entered), and the court is satisfied that a notice under that subsection did not come to the person's attention before the conviction was recorded or the order made;

EXPOSURE DRAFT

- (iii) the court is satisfied that a notice mentioned in the *Magistrates Court Act 1930*, section 116F (Procedure if notice of intention to defend given) or section 116H (Restricted penalties under pt 3.7) did not come to the person's attention before the date set under the section for the hearing of the proceeding.
- (2) On the application of the accused person, the court must set aside the order.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4312 Magistrates Court order made in absence of party may be set aside—other offences

(MCR s 10 (4))

- (1) This rule applies to an order made in the absence of a party if rule 4311 (Magistrates Court order made in absence of accused person may be set aside—summons for prescribed offence) does not apply to the order.
- (2) On application by the party, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

4313 Magistrates Court conviction made in absence of party set aside—warrant may be set aside

(MCR s 10 (5))

- (1) This rule applies if the court sets aside a conviction in a criminal proceeding under any of the following rules:
 - rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
 - rule 4311 (Magistrates Court order made in absence of accused person may be set aside—summons for prescribed offence)
 - rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).
- (2) The court may set aside a warrant issued under the *Magistrates Court Act 1930* because of the conviction.

4314 Magistrates Court conviction made in absence of party set aside—hearing

(MCR s 10 (6) and (7))

- (1) This rule applies if the court has set aside a conviction in a criminal proceeding under any of the following rules:
 - rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
 - rule 4311 (Magistrates Court order made in absence of accused person may be set aside—summons for prescribed offence)
 - rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).
- (2) The court may—
 - (a) on giving the parties reasonable notice, hear and decide the proceeding; or

- (b) adjourn the hearing of the proceeding to a time and place the court considers appropriate.
- (3) If the court adjourns the hearing of the proceeding under subrule (2) (a), the registrar must tell the parties the date set for the adjourned hearing.

4315 Magistrates Court order made in absence of party may be set aside—application by informant

(MCR s 11)

- (1) This rule applies if an accused person does not appear in a criminal proceeding and an order is made against the person.
- (2) However, this rule does not apply if the accused person—
 - (a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and
 - (b) did not withdraw the plea before the order was made; and
 - (c) did not appear in the proceeding.
- (3) On application by the informant, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If, under this rule, the court sets aside a conviction, the court must dismiss the information and set aside any warrant issued under the *Magistrates Court Act 1930* because of the conviction.

EXPOSURE DRAFT

Division 4.2.3 Magistrates Court criminal proceedings—witnesses

4330 Magistrates Court witness—request by informant to attend

(MCR s 12)

- (1) The informant may request a person to attend as a witness at the hearing of an information.
- (2) The request must be made by letter sent to the person by prepaid post in a form that requires a signature on receipt.
- (3) The letter of request must—
 - (a) set out the date, time and place for the hearing; and
 - (b) be accompanied by—
 - (i) an undertaking to attend for the person to sign and return to the informant by the date stated in the undertaking; and
 - (ii) a form to be completed by the person to claim the reasonable costs and expenses of attending the hearing.

4331 Magistrates Court witness—power of magistrate to subpoena

(MCR s 13)

- (1) This rule applies if—
 - (a) a person is likely to give material evidence at the hearing of an information; and
 - (b) it appears to a magistrate that the person will not voluntarily attend the hearing.

- (2) The magistrate must issue a subpoena addressed to the person ordering the person to attend to give the evidence before the court at the date, time and place stated in the subpoena.
- (3) In considering whether or not a person will voluntarily attend a hearing, the magistrate may consider any response by the person to any request made of the person to attend.

4332 Magistrates Court witness—entitlement to claim expenses

(MCR s 15)

- (1) This rule does not apply to a subpoena.
- (2) Any notice (however described and whether written or oral) requiring a person to attend a hearing as a witness must be accompanied by a form to be completed by the person to claim the reasonable costs and expenses of attending the hearing.
- (3) However, a person must not refuse to comply with the notice because it was not accompanied by the form.

4333 Magistrates Court witness—expenses

(MCR s 21)

A person who attends the hearing of a criminal proceeding as a witness is entitled to be paid witness expenses assessed in accordance with schedule 4.

Part 4.3 Supreme Court criminal proceedings

Division 4.3.1 Supreme Court criminal proceedings—preliminary

4700 Definitions—pt 4.3

(SCR o 80 r 1)

In this part:

accused person means a person charged with an indictable offence—

- (a) who is committed to the court for trial or sentence; or
- (b) for whom an indictment has been filed in the court.

Note For applications in relation to bail, see also def *accused person* in the following rules:

- r 4005 (Meaning of *accused person* for div 4.1.2—bail applications)
- r 4720 (Meaning of *accused person* for div 4.3.3).

appearance date—see rule 4731.

case statement—see rule 4732.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

- (a) after the person has been convicted or found guilty; or

EXPOSURE DRAFT

- (b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

- 1 a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)
- 2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, section 13 (Good behaviour orders)
- 3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

4701 Application—pt 4.3

This part applies to a criminal proceeding in the Supreme Court.

Division 4.3.2 Supreme Court criminal proceedings—representation

4705 Meaning of *criminal proceeding*—div 4.3.2

(SCR o 80 r 9)

In this division:

criminal proceeding does not include an application in relation to bail.

Note See also dict, def *criminal proceeding*.

4706 Supreme Court criminal proceedings—notice of solicitor acting

(SCR o 80 r 10)

- (1) If a solicitor begins acting for an accused person in a criminal matter after the matter becomes a criminal proceeding in the court, the solicitor must, as soon as practicable, but not later than 14 days after the day the solicitor begins acting—
 - (a) file a notice that the solicitor is acting for the accused person; and
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (b) serve a copy of the notice on—
 - (i) the director of public prosecutions; and
 - (ii) any solicitor who was acting for the accused person immediately before the notice was filed.
 - (2) A notice under subrule (1) must contain an address for service.
 - (3) If a solicitor acts for 2 or more accused people in the same proceeding and at the same time, the solicitor must file a single notice under subrule (1) that lists all the people the solicitor acts for in the proceeding.
 - (4) If a solicitor files a notice under subrule (1) in relation to an accused person, the solicitor is taken to act for the accused person until—
 - (a) another solicitor files a notice under subrule (1) in relation to the accused person; or
 - (b) the solicitor is given leave to withdraw under rule 4708, and complies with rule 4708 (5).

EXPOSURE DRAFT

4707 Supreme Court criminal proceedings—solicitor’s instructions to act for accused person ended

(SCR o 80 r 11)

- (1) This rule applies to a solicitor if the solicitor’s instructions to act for an accused person in a criminal proceeding are ended before the proceeding is finally disposed of in the court.

Note Rule 5537 (Appeals to Court of Appeal against convictions and sentences—solicitor’s instructions to act for convicted person ended) applies to a solicitor if the solicitor’s instructions to act for a convicted person who is a party to an application or appeal in the Court of Appeal are ended.

- (2) The solicitor must—

- (a) file written notice that the solicitor is no longer acting for the accused person; and
(b) serve a stamped copy of the notice on each party to the proceeding (including the accused person).

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The solicitor must file and serve the notice as soon as practicable, but not later than 14 days after the day the solicitor’s instructions are ended.

- (4) In this rule:

accused person includes a person who has been convicted of an offence and is awaiting sentence for the offence in the court.

Note See also r 4700, def ***accused person***.

court does not include the Court of Appeal.

4708 Supreme Court criminal proceedings—withdrawal of solicitor

(SCR o 80 r 12)

- (1) A solicitor may withdraw from acting for an accused person only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If the solicitor wants to withdraw from acting for the accused person during the person's trial or sentence hearing, the application may be made orally to the court.
- (3) The application must—
- (a) state the solicitor making the application; and
 - (b) state briefly the order sought.
- (4) A stamped copy of the application must be served—
- (a) on the accused person—
 - (i) personally; or
 - (ii) by registered letter addressed to the person's last-known address; or
 - (iii) if the court orders another way of service—as ordered; and
 - (b) on the director of public prosecutions.

EXPOSURE DRAFT

(5) If the court gives the solicitor leave to withdraw, the solicitor must—

(a) file a notice of withdrawal; and

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(b) serve a stamped copy of the notice on the accused person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a stamped copy of the notice on the director of public prosecutions.

4709 Supreme Court criminal proceedings—handing over depositions

(SCR o 80 r 13)

If a solicitor ceases to act for an accused person, the solicitor must, as soon as practicable after ceasing to act, give the depositions (if any) the solicitor has received under the *Magistrates Court Act 1930*, section 108 (Accused person may obtain copies of depositions etc) to—

(a) if the solicitor has received a notice under rule 4706 (Supreme court criminal proceeding—notice of solicitor acting) from another solicitor—the other solicitor; or

(b) if the solicitor has not received a notice under rule 4706—the accused person.

EXPOSURE DRAFT

Division 4.3.3 Supreme Court criminal proceedings—bail

4720 **Meaning of *accused person*—div 4.3.3**

(SCR o 80 r 14)

In this division:

accused person—

- (a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—means a person who is an accused person for that division; and

Note *Accused person* is defined for that division in the *Bail Act 1992*, dict.

- (b) for any other application in relation to bail—includes a convicted person.

Note See also r 4700, def *accused person*.

4721 **Supreme Court bail application in relation to accused person**

(SCR o 80 r 15)

- (1) An application in relation to bail by an accused person must comply with this division.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must—
 - (a) state the accused person’s name; and
 - (b) state briefly the order (or orders) sought; and
 - (c) state briefly particulars of the grounds relied on in support of the order (or orders) sought.
- (3) The application must be supported by an affidavit stating—
 - (a) the charges (if any) outstanding against the accused person; and
 - (b) if the accused person has been committed for sentence or trial to the court—that fact, and the date the person was committed; and
 - (c) if the accused person has been convicted or found guilty of an offence relevant to the application—that fact, the offence and the date the person was convicted or found guilty; and
 - (d) if the accused person has been sentenced for an offence relevant to the application—that fact, the sentence and the date the person was sentenced; and
 - (e) if bail has previously been refused for an offence relevant to the application—the reasons bail was refused; and
 - (f) the accused person’s date of birth; and
 - (g) whether the accused person has a criminal record; and
 - (h) if the accused person is in custody—the day the person was placed in custody; and
 - (i) the day the matter is next listed before a court; and
 - (j) the informant’s name; and

EXPOSURE DRAFT

- (k) if the *Bail Act 1992*, section 9C (Bail for murder), section 9D (Bail for serious offence committed while charge for another pending or outstanding) or section 9E (Bail for person sentenced to imprisonment) applies in relation to the application—the special or exceptional circumstances that exist favouring the grant of bail; and
- (l) if a court has made a decision in relation to an application for bail by the accused person and the application is a further application for bail—
- (i) whether the accused person was represented by a lawyer at the hearing of the person’s first application to a court for bail in relation to the offence with which the person is charged; or
 - (ii) any significant change in circumstances relevant to the granting of bail since the most recent application to a court for bail; or
 - (iii) any fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to a court for bail; and
- Note* See the *Bail Act 1992*, s 19 (General provisions relating to court bail).
- (m) if the application is for review of a decision in relation to bail—
- (i) any significant change in circumstances relevant to the granting of bail; or

EXPOSURE DRAFT

- (ii) the availability of fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to the court for bail; and

Note See the *Bail Act 1992*, s 43 (Power of Supreme Court to review).

- (n) the conditions (if any) on which bail is sought.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) The accused person must serve a stamped copy of the application and supporting affidavit on the director of public prosecutions.

4722 Supreme Court bail application by informant

(SCR o 80 r 16)

- (1) An application in relation to bail by an informant must comply with this division.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must—
- (a) state the accused person's name; and
 - (b) state briefly the order (or orders) sought; and
 - (c) state briefly particulars of the grounds relied on in support of the order (or orders) sought.
- (3) The application must be supported by an affidavit.
- (4) The informant must serve a stamped copy of the application and supporting affidavit on the accused person.

EXPOSURE DRAFT

Division 4.3.4 Supreme Court criminal proceedings—pre-trial procedure

4730 Application—div 4.3.4

(SCR o 80 r 17)

This division applies if an accused person is committed to the Supreme Court for trial or sentence.

4731 Supreme Court criminal proceedings—appearance of accused person

(SCR o 80 r 18)

The accused person must appear before the court on the date (the *appearance date*) set as a condition of bail or by the court or Magistrates Court.

4732 Supreme Court criminal proceedings—appearance when committed for sentence

(SCR o 80 r 19)

If the accused person is committed for sentence, the court may, on the appearance date—

- (a) ask the accused person about the person's representation, including legal aid; and
- (b) if the accused person pleaded guilty in the Magistrates Court—confirm the accused person's plea of guilty; and
- (c) direct the director of public prosecutions to file in the court a statement of the facts (the *case statement*) on which the prosecution relies; and

EXPOSURE DRAFT

- (d) direct the director of public prosecutions to give a copy of the case statement to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and
- (e) ask the parties if the matter is urgent; and
- (f) set a date for sentence; and
- (g) make orders in relation to pre-sentence reports; and
- (h) ask if any variation of bail is sought; and
- (i) deal with any application to suppress the accused person's name; and
- (j) give any other directions that the court considers appropriate.

4733 Supreme Court criminal proceedings—appearance when committed for trial

(SCR o 80 r 20)

If the accused person is committed for trial, the court may, on the appearance date—

- (a) ask the accused person about the person's representation, including legal aid; and
- (b) ask the accused person whether the person has decided to have the trial by judge alone; and

Note See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in criminal proceedings).

- (c) direct the director of public prosecutions to file in the court—
 - (i) a draft indictment; and
 - (ii) the case statement; and

- (iii) a list of proposed prosecution witnesses; and
 - (d) direct the director of public prosecutions to give a copy of the draft indictment, case statement and list of proposed prosecution witnesses to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and
 - (e) direct the parties to complete and file in the court a pre-trial questionnaire by the date set by the court; and
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (f) ask the parties if the matter is urgent; and
 - (g) ask about any unusual features of the matter; and
 - (h) ask about the length of the trial; and
 - (i) ask if any variation of bail is sought; and
 - (j) deal with any application to suppress the accused person's name; and
 - (k) give any other directions that the court considers appropriate.

4734 Supreme Court criminal proceedings—pre-trial questionnaire

(SCR o 80 r 21)

If the court directs the parties to complete a pre-trial questionnaire—

- (a) the director of public prosecutions must—
 - (i) complete the column of the questionnaire headed 'DPP'; and

EXPOSURE DRAFT

- (ii) give the completed questionnaire to the accused person or, if the accused person is represented by a solicitor, the solicitor—
 - (A) at least 7 days before the day the questionnaire must be filed in the court; or
 - (B) if the court sets another date—by that date; and
- (b) the accused person or the person’s lawyer must—
 - (i) complete the column of the questionnaire headed ‘Accused’; and
 - (ii) file the completed questionnaire in the court by the date set by the court.

4735 Supreme Court criminal proceedings—pre-arraignment conference

(SCR o 80 r 22)

- (1) After the pre-trial questionnaire is completed by the accused person or the person’s solicitor, and filed in the court, the registrar must—
 - (a) set a date and time for a pre-arraignment conference; and
 - (b) tell the parties the date and time for the conference.
- (2) At the pre-arraignment conference, the registrar may—
 - (a) give directions about matters raised in the pre-trial questionnaire, including a direction that the matter be listed before a judge; and
 - (b) ask the parties about the length of the trial; and

- (c) consider whether it is appropriate for the matter to be dealt with as a reserve trial and, if so, give appropriate directions; and
 - (d) set a date, at least 14 days after the day of the pre-arraignment conference, for arraignment of the accused person before the court; and
 - (e) adjourn the conference to another date.
- (3) The registrar may refer a matter to a judge, if a party does not comply with directions made by the registrar or the court.

4736 Supreme Court criminal proceedings—arraignment

(SCR o 80 r 23)

- (1) On the arraignment of the accused person, the director of public prosecutions may present an indictment in relation to the person to the court.
- (2) If an indictment is presented by the director of public prosecutions, the accused person must enter a plea.

Note The *Crimes Act 1900*, s 282 provides that, if a person refuses to plead, the court may order a plea of not guilty to be entered on behalf of the person. The plea has the same effect as if the person had pleaded not guilty.

- (3) If the accused person enters a plea of guilty, the court must set a date for sentence.
- (4) If the accused person enters a plea of not guilty, the court must—
 - (a) set a date for trial; and
 - (b) set a date for the pre-trial directions hearing; and

EXPOSURE DRAFT

- (c) order the accused person to appear before the court on the date set for the pre-trial directions hearing.

4737 Supreme Court criminal proceedings—pre-trial directions hearing

(SCR o 80 r 24)

At the pre-trial directions hearing, the court may—

- (a) confirm the trial length; and
- (b) hear and decide any preliminary or other matters.

Division 4.3.5 Supreme Court criminal proceedings—pre-trial applications

4750 Supreme Court criminal proceedings—application to set aside or stay proceeding

(SCR o 80 r 25)

- (1) An accused person may apply to set aside or stay any criminal proceeding against the person.

Note Pt 6.2 (Applications in proceedings) applies to the application.

- (2) The application must be made and heard before the accused person is arraigned.
- (3) If the application is dismissed, the accused person may make a further application under subrule (1) in relation to the same or similar charges only if—
 - (a) there has been a significant change of circumstances; and
 - (b) the application is limited to the change of circumstances.

4751 Supreme Court criminal proceedings—application for separate trials

(SCR o 80 r 26)

An accused person may apply for—

- (a) separate trials of different charges alleged against the person in the same indictment; and
- (b) a separate trial from that of someone else committed for trial and charged in the same indictment.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4752 Supreme Court criminal proceedings—other pre-trial applications

(SCR o 80 r 27)

An application made in the course of a criminal proceeding must be made in writing if—

- (a) the application—
 - (i) is made before the prosecution’s case opens or witnesses are called; and
 - (ii) raises any question about the admissibility of evidence, or any other question of law affecting the conduct of the trial, or
- (b) the application would postpone or delay a trial that has been listed for hearing if it were granted; or
- (c) the application cannot reasonably be made without notice to other parties; or
- (d) the application is directed by a judge to be in writing.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4753 Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752

(SCR o 80 r 28)

- (1) This rule applies to an application under any of the following rules:
 - rule 4750 (Supreme Court criminal proceedings—application to set aside or stay proceeding)
 - rule 4751 (Supreme Court criminal proceedings—application for separate trials)
 - rule 4752 (Supreme Court criminal proceedings—other pre-trial applications).
- (2) The application must—
 - (a) state the party making the application; and
 - (b) state briefly the order (or orders) sought; and
 - (c) state briefly particulars of the grounds relied on that are sufficient for any other party to decide whether to call evidence to resolve the issues raised; and
 - (d) state briefly any questions of law; and
 - (e) be supported by an affidavit filed with the application stating—
 - (i) any evidence necessary to establish the grounds of the application; and
 - (ii) any evidence that the applicant wants the court to receive.
- (3) A stamped copy of the application and any supporting affidavits must be served on all other parties as soon as possible after the notice is filed but at least 14 days before the date set for the trial to which the application relates.

EXPOSURE DRAFT

- (4) This rule is subject to rule 4750 (2) (Supreme Court criminal proceedings—applications to set aside or stay proceedings).
- (5) If the trial date has been set, the trial date may be set as the return date for the application and the application may be heard by the court immediately before the trial starts.

Division 4.3.6 Supreme Court criminal proceedings—other provisions

4780 Supreme Court criminal proceedings—arraignment dates (SCR o 80 r 29)

The registrar must publish a list of arraignment dates for each year.

4781 Supreme Court criminal proceedings—production of person in custody (SCR o 80 r 30)

- (1) The court may make the following orders:
 - (a) an order requiring the production of a person who is in custody;
 - (b) an order about the continuing custody of a person who is in custody.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (2) The court may order that the person in custody be produced—
 - (a) in person; or
 - (b) by audiovisual link or audio link in accordance with the *Evidence (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

EXPOSURE DRAFT

- (3) An order under this rule may be made on the application of a party or on the court's initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

4782 Supreme Court criminal proceedings—defence response to prosecutor's opening address

(SCR o 80 r 31)

If an accused person, or the person's counsel, makes an opening response to the prosecutor's opening address in a trial, the response—

- (a) must identify the acts, facts, matters and circumstances with which issue is taken in the prosecutor's opening address and the basis on which issue is taken; and
- (b) must not state facts that cannot be supported by evidence to be presented, or that has been presented, at the trial.

4783 Supreme Court criminal proceedings—execution of documents

(SCR o 80 r 32)

The registrar or a justice of the peace may witness any recognisance or other document required or allowed to be entered into under an order, decision or other sentence (however described) of the court in a criminal proceeding.

4784 Supreme Court criminal proceedings—inspection of registry files

(SCR o 80 r 33)

- (1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry in a criminal proceeding.

Note A fee may be determined under the *Court Procedures Act 2004* for this rule.

- (2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person appears to the registrar to have a sufficient interest in the document or the court gives leave:

- (a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;
- (b) an affidavit that has not been read in court;
- (c) a part of an affidavit ruled to be inadmissible in evidence;
- (d) an admission that has not been admitted into evidence;
- (e) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

- (f) a deposition taken before an examiner;
- (g) a document filed in support of an application made in the absence of a party;
- (h) a written submission that has not been read in court;
- (i) an unsworn statement of evidence;

EXPOSURE DRAFT

- (j) a draft indictment filed by the prosecution;
- (k) a case statement filed by the prosecution until read in court;
- (l) a questionnaire completed by the parties;
- (m) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

- (3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.
- (4) However, subrule (3) does not apply to a subpoena that has been served on the party.
- (5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:
 - (a) an application for a document, evidence or thing to be kept confidential;
 - (b) an application for a document or thing to be granted privilege from production.
- (6) Before considering an application for leave under subrule (2), the court may require the applicant for leave to do either or both of the following:
 - (a) give notice of the application for leave to a party to the relevant proceeding or another interested person;

EXPOSURE DRAFT

(b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

(7) In this rule:

document—to remove any doubt, **document** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines **document** to mean any record of information, and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or
- (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
- (d) a drawing, map, photograph or plan.

4785 Supreme Court criminal proceedings—certificate of conviction

(SCR o 80 r 34)

(1) For a criminal proceeding, the registrar may issue a certificate of conviction.

(2) In this rule:

conviction, for a person who has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment, means—

- (a) a conviction recorded by the court for the person; or
- (b) a finding of guilt recorded by the court for the person.

EXPOSURE DRAFT

4786 Supreme Court criminal proceedings—preparation of judgments

(SCR o 80 r 35)

- (1) In this rule:

judgment means sentence or other order.

- (2) At any time after a judgment has been given in a criminal proceeding, a party may give a draft of the judgment to the registrar.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If an appeal is made from the judgment, or an application is made in relation to the judgment, the appellant or applicant must give a draft of the judgment to the registrar, unless the judgment has been already entered.

- (4) The registrar—

(a) may approve a draft of the judgment given to the registrar, with or without amendment; and

(b) must, on the filing of the engrossed judgment with the approved draft, enter the judgment.

- (5) The registrar may file a minute of a judgment on the registrar's own initiative.

EXPOSURE DRAFT