

# **EXPOSURE DRAFT**

(Prepared by Parliamentary Counsel's Office)

## **Court Procedures Rules 2006**

**Subordinate Law SL2006-**

(in 3 volumes)

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### **Volume 3**

**Contents**

**Chapters 5 to 7**

**Schedules 1 to 6**

**Dictionary**

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# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Court Procedures Rules 2006

**Subordinate Law SL2006-**

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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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(Prepared by Parliamentary Counsel's Office)

## Court Procedures Rules 2006

**Subordinate Law SL2006-**

made under the

**Court Procedures Act 2004**

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## Chapter 5 Appellate proceedings

### Part 5.1 Appeals to court other than Court of Appeal

*Note* For orders to review certain decisions of Magistrates Court by Supreme Court, see pt 5.3 and for reference appeals, see pt 5.4.

#### 5000 Definitions—pt 5.1

(SCR o 84 r 1)

In this part:

*appeal* means an appeal from a decision of a tribunal, but does not include—

- (a) an appeal to the Court of Appeal; or

*Note* See pt 5.2 (Appeals to Court of Appeal from Supreme Court).

- (b) an order to review a decision of the Magistrates Court mentioned in the *Magistrates Court Act 1930*, section 219B (Appeals by way of orders to review); or

*Note* See pt 5.3 (Orders to review certain decisions of Magistrates Court by Supreme Court).

- (c) a reference appeal to the Supreme Court mentioned in the *Magistrates Court Act 1930*, section 219AB (2) (Reference appeal following acquittal on indictment); or

*Note* See div 5.4.1 (Reference appeals to Supreme Court).

- (d) a question referred to the Supreme Court to which division 5.5.1 (Questions referred to Supreme Court) applies.

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*decision* includes a judgment, order or sentence.

*relevant law*, in relation to an appeal, means the law under which the appeal is brought.

*tribunal* means a court, tribunal or other entity from which an appeal may be made to the court, and includes—

- (a) for the Supreme Court—the master in relation to the master’s interlocutory judgments; and
- (b) for the Supreme Court—the registrar of the Supreme Court; and
- (c) for the Magistrates Court—the registrar of the Magistrates Court.

**5001 Meaning of registrar—pt 5.1**

(SCR o 84 r 1A)

- (1) In this part:

*registrar*, of a tribunal, means—

- (a) for a tribunal other than the Supreme Court or Magistrates Court—the registrar of the tribunal or, if there is not a registrar of the tribunal, the person in charge of the tribunal’s administration; or
- (b) for the Supreme Court—the registrar of the Supreme Court; or
- (c) for the Magistrates Court—the registrar of the Magistrates Court.

- (2) In this rule:

*registrar of the tribunal* includes a deputy registrar of the tribunal.

**5002 Application—pt 5.1**

(SCR o 84 r 2)

This part applies to an appeal to the court subject to—

- (a) any territory law applying to the appeal; and

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

- (b) any direction of the court.

*Note* Appeals may be made from the tribunals mentioned in table 5002 to a court mentioned in the table:

**Table 5002 Tribunals appealed from**

column 1 item	column 2 tribunal	column 3 court (constituted by)	column 4 law appealed under
1	administrative appeals tribunal	Supreme Court (judge or master)	<i>Administrative Appeals Tribunal Act 1989, s 46</i>
2	consumer and trader tribunal	Supreme Court (judge or master)	<i>Consumer and Trader Tribunal Act 2003, s 51</i>
3	credit tribunal	Supreme Court (judge or master)	<i>Consumer Credit (Administration) Act 1996, s 94</i>

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**Chapter 5**  
**Part 5.1**

Appellate proceedings  
Appeals to court other than Court of Appeal

Rule 5002

column 1 item	column 2 tribunal	column 3 court (constituted by)	column 4 law appealed under
4	discrimination tribunal	Supreme Court (judge or master)	<i>Discrimination Act 1991</i> , s 108DB
5	guardianship tribunal	Supreme Court (judge or master)	<i>Guardianship and Management of Property Act 1991</i> , s 56
6	Magistrates Court	Supreme Court (judge or master)	<i>Community and Health Services Complaints Act 1993</i> , s 39G (1)  <i>Consumer Credit (Administration) Act 1996</i> , s 95  <i>Health Records (Privacy and Access) Act 1997</i> , s 32 (1)  <i>Leases (Commercial and Retail) Act 2001</i> , s 155  <i>Magistrates Court Act 1930</i> , s 274  <i>Victims of Crime (Financial Assistance) Act 1983</i> , s 61

## EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 tribunal</b>	<b>column 3 court (constituted by)</b>	<b>column 4 law appealed under</b>
7	Magistrates Court	Supreme Court (judge)	<i>Magistrates Court Act 1930</i> , s 207 (1) (a)
8	master, in relation to the master's interlocutory judgments	Supreme Court (judge)	<i>Supreme Court Act 1933</i> , s 9 (2) (a)
9	mental health tribunal	Supreme Court (judge or master)	<i>Mental Health (Treatment and Care) Act 1994</i> , s 141
10	occupational health and safety review authority	Supreme Court (judge or master)	<i>Occupational Health and Safety Act 1989</i> , s 194
11	registrar of the Magistrates Court	Magistrates Court (magistrate)	r 6255 (Appeals from registrar's orders etc)
12	registrar of the Supreme Court	Supreme Court (judge or master)	r 6255 (Appeals from registrar's orders etc)

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Rule 5003

column 1 item	column 2 tribunal	column 3 court (constituted by)	column 4 law appealed under
13	residential tenancies tribunal	Supreme Court (judge or master)	<i>Residential Tenancies Act 1997</i> , s 125
14	Small Claims Court	Supreme Court (judge or master)	<i>Magistrates Court Act 1930</i> , s 275

**5003 Appeals—non-publication order**

(SCR o 84 r 2A)

- (1) This rule applies if—
  - (a) an appeal is brought from a decision of a tribunal to the court; and
  - (b) the tribunal made an order prohibiting the publication of a party's name (the *non-publication order*); and
  - (c) the non-publication order has not been discharged by the tribunal or the court.
- (2) For the notice of appeal, the non-publication order remains in force as if it were an order of the court.
- (3) In this rule:

*party* means a party to the proceeding in which the decision was made.

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**5004 Appeals—starting appeal**

(SCR o 61 r 5 (1) (b), o 61A r 5 (b) and o 84 r 3; MC(CJ)R s 389 (1); Qld r 784 (1))

An appeal may be started in a court by filing a notice of appeal 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.

**5005 Appeals—requirements for notice of appeal etc**

(SCR o 84 r 4 and r 5 (1); Qld r 747, r 785 and r 786 (1) and (5))

- (1) A notice of appeal to a court must state—
  - (a) the tribunal's name;
  - (b) the tribunal's decision and the date of the decision; and
  - (c) the decision sought; and
  - (d) briefly, but specifically, the grounds relied on in support of the appeal.
- (2) If there is a respondent to an appeal, the notice of appeal must include an instruction that before taking any other step in the proceeding the respondent must file in the court a notice of intention to respond (unless the respondent has already done so and the information provided in the notice has not changed, or if the respondent files a notice of cross-appeal or a notice of contention).
- (3) A notice of appeal from a decision of the following tribunals must include a request for leave to appeal to the Supreme Court:
  - (a) the AAT;
  - (b) the consumer and trader tribunal;
  - (c) the credit tribunal;

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- (d) the discrimination tribunal;
- (e) the Magistrates Court, for appeals mentioned in the *Magistrates Court Act 1930*, section 274 (1) (Cases in which appeal may be brought);

*Note* The *Magistrates Court Act 1930*, s 274 is as follows:

- (1) An appeal may be brought only with the leave of the Supreme Court.
  - (2) However, an appeal may be brought as of right from a judgment or order—
    - (a) for, or for the payment of, an amount of \$2 000 or more; or
    - (b) in a proceeding in the Magistrates Court—
      - (i) in which the matter in issue amounts to, or is of the value of, \$2 000 or more; or
      - (ii) that involves directly or indirectly a claim, demand or question to or in relation to any property or any civil right amounting to, or of the value of, \$2 000 or more.
  - (3) This section does not apply in relation to an appeal from a judgment of the Small Claims Court.
- (f) the residential tenancies tribunal;
  - (g) the small claims court.
- (4) A notice of appeal from a decision of the guardianship tribunal on a question other than a question of law must include a request for leave to appeal to the Supreme Court.

- (5) On the hearing of an appeal, the appellant must not, without the court's leave—
- (a) raise any question that is not stated in the notice of appeal; or
  - (b) rely on any ground in support of the judgment sought that is not set out in the notice of appeal.

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

**5006 Appeals—notice of intention to respond**

(SCR o 84 r 5; Qld r 786 (2) to (4))

- (1) A respondent to an appeal to the court must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
- (a) the notice of appeal were an originating claim; and
  - (b) the respondent were a defendant; and
  - (c) the appellant were the plaintiff; and
  - (d) any other necessary changes were made.
- (2) However, this rule does not apply to a respondent if—
- (a) the appeal is from a decision of the master or the registrar of a court and the respondent has already filed in the court a notice of intention to respond in relation to the proceeding in which the decision was made, and the information provided in the notice has not changed; or
  - (b) the respondent files a notice of cross-appeal under rule 5017 (Appeals—cross-appeals) or a notice of contention under rule 5018 (Appeals—notice of contention).

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**5007 Appeals—other parties**

(SCR o 84 r 6; NSW r 46.5; Qld r 749, r 750 and r 785)

- (1) A person must be included as a respondent to an appeal to the court if the person—
  - (a) appeared or was given leave to appear before the tribunal in the proceeding in which the decision was made; and
  - (b) would be affected by the decision sought by the notice of appeal, or is interested in maintaining the decision.
- (2) If an unincorporated organisation or association appeared or was given leave to appear before the tribunal in a proceeding in which the decision was made—
  - (a) a reference in subrule (1) to a person is a reference to someone acting for the organisation or association; and
  - (b) subrule (1) (b) is taken to require that the interests of the organisation or association, found out from its objects or purposes, would be affected by the decision sought by the notice of appeal or by the maintenance of the decision.
- (3) The court may order—
  - (a) the inclusion or substitution of anyone as a party to an appeal; or
  - (b) the removal of anyone as a party from the appeal.

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

**5008 Appeals—time for filing notice of appeal**

(SCR o 61 r 4A and 5 (1) (a), o 61A r 4A and 5 (a) and 84 r 7 and r 8;  
MCA s 209 (1); MC(CJ)R s 389 (1); NSW r 46.3; Qld r 748 and r 785)

- (1) A notice of appeal from a decision of a tribunal to the court must be filed in the court—
- (a) not later than the time provided by the relevant law; or
  - (b) not later than any further time the court allows in accordance with the relevant law; or
  - (c) if no time is provided by the relevant law—not later than 28 days after the day the decision appealed from was made, or not later than any further time the court allows on application at any time; or
  - (d) for an appeal from a decision of the master or registrar of the Supreme Court, other than a decision, direction of act mentioned in paragraph (e)—not later than 5 days after the day the decision is made; or
  - (e) for an appeal from a decision, direction or act of the master or registrar of the Supreme Court made, given or done under the rules in schedule 6 (Corporations Rules)—not later than 21 days after the day the decision is made, direction given or act done, or any further time the Supreme Court allows.

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for further time.

*Note 2* An application for further time may be made before or after the time mentioned in r (1) (see Legislation Act, s 151C).

- (2) An application for further time must be accompanied by an affidavit showing—
- (a) the nature of the case in summary form; and
  - (b) each question involved; and
  - (c) the reasons why the extension of time should be given.

**5009 Appeals—notice of appeal to be sealed**

The registrar of the court in which an appeal is brought must seal the original and filed copies of a notice of appeal.

*Note* The registrar may reject a notice of appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

**5010 Appeals—date for settlement of appeal papers**

(SCR o 84 r 9)

The registrar of the court in which an appeal is brought must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

**5011 Appeals—service of notice of appeal**

(SCR o 84 r 10; MCA s 209 (2); MC(CJ)R s 389 (2); NSW r 46.6; Qld r 752, r 784 (2) and r 785)

- (1) Unless otherwise provided by these rules, a sealed copy of a notice of appeal must be served—
- (a) personally on each respondent; or

*Note* See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

- (b) for an appeal mentioned in the *Magistrates Court Act 1930*, section 208 (1), other than section 208 (1) (a)—on the informant; or
- (c) for an appeal mentioned in the *Magistrates Court Act 1930*, section 208 (1) (a)—on each person mentioned in the paragraph.
- (2) A sealed copy of the notice must also be served on the registrar of the tribunal.
- (3) A copy of a notice of appeal to the court must be served under subrule (1) not later than 7 days after the day the notice is filed, but no later than 5 days before the day for settling the appeal papers, unless the court otherwise orders.

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

- (4) If the court makes an order under subrule (3), the registrar of the court must make a note of the order made on the notice of appeal.

## **5012 Appeals—security for costs**

(SCR o 84 r 11; NSW r 46.8; Qld rr 772-774 and r 785)

- (1) Security for the costs of an appeal to the court is not required.
- (2) However, the court may, in special circumstances, order that security for the costs of an appeal in a civil proceeding be given.

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

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**5013 Appeals—stay of decision etc**

(SCR o 61A r 10 and 84 r 12; MCA s 216; NSW r 45.22 and r 46.7; Qld r 761 and r 785)

- (1) An appeal from a decision of a tribunal in a civil proceeding does not operate as a stay of the decision appealed from unless the relevant law or these rules provide otherwise.
- (2) On application by a person affected by a decision of the master, or the Magistrates Court in a civil proceeding, that is appealed from, the Supreme Court may make an order staying or otherwise affecting the operation or implementation of all or part of the decision.

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

- (3) In an urgent case, the application—
  - (a) may be made without serving it on anyone; and
  - (b) if made without serving it on anyone, must be accompanied by an affidavit setting out the grounds relied on in support of the application.
- (4) If an appeal to which the *Magistrates Court Act 1930*, part 3.10.2 (Appeals in criminal matters) has been properly started—
  - (a) the enforcement of the decision appealed from is stayed until the appeal ends, is abandoned or discontinued; and
  - (b) if the appellant is in custody and is not detained for any other reason, the appellant may—
    - (i) be granted bail under the *Bail Act 1992*; or
    - (ii) if not granted bail under the Act—the Supreme Court or the Magistrates Court may commit the person to a correctional centre.

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**5014 Appeals—documents**

(SCR o 84 r 13; NSW r 46.14; Qld r 784 (3))

- (1) Not later than 21 days after the day a notice of appeal from a decision of a tribunal to the court is served on the registrar of the tribunal, the appellant must file in the court—
  - (a) a copy of the decision appealed from; and
  - (b) if the tribunal has given written reasons for its decision—a copy of the reasons; and
  - (c) any transcript, or notes, of the proceeding in the tribunal; and
  - (d) a list, certified by the registrar of the tribunal, of the documents and any other exhibits that were before the tribunal.
- (2) After being served with a notice of appeal, the registrar of a tribunal must send the registrar of the court all documents and exhibits that were before the tribunal in relation to the proceeding from which the appeal is brought.
- (3) When the documents and exhibits mentioned in subrule (2) have been received by the registrar of the court, the registrar must send a copy of the list mentioned in subrule (1) (d) to each party to the appeal.
- (4) If an appeal is brought against a decision of the AAT, the list mentioned in subrule (1) (d) must—
  - (a) state any documents that were the subject of an order under the *Administrative Appeals Tribunal Act 1989*, section 34 (3) (Hearings to be in public except in special circumstances); and
  - (b) state any documents for which a certificate of the Minister is in force under that Act, section 26 (7) (Person affected by decision may obtain reasons for decision); and

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- (c) state any documents for which a certificate is in force under that Act, section 35 (Certain documents and information not required to be disclosed and questions not required to be answered) and whether an order was made by the tribunal under that Act, section 35 (4) in relation to the document.
- (5) If the AAT has not given written reasons for the decision, the appellant must, if entitled to do so under the relevant law—
  - (a) obtain a statement of written reasons for the decision; and
  - (b) send a copy of the statement to the registrar of the tribunal and the registrar of the court no later than 10 days after the day the appellant receives the statement.

**5015 Appeals—discontinuance of appeal**

(SCR o 61A r 9 and o 84 r 14)

- (1) An appellant may discontinue the appeal or part of the appeal at any time by—
  - (a) filing a notice of discontinuance; and
    - Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
  - (b) serving a stamped copy of the notice on each other party to the appeal.
- (2) However, an appeal from a decision of the Magistrates Court may be discontinued only with the Supreme Court’s leave.
- (3) If an appellant files and serves a notice of discontinuance of an appeal or part of an appeal—
  - (a) the appeal or part of the appeal is abandoned by the appellant; and

- (b) the notice of discontinuance does not affect any other appellant.
- (4) If subrule (3) applies and if the appeal is an appeal in a civil proceeding, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal, unless the court otherwise orders.
- (5) A party whose costs are payable under subrule (4) may submit a bill of costs to the registrar of the court for assessment.
- (6) If the costs payable under subrule (4), as assessed, are not paid within 14 days after the day the certificate of assessment is served on the party liable to pay the costs, the court may, on application by the party submitting the bill, enter judgment for the costs.

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

## **5016 Appeals—amending notice of appeal**

(SCR o 84 r 15; Qld r 751 and r 785)

- (1) Before the date set for settling the appeal papers, an appellant may, without leave, amend a notice of appeal.
- (2) After that date, the court may give leave for a notice of appeal to be amended.

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

- (3) The following rules of part 2.7 (Amendment) apply to an amendment of a notice of appeal as if it were a pleading (and with any other necessary changes):
- rule 502 (Amendment—of documents)
  - rule 506 (Amendment—of pleadings disallowed)
  - rule 509 (Amendment—procedure)
  - rule 510 (Amendment—person required to make)

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- rule 511 (Amendment—service of amendment document)
- for an appeal in a civil proceeding—rule 513 (Amendment—costs).

### **5017 Appeals—cross-appeals**

(SCR o 84 r 4 (6) and r 16; NSW r 46.10 and r 46.13 (3) (d); Qld rr 754-756 and r 785)

- (1) This rule applies if a respondent to an appeal in the court—
  - (a) wants to appeal from part of the decision appealed from by the appellant; or
  - (b) seeks an amendment of part of the decision.
- (2) The respondent need not start a substantive appeal, but may instead start a cross-appeal by filing in the court a notice of cross-appeal not later than 28 days after the day the notice of appeal is served on the respondent.

*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 of cross-appeal personally on the appellant and each other party to the appeal, unless otherwise provided by these rules.

*Note* See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

- (4) The notice of cross-appeal must state—
  - (a) what part of the decision the respondent cross-appeals from or contends should be amended; and

- (b) either—
    - (i) the decision that the respondent seeks instead of the decision cross-appealed; or
    - (ii) the amendment of the decision that the respondent seeks; and
  - (c) briefly, but specifically, the grounds relied on in support of the cross-appeal.
- (5) On the hearing of a cross-appeal, the respondent bringing the cross-appeal must not, without the court's leave—
- (a) raise any question that is not stated in the notice of cross-appeal; or
  - (b) rely on any ground in support of—
    - (i) the decision sought that is not set out in the notice of cross-appeal; or
    - (ii) the amendment of the decision sought that is not set out in the notice of cross-appeal.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave.
- (6) The rules mentioned in subrule (7) apply to a cross-appeal as if—
- (a) a reference to an appeal were a reference to a cross-appeal; and
  - (b) a reference to the appellant were a reference to the respondent bringing the cross-appeal; and
  - (c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and
  - (d) any other necessary changes were made.

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- (7) The rules applying to a cross-appeal are as follows:
- rule 675 (Discovery by electronic means—practice notes)
  - rule 5003 (Appeals—non-publication order)
  - rule 5009 (Appeals—notice of appeal to be sealed)
  - rule 5011 (2) to (4) (Appeals—service of notice of appeal)
  - rule 5012 (Appeals—security for costs)
  - rule 5013 (Appeals—stay of decision etc)
  - rule 5015 (Appeals—discontinuance of appeal)
  - rule 5016 (Appeals—amending notice of appeal)
  - rule 5028 (Appeals—abandonment of ground of appeal).

**5018 Appeals—notice of contention**

(SCR o 84 r 17; NSW r 45.24 and r 46.11; Qld r 757 and r 785)

- (1) This rule applies if a respondent to an appeal in the court—
- (a) wants to contend that a question of law has been incorrectly decided against the respondent in the decision appealed from by the appellant; but
  - (b) does not seek a discharge or amendment of part of the decision.
- (2) The respondent must file a notice of contention in the court and serve a stamped copy of the notice on the appellant.
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (3) When the appeal papers are settled under rule 5022 (Appeals—settlement of appeal papers) the appellant must, at the respondent's request, include in the appeal papers that part of the record of evidence, and any documents, before the tribunal that are relevant to the respondent's contention.

**5019 Appeals—content of appeal papers**

(SCR o 84 r 19 (1) (a) to (c))

- (1) The title page of the appeal papers must give—
  - (a) the title of the proceeding; and
  - (b) the tribunal's name; and
  - (c) the names of each party (and the party's solicitor (if any)) and their addresses for service.
- (2) Following the title page of the appeal papers, there must be—
  - (a) an index of the documents to be included in the appeal papers that shows the date and page number of each document; and
  - (b) in chronological order, a copy of all documents necessary to enable the questions raised by the appeal to be decided by the court.

**5020 Appeals—presentation of appeal papers**

(SCR o 84 r 19 (1) (d) and (e))

- (1) The appeal papers must be—
  - (a) paginated; and
  - (b) clear, legible and securely fastened, but need not be bound or printed.
- (2) The registrar must be satisfied about the presentation of the appeal papers.

**5021 Appeals—filing appeal papers for settling**

(SCR o 84 r 19 (2))

An appellant must file a copy of the appeal papers for settling together with a certificate by the parties (or their solicitors) stating that the copy has been examined, and is correct.

**5022 Appeals—settlement of appeal papers**

(SCR o 84 r 18; Qld r 789)

- (1) When settling the appeal papers, the court may give directions about the conduct of the appeal that the court considers appropriate.
- (2) Without limiting subrule (1), the court may do the following:
  - (a) work out what documents [and matters] were before the tribunal;
  - (b) decide what documents are to be included in the appeal papers, and the order of inclusion;
  - (c) settle the index of the documents to be included in the appeal papers;
  - (d) decide the number of copies of the appeal papers required and when they should be served;
  - (e) direct the inclusion, substitution or removal of parties;
  - (f) get an estimate of the length of the hearing from the parties;
  - (g) direct the place, date and kind of hearing.

**5023 Appeals—filing and serving settled appeal papers**

(SCR o 84 r 19 (3))

The appellant must file the number of copies of the appeal papers, and serve them, as decided under rule 5022 (2) (d) (Appeals—settlement of appeal papers).

**5024 Appeals—setting appeal for hearing**

(SCR o 84 r 20)

- (1) This rule applies if the court does not set a date for hearing when the appeal papers are settled under rule 5022 (Appeals—settlement of appeal papers).
- (2) The registrar of the court may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.
- (3) The registrar may set the date—
  - (a) on the registrar’s own initiative; or
  - (b) on application by any party.

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

**5025 Appeals—written summary and list for appeal hearing**

(SCR o 84 r 22)

- (1) A party to an appeal that has been set for hearing must prepare a written summary of arguments in accordance with rule 5026 (Appeals—summaries of arguments) and a list of authorities, legislation and texts in accordance with rule 5027 (Appeals—list of authorities, legislation and texts), unless the court otherwise orders.

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

- (2) At least 5 days before the day set for the start of the hearing of the appeal, each appellant must file in the court 2 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.
- (3) At least 2 days before the day set for the start of the hearing of the appeal, each respondent must file in the court 2 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.
- (4) At least 1 day before the day set for the start of the hearing of the appeal, each appellant may file in the court 2 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.
- (5) This rule does not apply to appeals from interlocutory judgments of the master.

**5026 Appeals—summaries of arguments**

(SCR o 84 r 23)

- (1) A party's summary of arguments must state as briefly as possible—
  - (a) the issues in the appeal; and
  - (b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and
  - (c) if there is to be a challenge to any of the tribunal's findings of fact—
    - (i) the claimed error (including any failure to make a finding of fact); and
    - (ii) the reasons why the party considers the finding was an error; and

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- (iii) the finding that the party considers should have been made; and
  - (d) for an appellant—a chronology of the facts; and
  - (e) if a respondent disagrees with an appellant’s chronology of facts—the respondent’s chronology of facts that highlights where the respondent’s chronology differs from the appellant’s chronology.
- (2) If the summary relies on a matter in another document, the summary must—
  - (a) for a document mentioned in rule 5027 (3) (a) to (c)—identify the document as mentioned in the paragraphs; and
  - (b) for other documents—if relevant, identify the page of the document relied on.

**5027 Appeals—list of authorities, legislation and texts**

(SCR o 84 r 24)

- (1) A party’s list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.
- (2) A party’s list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text—
  - (a) in part A—that the party expects will be quoted from by the party; and
  - (b) in part B—that may be referred to by the party.
- (3) An authority, legislation or text must be identified as follows:
  - (a) for an authority—by case, citation and relevant part;

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- (b) for legislation—by provision;
- (c) for a text—by edition and page number.

**5028 Appeals—abandonment of ground of appeal**

(SCR o 84 r 25)

- (1) This rule applies if an appellant to an appeal to a court wants to abandon a ground of appeal.
- (2) The appellant must give notice to each other party to the appeal that the ground of appeal will not be relied on.
- (3) The notice must be given—
  - (a) as soon as possible; but
  - (b) within a reasonable time before the day set for the hearing.
- (4) The court may make any order the court considers appropriate in an appeal in a civil proceeding in relation to costs incurred because of a failure by the appellant to comply with this rule.

**5029 Appeals—directions about appeal etc**

(SCR o 86 r 89)

- (1) At any time after the filing of a notice of appeal in the court, the court may give any direction about the conduct of the appeal it considers appropriate, even though the direction may be inconsistent with another provision of these rules.
- (2) The court may give a direction about the conduct of the appeal on application by a party to the appeal or on its own initiative.

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

- (3) In deciding whether to give a direction under this rule, the interests of justice are paramount.
- (4) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.
- (5) The court may at any time amend or revoke a direction made under this rule.
- (6) The court may amend or revoke a direction 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.

- (7) 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).

**5030 Further evidence on appeal—Magistrates Court Act 1930, s 214**

(SCR o 84 r 21)

- (1) This rule applies to an application to the Supreme Court to receive evidence mentioned in the *Magistrates Court Act 1930*, section 214 (3) and (4) in an appeal mentioned in that section.

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

- (2) The application must be supported by an affidavit stating—
  - (a) the grounds of the application; and
  - (b) any evidence necessary to establish the grounds of the application; and
  - (c) the evidence that the applicant wants the Supreme Court to receive.

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- (3) Not later than 21 days before the day set for the hearing of the appeal, the applicant must file the affidavit in the Supreme Court and serve a stamped copy on the other party to the appeal.
- (4) Unless the Supreme Court otherwise orders, the evidence of the other party to the appeal must be given by affidavit.
- (5) Not later than 14 days before the day set for the hearing of the appeal, the other party to the appeal must file the affidavit in the Supreme Court and serve a stamped copy on the applicant.

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## **Part 5.2**                      **Appeals to Court of Appeal from Supreme Court**

### **Division 5.2.1**            **Interpretation—pt 5.2**

#### **5300**            **Meaning of *court* in pt 5.2**

(SCR o 86 r 1; Qld r 745)

- (1) In this part, the *court* is the Supreme Court other than when it is the Court of Appeal.
- (2) Also, the *court* includes the master, except in relation to interlocutory judgments of the master.
- (3) However, the *court* does not include—
  - (a) the Full Court of the Supreme Court exercising appellate jurisdiction; or
  - (b) the registrar.

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

#### **5310**            **Application—div 5.2.2**

(SCR o 86 r 2)

This division applies to an application for leave to appeal to the Court of Appeal from an interlocutory judgment of the court.

**5311 Application for leave to appeal to Court of Appeal—  
interlocutory judgment**

(SCR o 86 r 3)

The application must comply with this division.

*Note* The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

**5312 Requirements for application for leave to appeal to Court  
of Appeal—interlocutory judgment**

(SCR o 86 r 4)

- (1) If the applicant wants to present the applicant's case in writing under division 5.2.6 (Written cases), the application must state that the applicant wants to do so.

*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 accompanied by—
- (a) an affidavit showing—
    - (i) the nature of the case; and
    - (ii) the questions involved; and
    - (iii) the reasons why leave should be given; and
  - (b) the draft notice of appeal.

**5313 Time for filing application for leave to appeal to Court of Appeal—interlocutory judgment**

(SCR o 86 r 5)

The application, accompanying affidavit and draft notice of appeal must be filed not later than 7 days after the day the interlocutory judgment is given, or not later than any further time allowed by the Court of Appeal or the judge who gave the interlocutory judgment.

**5314 Service of application for leave to appeal to Court of Appeal—interlocutory judgment**

(SCR o 86 r 6)

- (1) The application, accompanying affidavit and draft notice of appeal must be served on each person who was a party to, or given leave to intervene in, the proceeding in which the interlocutory judgment was given.
- (2) The application, accompanying affidavit and draft notice of appeal must be served not later than 3 days after the day the application is filed.

**5315 Notice of intention to respond to application for leave to appeal to Court of Appeal—interlocutory judgment**

(SCR o 86 r 7)

- (1) A respondent to the application must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
  - (a) the application were an originating application; and
  - (b) the respondent were a defendant; and
  - (c) the appellant were the plaintiff; and

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- (d) any other necessary changes were made.
- (2) However, this rule does not apply to a respondent if the respondent has already filed in the court a notice of intention to respond in relation to the proceeding in which the interlocutory judgment was given, and the information provided in the notice has not changed.

**5316 Time for filing and service of affidavits by respondents to application for leave to appeal to Court of Appeal—interlocutory judgment**

(SCR o 86 r 8)

A respondent who wants to present evidence must file and serve the respondent's affidavits not later than 14 days after the day the application is served on the respondent.

**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**

(SCR o 86 r 9)

In this division:

*conviction*—see rule 5500 (Definitions—div 5.2.5).

*final judgment*, of the court, means a judgment that is not an interlocutory judgment, but does not include a conviction or sentence.

*out of time*, for leave to appeal from a final judgment, means more than 28 days after the day the judgment was given.

*sentence*—see rule 5500 (Definitions—div 5.2.5).

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**5331 Application—div 5.2.3**

(SCR o 86 r 10)

This division applies to an application for leave to appeal to the Court of Appeal out of time from a final judgment of the court.

*Note* For leave to appeal out of time from a conviction or sentence (as defined in r 5500), see sdiv 5.2.5.2 (Leave to appeal to Court of Appeal out of time against convictions and sentences—convicted person) and sdiv 5.2.5.3 (Leave to appeal to Court of Appeal out of time against sentence—director of public prosecutions).

**5332 Application for leave to appeal to Court of Appeal out of time—final judgment**

(SCR o 86 r 11)

The application must comply with this division.

*Note 1* The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

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

**5333 Requirements for application for leave to appeal to Court of Appeal out of time—final judgment**

(SCR o 86 r 12)

- (1) If the applicant wants to present the applicant's case in writing under division 5.2.6 (Written cases), the application must state that the applicant wants to do so.
- (2) The application must be accompanied by—
  - (a) an affidavit showing—
    - (i) the nature of the case; and

- (ii) the questions involved; and
  - (iii) the reasons why leave should be given; and
- (b) the draft notice of appeal.

**5334 Filing and service of application for leave to appeal to Court of Appeal out of time—final judgment**

(SCR o 86 r 13)

- (1) The application, accompanying affidavit and draft notice of appeal must be filed, and served on each person who was a party to, or given leave to intervene in, the proceeding in which the final judgment was given.
- (2) The application, accompanying affidavit and draft notice of appeal must be served not later than 3 days after the day the application is filed.

**5335 Notice of intention to respond to application for leave to appeal to Court of Appeal out of time—final judgment**

(SCR o 86 r 14)

- (1) A respondent to the application must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
  - (a) the application were an originating application; and
  - (b) the respondent were a defendant; and
  - (c) the appellant were the plaintiff; and
  - (d) any other necessary changes were made.

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- (2) However, this rule does not apply to a respondent if the respondent has already filed in the court a notice of intention to respond in relation to the proceeding in which the final judgment was given, and the information provided in the notice has not changed.

**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**

(SCR o 86 r 15)

A respondent who wants to present evidence must file and serve the respondent's affidavits not later than 14 days after the day the application is served on the respondent.

**Division 5.2.4 Appeals to Court of Appeal from Supreme Court generally**

*Note* See also sdiv 5.2.5.4 (Additional rules for appeals to Court of Appeal against convictions and sentences).

**5400 Meaning of *appeal*—div 5.2.4**

(SCR o 86 r 16; Qld r 744)

- (1) In this division:

*appeal* means an appeal from a judgment of the court.

*conviction*—see rule 5500 (Definitions—div 5.2.5).

*judgment* includes—

- (a) a decree, order or direction of the court; or
- (b) a conviction of the court; or
- (c) a sentence of the court.

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*sentence*—see rule 5500 (Definitions—div 5.2.5).

- (2) However, an *appeal* does not include—
- (a) a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal; or
- Note* See div 5.5.2 (Cases stated and questions reserved to Court of Appeal).
- (b) an appeal under the *Supreme Court Act 1933*, section 37S (Reference appeal following acquittal on indictment).
- Note* See pt 5.4 (Reference appeals).

**5401 Application—div 5.2.4**

(SCR o 86 r 17)

This division applies to an appeal to the Court of Appeal.

**5402 Appeals to Court of Appeal—starting appeal**

(SCR o 86 r 18; Qld r 746)

The appeal is started by filing a notice of appeal 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.

**5403 Appeals to Court of Appeal—requirements for notice of appeal**

(SCR o 86 r 19; Qld r 747)

- (1) The notice of appeal must state—
- (a) whether the appeal is from all or part of the judgment; and

- (b) if the appeal is from part of the judgment—the part appealed from; and
  - (c) briefly, but specifically, the grounds relied on in support of the appeal; and
  - (d) the decision sought.
- (2) If the appeal is brought by leave of the Court of Appeal—
- (a) the notice of appeal must state that the appeal is brought by leave; and
  - (b) a copy of the judgment giving leave to appeal must be attached to the notice of appeal and every copy of the notice of appeal served under rule 5408 (Appeals to Court of Appeal—service of notice of appeal).
- (3) If the appellant wants to present the appellant’s case in writing under division 5.2.6 (Written cases), the notice of appeal must state that the appellant wants to do so.

**5404 Appeals to Court of Appeal—parties to appeal**

(SCR o 86 r 20; Qld r 749 and r 750)

- (1) Each party to the proceeding in which the judgment appealed from was given must be joined as an appellant or respondent to the appeal if the party is affected by the judgment sought by the notice of appeal or is interested in maintaining the judgment under appeal.
- (2) The Court of Appeal may order the inclusion, substitution or removal of anyone as a party to the appeal.

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

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- (3) However, a person may be made an appellant only with the person's consent.

**5405 Appeals to Court of Appeal—notice of intention to respond**

(SCR o 86 r 21; Qld r 786 (2) to (4))

- (1) A respondent to an appeal to the Court of Appeal must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
- (a) the notice of appeal were an originating application; and
  - (b) the respondent were a defendant; and
  - (c) the appellant were the plaintiff; and
  - (d) any other necessary changes were made.
- (2) However, this rule does not apply to a respondent if—
- (a) the respondent has already filed a notice of intention to respond under rule 5315 (Notice of intention to respond to application for leave to appeal to Court of Appeal—interlocutory judgment) or rule 5335 (Notice of intention to respond to application for leave to appeal to Court of Appeal out of time—final judgment); or
  - (b) rule 5315 or rule 5335 does not apply to the respondent because the respondent has already filed in the court a notice of intention to respond in relation to the proceeding in which the interlocutory or final judgment was given, and the information provided in the notice has not changed; or

- (c) the respondent files a notice of cross-appeal or notice of contention under rule 5415 (Appeals to Court of Appeal—cross-appeal etc).

**5406 Appeals to Court of Appeal—time for filing and serving notice of appeal**

(SCR o 86 r 22; Qld r 748)

- (1) The notice of appeal must be filed and served—
- (a) if leave to appeal has been given—
- (i) not later than 28 days after the day leave to appeal is given or not later than any further time allowed by the Court of Appeal on application filed in the court before the end of the 28-day period; or
- (ii) if the Court of Appeal sets a time for the filing and service when giving leave to appeal—not later than the time set or not later than any further time allowed by the Court of Appeal on application filed in the court before the end of the time set; or
- Note* Pt 6.2 (Applications in proceedings) applies to an application for further time.
- (b) in any other case—not later than 28 days after the day the judgment appealed from was given.
- (2) However, the Court of Appeal may, at any time, give leave to file and serve a notice of appeal, for special reasons.

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

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<b>Chapter 5</b>	Appellate proceedings
<b>Part 5.2</b>	Appeals to Court of Appeal from Supreme Court
<b>Division 5.2.4</b>	Appeals to Court of Appeal from Supreme Court generally

Rule 5407

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**5407 Appeals to Court of Appeal—notice of appeal to be sealed**

The registrar must seal the original and filed copies of a notice of appeal.

*Note* The registrar may reject a notice of appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

**5408 Appeals to Court of Appeal—service of notice of appeal**

(SCR o 86 r 23; Qld r 752)

- (1) A notice of appeal must be served on each person who was a party to, or was given leave to intervene in, the proceeding in which the judgment appealed from was given.
- (2) However, a notice of appeal from a decision refusing an application made without notice need not be served unless the Court of Appeal otherwise orders on its own initiative.
- (3) The Court of Appeal may order that the notice of appeal be served on anyone else.

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

- (4) The Court of Appeal may make an order under subrule (3) on application by a party to the appeal or on its own initiative.

**5409 Appeals to Court of Appeal—stay**

(SCR o 86 r 24; Qld r 761)

- (1) Unless the Court of Appeal or the court otherwise orders, an appeal to the Court of Appeal does not—
  - (a) stay the enforcement of the judgment appealed from; or

- (b) invalidate any intermediate act or proceeding.
- (2) The Court of Appeal may, by order, amend or set aside an order under subrule (1).
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) An application for an order of the Court of Appeal under subrule (1) may be made whether or not a similar application has been made to the court.

**5410 Appeals to Court of Appeal—competency of appeal**  
(SCR o 86 r 25)

- (1) A respondent may apply to the Court of Appeal at any time for an order striking out an appeal as incompetent.
- 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 burden of establishing the competency of the appeal is on the appellant.

**5411 Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent**  
(SCR o 86 r 26)

- (1) This rule applies if a respondent does not make an application under rule 5410 (1) and the appeal is struck out by the Court of Appeal as incompetent.
- (2) The respondent must not receive any costs of the appeal, unless the Court of Appeal otherwise orders.

<b>Chapter 5</b>	Appellate proceedings
<b>Part 5.2</b>	Appeals to Court of Appeal from Supreme Court
<b>Division 5.2.4</b>	Appeals to Court of Appeal from Supreme Court generally

Rule 5412

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- (3) The Court of Appeal may order that the respondent pay the appellant any costs of the appeal wasted because of the respondent's failure to make an application under rule 5410 (1).
- (4) The Court of Appeal may make an order under this rule on application by a party to the appeal or on its own initiative.

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

**5412 Appeals to Court of Appeal—discontinuance of appeal**

(SCR o 86 r 27)

- (1) An appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before the hearing of the appeal without the leave of the Court of Appeal; or
  - (b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for leave, or an order otherwise ordering, 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) However, if an appeal is to be decided by written cases under division 5.2.6 (Written cases), an appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before (and including) the last day that the appellant may file a written submission under rule 5606 (3) (Filing and serving written case—appeal), without the leave of the Court of Appeal; or

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- (b) after the period mentioned in paragraph (a), and before judgment, with the leave of the Court of Appeal.
- (3) If an appellant files and serves a notice of discontinuance of an appeal or part of an appeal—
  - (a) the appeal or part of the appeal is abandoned by the appellant; but
  - (b) the notice of discontinuance does not affect any other appellant in the appeal.
- (4) If subrule (3) applies, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal, unless the Court of Appeal otherwise orders.
- (5) The Court of Appeal may make an order under subrule (4) on application by a party to the appeal or on its own initiative.

**5413 Appeals to Court of Appeal—security for costs**

(SCR o 86 r 28; Qld rr 772-774)

Security for costs of an appeal is not required, unless the Court of Appeal otherwise orders.

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

**5414 Appeals to Court of Appeal—amending notice of appeal**

(SCR o 86 r 29; Qld r 751)

- (1) Before the date set for settling the appeal papers, an appellant may, without leave, amend a notice of appeal.
- (2) After that date, the Court of Appeal may give leave for a notice of appeal to be amended.

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<b>Part 5.2</b>	Appeals to Court of Appeal from Supreme Court
<b>Division 5.2.4</b>	Appeals to Court of Appeal from Supreme Court generally

Rule 5415

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- (3) The following rules of part 2.7 (Amendment) apply to an amendment of a notice of appeal as if it were a pleading (and with any other necessary changes):
- rule 502 (Amendment—of documents)
  - rule 506 (Amendment—of pleadings disallowed)
  - rule 509 (Amendment—procedure)
  - rule 510 (Amendment—person required to make)
  - rule 511 (Amendment—service of amendment document)
  - for an appeal in a civil proceeding—rule 513 (Amendment—costs).

**5415 Appeals to Court of Appeal—cross-appeal etc**

(SCR o 86 r 30; Qld rr 754-757)

- (1) A respondent who wants to appeal from part of a judgment, or an amendment of part of a judgment, need not begin a substantive appeal.
- (2) However, the respondent must—
- (a) file a notice of cross-appeal not later than 28 days after the day the notice of appeal is served on the respondent, or not later than any further time allowed by the Court of Appeal; and
  - (b) serve a copy of the notice on—
    - (i) the appellant (or each appellant); and
    - (ii) any other party to the proceeding in which the judgment appealed from was given, who would be affected by the decision that the respondent seeks.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for further time.

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- (3) The notice of cross-appeal must state—
  - (a) what part of the judgment the respondent cross-appeals from or contends should be amended; and
  - (b) briefly, but specifically, the grounds of the cross-appeal; and
  - (c) either—
    - (i) the judgment that the respondent seeks instead of the judgment cross-appealed; or
    - (ii) the amendment of the judgment that the respondent seeks.
- (4) If a respondent proposes to contend that a matter of fact or law has been incorrectly decided against the respondent but does not seek a discharge or amendment of a part of the judgment, the respondent need not file a notice of cross-appeal.
- (5) However, the respondent must—
  - (a) file and serve notice of the respondent's contention on the appellant (or each appellant) before the date set for settling the appeal papers; and
  - (b) give notice to the appellant of the record of evidence or documents before the court relevant to the respondent's contention, for inclusion in the appellant's draft index to be prepared in accordance with rule 5420 (1) (Appeals to Court of Appeal—draft index of appeal papers); and
  - (c) when the appeal papers are being settled, ask the Court of Appeal to include the record of evidence or documents in the appeal papers.
- (6) The master or registrar may exercise the jurisdiction of the Court of Appeal for subrule (5) (c).

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**5416 Appeals to Court of Appeal—application of certain rules to cross-appeals**

(SCR o 86 r 31)

- (1) The rules mentioned in subrule (2) apply to a cross-appeal as if—
  - (a) a reference to an appeal were a reference to a cross-appeal; and
  - (b) a reference to the appellant were a reference to the respondent bringing the cross-appeal; and
  - (c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and
  - (d) any other necessary changes were made.
- (2) The rules applying to a cross-appeal are as follows:
  - rule 5410 (Appeals to Court of Appeal—competency of appeal)
  - rule 5411 (Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent)
  - rule 5412 (Appeals to Court of Appeal—discontinuance of appeal)
  - rule 5430 (Appeals to Court of Appeal—abandonment of ground of appeal).

**5417 Appeals to Court of Appeal—keeping exhibits**

(SCR o 86 r 32)

- (1) This rule applies in relation to an appeal in the Court of Appeal from a judgment given in a proceeding in the court.

- (2) Unless the court otherwise orders, the registrar must keep the exhibits in the proceeding until 28 days after the day the appeal is disposed of.

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

- (3) However, the register may permit a document or thing to be removed from the registry in accordance with rule 6767 (Power to allow removal of documents and things).

**5418 Appeals to Court of Appeal—date for settlement of appeal papers**

(SCR o 86 r 33; Qld r 753)

The registrar must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

**5419 Appeals to Court of Appeal—filing of things before settlement of appeal papers**

(SCR o 86 r 34)

- (1) Before the date set for settling the appeal papers, the appellant must get and file—
- (a) the reasons for judgment or the summing up of the judicial officer of the court who gave the judgment appealed from, certified by the judicial officer's associate; and
  - (b) a copy of the transcript of the proceeding in which the judgment was given, corrected in accordance with subrules (2) and (3).

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- (2) If the appellant gets a copy of the transcript of the proceeding, the appellant must—
  - (a) correct any errors in it; and
  - (b) give a list of the corrections to the respondent; and
  - (c) give the respondent a reasonable time to examine the transcript and corrections.
- (3) If the parties disagree on the accuracy of any part of the transcript, or cannot agree on a correction, the disagreement must be submitted to the judicial officer of the court who gave the judgment appealed from, or to the registrar, for directions.

**5420 Appeals to Court of Appeal—draft index of appeal papers**  
(SCR o 86 r 35)

- (1) Before the date set for settling the appeal papers, the appellant must prepare and file—
  - (a) a draft index of the appeal papers; and
  - (b) a separate, chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits.
- (2) The appellant must serve the draft index, and list, on the respondent a reasonable time before the date set for settling the appeal papers.

**5421 Appeals to Court of Appeal—content of appeal papers**

(SCR o 86 r 36; Qld r 758)

- (1) The title page of the appeal papers must give the title of the proceeding and the names of each party (and the party's solicitor (if any)) and their addresses for service.
- (2) Following the title page of the appeal papers, there must be—
  - (a) an index of the documents making up the appeal papers that shows the date and page number of each document; and
  - (b) a chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits, showing the date and page number of each document.
- (3) The appeal papers must be paginated, and the documents arranged, in the following order:
  - (a) notice of appeal or, if amended, the amended notice of appeal;
  - (b) any notice of cross-appeal or notice of contention;
  - (c) if leave to appeal has been given—the judgment giving leave;
  - (d) the formal order of the court from which the appeal is brought;
  - (e) reasons for the judgment of the court;
  - (f) process and pleading;
  - (g) evidence, as follows:
    - (i) the transcript of any oral evidence;

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- (ii) affidavit evidence in which, after each affidavit, documents exhibited or attached to the affidavit are arranged in the order in which they have been numbered in the affidavit;
  - (iii) other exhibits that are documents (other than affidavits and documents exhibited or attached to each affidavit) arranged in the order in which they have been numbered as exhibits in the court, and any list of the exhibits appearing in the transcript;
  - (iv) a list of exhibits that are not documents;
  - (h) testimony taken on commission or before an examiner and received in evidence in the proceeding in which the judgment appealed from was given;
  - (i) if the judgment appealed from was given in an appeal from a tribunal, as follows:
    - (i) reasons for decisions of the tribunal;
    - (ii) the formal decision of the tribunal;
    - (iii) any notice of appeal to the court;
  - (j) the certificate under rule 5424 (1) (Appeals to Court of Appeal—filing and serving appeal papers).
- (4) Interrogatories and answers and affidavits of documents must not be copied except as far as they were put in evidence in the proceeding in which the judgment appealed from was given.

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- (5) If the text of an oral judgment or summing up of a judicial officer of the court is included in the appeal papers, the text must first be submitted to the judicial officer for correction and must, when included in the appeal papers, be accompanied by a certificate from the judicial officer's associate that this has been done.
- (6) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.
- (7) In subrule (3) (i):
- appeal* includes an application for—
- (a) an order nisi to review a decision of the Magistrates Court; or
- (b) remedy or relief by way of prerogative writ.
- tribunal*—see rule 5000 (Definitions—pt 5.1).

**5422 Appeals to Court of Appeal—presentation of appeal papers**

(SCR o 86 r 38)

- (1) The appeal papers need not be printed or in bound form, but must be clear, legible and securely fastened.
- (2) The registrar must be satisfied about the presentation of the appeal papers.
- (3) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.

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**5423 Appeals to Court of Appeal—settlement of appeal papers**

(SCR o 86 r 37; Qld r 760)

- (1) When settling the appeal papers, the Court of Appeal may give directions about the conduct of the appeal that the court considers appropriate.
- (2) Without limiting subrule (1), the Court of Appeal may do the following:
  - (a) work out what documents [and matters] were before the judicial officer of the court who gave the judgment appealed from;
  - (b) decide what documents are to be included in the appeal papers, and the order of inclusion;
  - (c) settle the index in accordance with rule 5421 (Appeals to Court of Appeal—content of appeal papers);
  - (d) decide the number of copies of the appeal papers required and when they should be served;
  - (e) direct the inclusion, substitution or removal of parties;
  - (f) get an estimate of the length of the hearing from the parties;
  - (g) direct the place, date and kind of hearing.
- (3) The master or registrar may exercise the jurisdiction of the Court of Appeal for this rule.

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**5424 Appeals to Court of Appeal—filing and serving appeal papers**

(SCR o 86 r 39)

- (1) An appellant must file the appeal papers with a certificate by the parties or their solicitors that the papers have been examined and are correct.

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

- (2) The appellant must file the number of copies of the appeal papers, and serve them, as decided under rule 5423 (2) (d) (Appeals to Court of Appeal—settlement of appeal papers).

**5425 Appeals to Court of Appeal—setting appeal for hearing**

(SCR o 86 r 40)

- (1) This rule applies if the Court of Appeal, the master or registrar does not set a date for hearing when the appeal papers are settled under rule 5423 (Appeals to Court of Appeal—settlement of appeal papers).
- (2) The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.

**5426 Appeals to Court of Appeal—power to change appeal hearing date**

(SCR o 86 r 41)

The Court of Appeal may, at any time, order that an appeal be heard on a date other than that set under rule 5423 (Appeals to Court of Appeal—settlement of appeal papers) or rule 5425 (Appeals to Court of Appeal—setting appeal for hearing).

**5427 Appeals to Court of Appeal—written summary and list for appeal hearing**

(SCR o 86 r 42)

- (1) A party to an appeal that has been set for hearing must prepare a written summary of arguments in accordance with rule 5428 (Appeals to Court of Appeal—summaries of arguments) and a list of authorities, legislation and texts in accordance with rule 5429 (Appeals to Court of Appeal—list of authorities, legislation and texts), unless the Court of Appeal otherwise orders.

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

- (2) At least 5 days before the day set for the start of the hearing of the appeal, each appellant must file in the court 5 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.
- (3) At least 2 days before the day set for the start of the hearing of the appeal, each respondent must file in the court 5 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.
- (4) At least 1 day before the day set for the start of the hearing of the appeal, each appellant may file in the court 5 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.

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**5428 Appeals to Court of Appeal—summaries of arguments**

(SCR o 86 r 43)

- (1) A party's summary of arguments must state as briefly as possible—
  - (a) the issues in the appeal; and
  - (b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and
  - (c) if there is to be a challenge to any of the court's findings of fact—
    - (i) the claimed error (including any failure to make a finding of fact); and
    - (ii) the reasons why the party considers the finding was an error; and
    - (iii) the finding that the party considers should have been made; and
  - (d) for an appellant—a chronology of the facts; and
  - (e) if a respondent disagrees with an appellant's chronology of facts—the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.
- (2) If the summary relies on a matter in another document, the summary must—
  - (a) for a document mentioned in rule 5429 (3) (a) to (c) (Appeals to Court of Appeal—list of authorities, legislation and texts)—identify the document as mentioned in the paragraphs; and

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- (b) for other documents—if relevant, identify the page of the document relied on.

**5429 Appeals to Court of Appeal—list of authorities, legislation and texts**

(SCR o 86 r 44)

- (1) A party's list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.
- (2) A party's list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text—
  - (a) in part A—that the party expects will be quoted from by the party; and
  - (b) in part B—that may be referred to by the party.
- (3) An authority, legislation or text must be identified as follows:
  - (a) for an authority—by case, citation and relevant part;
  - (b) for legislation—by provision;
  - (c) for a text—by edition and page number.

**5430 Appeals to Court of Appeal—abandonment of ground of appeal**

(SCR o 86 r 45)

- (1) This rule applies if an appellant wants to abandon a ground of appeal.
- (2) The appellant must give notice to each other party that the ground of appeal will not be relied on.

- (3) The notice must be given—
  - (a) as soon as possible; but
  - (b) if the appeal is not to be decided by written cases under division 5.2.6 (Written cases)—within a reasonable time before the day set for the hearing.
- (4) The Court of Appeal may make any order the court considers appropriate in an appeal in a civil proceeding in relation to costs incurred because of a failure by the appellant to comply with this rule.

**5431 Appeals to Court of Appeal—further evidence on appeal**  
(SCR o 86 r 46)

- (1) This rule applies—
  - (a) to an application to the Court of Appeal to receive evidence on a hearing of an appeal in addition to evidence in the proceeding appealed from; and
  - (b) unless the Court of Appeal otherwise orders.
- (2) The application must be made on the hearing of the appeal.

*Note* Pt 6.2 (Applications in proceedings) applies to the application.
- (3) Not later than 28 days before the day set for the start of the hearing of the appeal, the applicant must file 1 or more affidavits stating—
  - (a) the grounds of the application; and
  - (b) any evidence necessary to establish the grounds of the application; and
  - (c) any evidence that the applicant wants the Court of Appeal to receive.

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- (4) The evidence of any other party to the appeal must be given by affidavit filed not later than 7 days before the day set for the start of the hearing of the appeal.
- (5) A party to the appeal must, not later than the time for the party to file an affidavit under this rule—
  - (a) file the number of copies of the affidavit that the registrar directs; and
  - (b) serve 3 copies of the affidavit on each other party to the appeal.

**5432 Appeals to Court of Appeal—absence of party**

(SCR o 86 r 47)

- (1) If a party is not present when an appeal is called on for hearing, the Court of Appeal may—
  - (a) order that the hearing not proceed unless the appeal is again set for hearing or the other steps directed by the Court of Appeal are taken; or
  - (b) adjourn the hearing; or
  - (c) if the absent party is an appellant or cross-appellant—dismiss the appeal or cross-appeal; or
  - (d) proceed with the hearing, either generally or in relation to the decision sought in the appeal; or
  - (e) for an appeal against conviction or sentence, if the party is the appellant who is on bail and is not legally represented—make another order the court considers appropriate or issue a warrant for the appellant’s arrest.

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- (2) The Court of Appeal may make an order, or do anything else, mentioned in subrule (1) on application by a party to the appeal or on its own initiative.
- (3) If the hearing proceeds in the absence of the party and an order is made, the Court of Appeal may, on application by the party—
  - (a) amend or set aside the order; and
  - (b) give directions for the further conduct of the appeal.

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

## **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**

(SCR o 86 r 48)

In this division:

*convicted person* means—

- (a) for a conviction—the person against whom the conviction was recorded; or
- (b) for a sentence—the person on whom the sentence was imposed.

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**conviction** means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

- (a) a conviction recorded by the court for the person; or
- (b) a finding of guilt recorded by the court for the person.

**out of time**, for leave to appeal against a conviction or sentence, means more than 28 days after the day the conviction was recorded or sentence was imposed.

**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
- (a) 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).

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**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**

(SCR o 86 r 49)

This subdivision applies to an application by the convicted person for a conviction or sentence for leave to appeal to the Court of Appeal out of time against the conviction or sentence.

**5506 Application for leave to appeal to Court of Appeal out of time—conviction or sentence**

(SCR o 86 r 50)

The application must be made to the registrar in the first instance.

*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.

**5507 Requirements for application for leave to appeal to Court of Appeal out of time—conviction or sentence**

(SCR o 86 r 51)

- (1) If the convicted person wants to present the person's case in writing under division 5.2.6 (Written cases) the application must state that the person wants to do so.

- (2) The application must be accompanied by—
- (a) an affidavit showing—
    - (i) the nature of the case; and
    - (ii) the questions involved; and
    - (iii) the reasons why leave should be given; and
  - (b) the draft notice of appeal.

**5508 Service of application for leave to appeal to Court of Appeal out of time—conviction or sentence**

(SCR o 86 r 52)

The convicted person must serve the application, accompanying affidavit and draft notice of appeal on the director of public prosecutions not later than 5 days after the day the application is filed.

*Note* Rule 5533 (Appeals to Court of Appeal against convictions and sentences—service if convicted person in custody and unrepresented) deals with the service of documents if a party is in custody and not represented by a lawyer.

**5509 Response by director of public prosecutions to application for leave to appeal to Court of Appeal out of time—conviction or sentence**

(SCR o 86 r 53 and r 54)

- (1) The director of public prosecutions must file a response to 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 response must state—
- (a) whether the director opposes, consents to, or does not oppose, the application; and
  - (b) whether the director proposes to file any affidavits in response to the application; and
  - (c) an address for service.

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

- (3) The director of public prosecutions must file the response, and serve it on the convicted person, not later than 7 days after the day the application is served on the director.
- (4) If the director of public prosecutions wants to present evidence, the director must file the director's affidavits, and serve them on the convicted person, not later than 14 days after the day the application is served on the director.

**5510 Registrar's decision to give or refuse leave to appeal to Court of Appeal out of time—conviction or sentence**

(SCR o 86 r 55)

- (1) The registrar must tell the convicted person, and the director of public prosecutions, of the registrar's decision to give or refuse leave to appeal out of time.
- (2) If the registrar gives leave, the director of public prosecutions may apply to the Court of Appeal for an order that the application mentioned in rule 5505 (Application—sdiv 5.2.5.2) be refused.

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

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- (3) If the registrar refuses leave—
- (a) the registrar must give the convicted person a copy of the form to be used for applying to the Court of Appeal when telling the person about the refusal; and
  - (b) the convicted person may apply to the Court of Appeal to have the application mentioned in rule 5505 decided by the Court of Appeal.
- Note 1* Pt 6.2 (Applications in proceedings) applies to the application to the Court of Appeal.
- Note 2* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (4) The application to the Court of Appeal must be filed not later than 14 days after the day the convicted person is told about the registrar's decision.

### **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**

(SCR o 86 r 56)

Division 5.2.3 (Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court) applies to an application for leave to appeal out of time against sentence by the director of public prosecutions as if—

- (a) a reference to a final judgment were a reference to a sentence; and
- (b) any other necessary changes were made.

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**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**

(SCR o 86 r 57)

If an application for leave to appeal out of time against conviction or sentence is made by the convicted person to the Court of Appeal, the court may treat the hearing of the application as the hearing of the appeal.

**5531 Appeals to Court of Appeal against convictions and sentences—grounds of appeal**

(SCR o 86 r 58)

Unless the Court of Appeal otherwise orders, the following may not be allowed as a ground for appeal against conviction or sentence unless objection was taken at the trial by the party appealing:

- (a) a direction given by the trial judge;
- (b) the trial judge's failure to give a direction;
- (c) the trial judge's decision about the admission or rejection of evidence.

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

**5532 Appeals to Court of Appeal against convictions and sentences—trial judge’s report**

(SCR o 86 r 59)

- (1) During the hearing of an appeal against conviction or sentence, the Court of Appeal may ask the trial judge to give the court (through the registrar) a report on any aspect of the case.
- (2) The report is not available for inspection by the parties or anyone else unless the Court of Appeal otherwise orders.

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

**5533 Appeals to Court of Appeal against convictions and sentences—service if convicted person in custody and unrepresented**

(SCR o 86 r 60)

- (1) This rule applies to an application or appeal under this part in relation to a conviction or sentence if the convicted person—
  - (a) is in custody; and
  - (b) is not represented by a solicitor.
- (2) A document required or allowed under these rules to be served by the convicted person for the application or appeal may be served on the registrar for service by the registrar on another party.
- (3) A document required or allowed under these rules to be served on the convicted person for the application or appeal 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 convicted 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
- (d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

**5534 Convicted person is appellant—written case and presence**

(SCR o 86 r 61)

- (1) This rule applies to an application or appeal under this part in relation to a conviction or sentence if the convicted person is the applicant or appellant.
- (2) The convicted person may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

*Note* The convicted person must state that the person wants to present his or her case in writing. See the following:

- r 5312 (1) (Requirements for application for leave to appeal to Court of Appeal—interlocutory judgment)
- r 5403 (3) (Appeals to Court of Appeal—requirements for notice of appeal)
- r 5507 (1) (Requirements for application for leave to appeal to Court of Appeal out of time—conviction or sentence).

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- (3) If the convicted person presents his or her case in writing, the person need not appear or be present at the hearing of the application or appeal unless the Court of Appeal otherwise orders.
- (4) If the convicted person is in custody and does not present his or her case in writing, the person is entitled to be present at the hearing of the application or appeal in the way that the Court of Appeal orders.
- (5) The Court of Appeal may order that the convicted person be present—
  - (a) in person; or
  - (b) by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).
- (6) The Court of Appeal may make an order under this rule on application by a party to the application or appeal or on its own initiative.

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

**5535 Appeals to Court of Appeal against convictions and sentences—order for production of prisoner**

(SCR o 86 r 62)

- (1) The Court of Appeal may make the following orders in relation to the hearing of an application or appeal under this part in relation to a conviction or sentence:
  - (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.

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- (2) The Court of Appeal 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).
- (3) The registrar may exercise the jurisdiction of the Court of Appeal for subrule (1) (a) or (2).
- (4) The Court of Appeal may make an order under this rule on application by a party to the application or appeal or on its own initiative.

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

**5536 Appeals to Court of Appeal against convictions and sentences—fine paid to be kept pending appeal**

(SCR o 86 r 63)

- (1) This rule applies if a convicted person for a conviction or sentence is sentenced to pay a fine.
- (2) If the convicted person appeals against the conviction or sentence, an amount paid by the person as the fine, or part of the fine, must be kept by the person authorised to receive the fine until the appeal is finally decided.
- (3) If the convicted person has paid an amount mentioned in subrule (2), and the person's appeal is upheld, the person is entitled to a refund, unless the Court of Appeal otherwise orders.

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

**EXPOSURE DRAFT**

(4) In this rule:

***fine*** includes an amount for costs or any other amount ordered to be paid by the convicted person in relation to an offence.

**Examples**

- 1 a financial penalty imposed by a court for an offence
- 2 a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence
- 3 costs payable to the Territory under a court order in a proceeding for an offence
- 4 a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*
- 5 an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)

*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).

**5537 Appeals to Court of Appeal against convictions and sentences—solicitor’s instructions to act for convicted person ended**

(SCR o 86 r 64)

- (1) This rule applies to a solicitor if—
  - (a) the solicitor is acting for the convicted person for a conviction or sentence in relation to an application or appeal under this part in relation to the conviction or sentence; and
  - (b) the solicitor’s instructions to act for the convicted person are ended before—
    - (i) for an application—the application is decided; or
    - (ii) for an appeal—judgement is given in the appeal.

**EXPOSURE DRAFT**

- (2) The solicitor must file and serve on each party to the application or appeal (including the convicted person) written notice that the solicitor is no longer acting for the convicted person.
- (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.

**5538 Appeals to Court of Appeal against convictions and sentences—solicitor wants to withdraw from acting for convicted person**

(SCR o 86 r 65)

- (1) This rule applies to a solicitor if—
  - (a) the solicitor is acting for the convicted person for a conviction or sentence in relation to an application or appeal under this part in relation to the conviction or sentence; and
  - (b) the solicitor no longer wants to act for the convicted person in relation to the application or appeal.
- (2) The solicitor must—
  - (a) give the registrar written notice that the solicitor intends to ask the Court of Appeal for leave to withdraw; and
  - (b) serve a copy of the notice on each party other than the convicted person; and
  - (c) serve a copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address.
- (3) The copies of the notice must be served as soon as possible after the solicitor gives the notice to the registrar.

## **EXPOSURE DRAFT**

- (4) The solicitor may withdraw from acting for the convicted person only with the Court of Appeal's leave.
- (5) If the Court of Appeal 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 copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address; and
  - (c) serve a copy of the notice on the director of public prosecutions.

**5539 Appeals to Court of Appeal against convictions and sentences—notification of result etc**

(SCR o 86 r 66)

- (1) For an application or appeal under this part in relation to a conviction or sentence, the registrar must give written notice—
  - (a) to each relevant person about the final decision made on the application or appeal; and
  - (b) to each party to the application or appeal, or anyone else the registrar considers appropriate, about an order made in relation to the application or appeal.
- (2) However, the registrar need only give notice to a person mentioned in subrule (1) if the person was not present when the application or appeal was decided, or the order or direction made.

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(3) In this rule:

*present* means—

- (a) present in person; or
- (b) present by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

*relevant person* means—

- (a) a party to the application or appeal; or
- (b) the judge who gave the judgment appealed from; or
- (c) anyone else the registrar considers appropriate.

## **Division 5.2.6      Written cases**

### **5600      Definitions—div 5.2.6**

(SCR o 86 r 77)

In this division:

*appeal* means an appeal to the Court of Appeal from a judgment of the court, and includes a reference appeal.

*appellant* means—

- (a) a person applying for further time to apply for leave to appeal;  
or
- (b) an applicant (including a convicted person for a conviction or sentence under division 5.2.5.2 (Leave to appeal to Court of Appeal out of time against convictions and sentences—convicted person)) for leave to appeal; or
- (c) a person appealing from a judgment of the court; or

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- (d) an applicant for further time to appeal; or
- (e) an applicant for leave to file and serve a notice of appeal under rule 5406 (2) (Appeals to Court of Appeal—time for filing and serving notice of appeal); or
- (f) an applicant for a reference appeal.

**applicant**, for a reference appeal—see the *Supreme Court Act 1933*, section 37S (2) (Reference appeal following acquittal on indictment).

*Note* The **applicant** for a reference appeal is the Attorney-General or director of public prosecutions.

**application** means—

- (a) an application for further time to apply for leave to appeal; or
- (b) an application for leave to appeal (including a convicted person’s application); or

*Note* An application under sdiv 5.2.5.3 (Leave to appeal to Court of Appeal out of time against sentence—director of public prosecutions) is taken to be an application under r 5333 (see r 5520).

- (c) an application for further time to appeal; or
- (d) an application for leave to file and serve a notice of appeal under rule 5406 (2) (Appeals to Court of Appeal—time for filing and serving notice of appeal).

**convicted person’s application** means an application by a convicted person for a conviction or sentence under subdivision 5.2.5.2 (Leave to appeal to Court of Appeal out of time against convictions and sentences—convicted person).

**conviction**—see rule 5500 (Definitions—div 5.2.5).

*interested party*, for a reference appeal—see the *Supreme Court Act 1933*, section 37S (4).

*Note* An *interested party*, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

*judgment* includes—

- (a) a decree, order or direction of the court; or
- (b) a conviction of the court; or
- (c) a sentence of the court.

*reference appeal* means an appeal under the *Supreme Court Act 1933*, section 37S.

*respondent*, for a reference appeal, means an interested party.

*sentence*—see rule 5500 (Definitions—div 5.2.5).

**5601 Application of div 5.2.6 to case stated etc**

(SCR o 86 r 78)

This division applies, with any necessary changes, to a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal.

**5602 Appeals to Court of Appeal—when are written cases used?**

(SCR o 86 r 79)

- (1) If all the parties to an appeal or application indicate, in accordance with this division, that they want to present their cases in writing, the appeal or application may be dealt with by written cases.

- (2) If any of the parties to an appeal or application (other than the director of public prosecutions as respondent to a convicted person's application) does not indicate, in accordance with this division, that the party wants to present his or her case in writing, the appeal or application must be dealt with by oral hearing.

*Note* Rule 5534 (2) (Convicted person is appellant—written case and presence) provides that a convicted person who is the applicant or appellant may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

- (3) This rule does not prevent the Court of Appeal requiring the parties or a party to present oral argument.

### **5603 Appeals to Court of Appeal—appellant wants written case**

(SCR o 86 r 80)

An appellant may indicate, in accordance with this part, that the appellant wants to present his or her case in writing.

*Note* See the following provisions:

- r 5312 (1) (Requirements for application for leave to appeal to Court of Appeal—interlocutory judgment)
- r 5333 (1) (Requirements for application for leave to appeal to Court of Appeal out of time—final judgment)
- r 5403 (3) (Appeals to Court of Appeal—requirements for notice of appeal)
- r 5507 (1) (Requirements for application for leave to appeal to Court of Appeal out of time—conviction or sentence).
- r 5801 (2) (Reference appeals to Court of Appeal—application for reference appeal)
- r 5871 (3) (Case stated or question reserved to Court of Appeal—form).

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**5604 Appeals to Court of Appeal—respondent wants written case**

(SCR o 86 r 81)

- (1) This rule applies if—
  - (a) an appellant indicates, in accordance with this part, that the appellant wants to present the appellant’s case in writing; and
  - (b) a respondent also wants to present his or her case in writing.
- (2) The respondent must file a notice stating that the respondent wants to present the respondent’s case in writing.
- (3) The notice must be filed, and served on each other party, not later than 7 days after the day the appellant’s application or notice of appeal is served on the respondent.
- (4) If all the parties to an appeal or application indicate, in accordance with this part, that they want to present their cases in writing, the hearing date for the appeal or application is vacated on the filing of the respondent’s notice under subrule (2) (or, if there are 2 or more respondents, on the filing of the last notice under subrule (2)).

**5605 Filing and serving written case—applications**

(SCR o 86 r 82)

- (1) This rule applies if an application is to be dealt with by written case.
- (2) The appellant (or each appellant) to the application must—
  - (a) if there is only 1 respondent—file 4 copies, and serve 3 copies on the respondent, of the appellant’s written case not later than 28 days after the day the notice mentioned in rule 5604 (2) is served on the appellant; or

- (b) if there are 2 or more respondents and the notice mentioned in rule 5604 (2) is served by them on different days—file 4 copies, and serve 3 copies on each respondent, of the appellant’s written case not later than 28 days after the earliest of the days.
- (3) The respondent (or each respondent) to the application must file 4 copies, and serve 3 copies on each other party, of the respondent’s written case not later than 28 days after the day the appellant’s written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants’ written cases are served on the respondent).
- (4) An appellant to the application may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply to a respondent’s written case not later than 14 days after the day the written case is served on the appellant.

**5606 Filing and serving written case—appeal**

(SCR o 86 r 83)

- (1) The appellant (or each appellant) to an appeal must file 4 copies, and serve 3 copies on the respondent (or each respondent), of the appellant’s written case not later than 28 days after the day the appeal papers are filed.
- (2) The respondent (or each respondent) to an appeal must file 4 copies, and serve 3 copies on each other party, of the respondent’s written case not later than 35 days after the day the appellant’s written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants’ written cases are served on the respondent).

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- (3) An appellant to an appeal may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply to a respondent's written case not later than 14 days after the day the written case is served on the appellant.

**5607 Appeals to Court of Appeal—form of written case**

(SCR o 86 r 84)

- (1) The written case of a party must—
- (a) have a title that includes the name of the proceeding; and
  - (b) identify the party; and
  - (c) have consecutively numbered paragraphs; and
  - (d) state the issues; and
  - (e) state the argument to be made on each issue, mentioning the steps in the argument and any authority, legislation or finding of fact to be relied on for each step; and
  - (f) if there is to be a challenge to any of the court's findings of fact, state—
    - (i) the claimed error (including any failure to make a finding of fact); and
    - (ii) the reasons why the party considers the finding was an error; and
    - (iii) the finding that the party considers should have been made; and
  - (g) include a chronology of the facts; and

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- (h) include a list of authorities, legislation and texts relied on by the party that identifies them in accordance with rule 5429 (3) (Appeals to Court of Appeal—list of authorities, legislation and texts).
- (2) If the written case relies on a matter in another document, the following applies:
  - (a) for a document mentioned in subrule (1) (h)—the document must be identified as mentioned in that paragraph;
  - (b) for a transcript—relevant parts must be identified by page and line and attached to the case;
  - (c) for other documents—if relevant, the page of the document relied on must be identified.
- (3) A written case need not be printed or in bound form, but must be clear, legible and securely fastened.

**5608 Appeals to Court of Appeal—inspection of written cases**

(SCR o 86 r 85)

A written case cannot be inspected at the registry unless all parties have filed their cases.

**Division 5.2.7 Miscellaneous—pt 5.2**

**5650 Service for pt 5.2 generally**

(SCR o 86 r 86)

- (1) This rule applies if service of a document is required or allowed under this part.

- (2) If the document is an appeal document, the document must be served—
- (a) by serving a signed and sealed, or signed and stamped, copy of the document personally on the party to be served; or
  - (b) by delivering a signed and sealed, or signed and stamped, copy of the document to the party's address for service in the proceeding in which the judgment appealed from was given.

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

- (3) If the document is not an appeal document, the document must be served—
- (a) as mentioned in subrule (2) (a); or
  - (b) in accordance with rule 6420 (Ordinary service—address for service).
- (4) This rule is subject to rule 5533 (Appeals to Court of Appeal against convictions or sentences—service if convicted person in custody and unrepresented).
- (5) In this rule:

**appeal document** means—

- (a) a notice of appeal; or
- (b) an application for further time to apply for leave to appeal; or
- (c) an application for leave to appeal; or
- (d) an application for further time to appeal; or
- (e) an application for leave to file and serve a notice of appeal under rule 5406 (2) (Appeals to Court of Appeal—time for filing and serving notice of appeal).

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**5651 Appeals to Court of Appeal—power to amend proceedings in court below**

(SCR o 86 r 87)

The Court of Appeal may amend the proceeding in which the judgment appealed from was given.

**5652 Appeals to Court of Appeal—expediting appeals**

(SCR o 86 r 88)

- (1) The Court of Appeal may, at any time, make any order the Court of Appeal considers just to expedite an appeal under this part.
- (2) A party wanting leave to appeal may apply to the Court of Appeal for an order that the application for leave to appeal be heard with, or immediately before, the hearing of the appeal, and for any consequential orders.

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

**5653 Directions by Court of Appeal and registrar about appeal etc**

(SCR o 86 r 89)

- (1) At any time after the filing of a notice of appeal or application for leave to appeal under this part, the Court of Appeal or registrar may give directions about any matter relevant to the appeal or application.
- (2) A direction under this rule may be made on application by a party to the appeal or application or on the initiative of the Court of Appeal or the registrar.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for a direction.

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(3) The court may at any time amend or revoke a direction made under this rule.

(4) The court may amend or revoke a direction 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.

(5) 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).

**5654 Appeals to Court of Appeal—want of prosecution of appeal**

(SCR o 86 r 90; Qld r 775)

(1) In this rule:

*appeal* includes—

- (a) an application for further time to apply for leave to appeal; or
- (b) an application for leave to appeal; or
- (c) an application for further time to appeal; or
- (d) an application for leave to file and serve a notice of appeal under rule 5406 (2) (Appeals to Court of Appeal—time for filing and serving notice of appeal).

*appellant* includes—

- (a) a person applying for further time to apply for leave to appeal; or
- (b) an applicant for leave to appeal; or
- (c) an applicant for further time to appeal; or

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- (d) an applicant for leave under rule 5406 (2) (Appeals to Court of Appeal—time for filing and serving notice of appeal).
- (2) If an appellant has not done anything required to be done under these rules, or otherwise has not prosecuted the appellant's appeal with appropriate effort, the Court of Appeal may—
- (a) order that the appeal be dismissed for want of prosecution; or
  - (b) on its own initiative, set a time for the doing of the thing and—
    - (i) at the same time order that, if the appellant does not do the thing within the time, the appeal will be dismissed for want of prosecution; or
    - (ii) if the appellant does not do the thing within the time— order that the appeal be dismissed for want of prosecution; or
  - (c) make any other order the Court of Appeal considers just.
- (3) A respondent may apply to the Court of Appeal to require the appellant to show cause why the appeal should not be dismissed for want of prosecution.
- Note* Pt 6.2 (Applications in proceedings) applies to the application.
- (4) On the hearing of the application, the Court of Appeal may make an order mentioned in subrule (2).
- (5) An order mentioned in subrule (2) (b) may be amended at any time before the appeal is dismissed for want of prosecution and, in special circumstances, may be amended or revoked after that time.

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**5655 When Court of Appeal may be constituted by single judge—Supreme Court Act 1933, s 37J (1) (h)**

(SCR o 86 r 90A; Qld r 767)

The Court of Appeal may be constituted by a single judge in relation to hearing and deciding the dismissal of an appeal for any of the following reasons:

- (a) the appeal is incompetent;
- (b) the notice of appeal does not contain any coherent or arguable ground of appeal;
- (c) the appellant has failed to comply with any relevant rules of court or practice direction;
- (d) the appellant has failed to comply with a direction of the Court of Appeal;
- (e) the appellant has failed to provide security for costs in accordance with an order of the Court of Appeal.

**5656 Jurisdiction of Court of Appeal that may be exercised by single judge—Supreme Court Act 1933, s 37J (3)**

(SCR o 86 r 90B)

The jurisdiction and powers of the Court of Appeal may be exercised by a single judge in the following proceedings:

- (a) an application by the director of public prosecutions under rule 5510 (2) (Registrar's decision to give or refuse leave to appeal to Court of Appeal out of time—conviction or sentence);
- (b) an application by the applicant under rule 5510 (3) (b).

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**5657**      **Judgments of Court of Appeal—accidental slips or omissions**

(SCR o 86 r 91)

The Court of Appeal may, on application by a party or on its own initiative, correct a clerical mistake in a judgment or an error in a judgment arising from an accidental slip or omission.

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

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## Part 5.3                      Orders to review certain    decisions of Magistrates Court    by Supreme Court

### 5700            **Meaning of *review order*—pt 5.3**

(SCR o 85 r 1)

In this part:

*review order* means an order nisi to review a decision of the Magistrates Court mentioned in the *Magistrates Court Act 1930*, section 219B (Appeals by way of orders to review).

### 5701            **Review orders—application for order**

(SCR o 85 r 2)

- (1) An application for a review order must be—
  - (a) made orally to the Supreme Court not later than the time mentioned in the *Magistrates Court Act 1930*, section 219C (1) (Grant of order nisi to review); and
  - (b) made without notice to another party; and
  - (c) supported by an affidavit under rule 5702.
- (2) Part 6.2 (Applications in proceedings) does not apply to an application for a review order.

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**5702 Review orders—affidavits**

(SCR o 85 r 3)

The affidavit must set out—

- (a) the material circumstances; and
- (b) each statutory ground relied on; and
- (c) a brief statement of the matter relied on for each ground.

**5703 Review orders—service of applications**

(SCR o 85 r 4)

The Supreme Court may, on its own initiative, order that notice of an application for a review order be given to anyone interested in maintaining the relevant decision of the Magistrates Court.

**5704 Review orders—parties**

(SCR o 85 r 5)

A party served with an application for a review order is entitled to be heard on the application.

**5705 Review orders—service of review order**

(SCR o 85 r 7)

Not later than 7 days after the day a review order is made, the order and affidavit mentioned in rule 5702 must be—

- (a) served on each person called on by the order to show cause; and
- (b) if the court orders service under rule 5703 (Review orders—service of applications) on anyone else—served on the person; and
- (c) given to the registrar of the Magistrates Court.

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**5706 Review orders—notice of intention to respond to review order**

(SCR o 85 r 8)

- (1) This rule applies if a person served with a review order wants to oppose the making absolute of the order, or be heard in that proceeding.
- (2) The person must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
  - (a) the order were an originating application; and
  - (b) the person were a defendant; and
  - (c) the applicant for the order were the plaintiff; and
  - (d) any other necessary changes were made.

**5707 Review orders—application to revoke review order**

(SCR o 85 r 9)

- (1) An application to revoke a review order must be supported by affidavit.

*Note* Pt 6.2 (Applications in proceedings) applies to the application.
- (2) An application to revoke a review order, together with any supporting affidavit, must be served on—
  - (a) the applicant for the order; and
  - (b) anyone the court orders to be served under rule 5703 (Orders to review—service of applications).

## 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

(SCR o 86 r 71)

In this division:

***applicant***—see the *Supreme Court Act 1933*, section 37S (2) (Reference appeal following acquittal on indictment).

*Note* The ***applicant*** for a reference appeal is the Attorney-General or director of public prosecutions.

***interested party***—see the *Supreme Court Act 1933*, section 37S (4).

*Note* An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

***reference appeal*** means an appeal under the *Supreme Court Act 1933*, section 37S.

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**5801 Reference appeals to Court of Appeal—application for reference appeal**

(SCR o 86 r 72)

- (1) An application for a reference appeal must—
  - (a) state the grounds of the application; and
  - (b) state the question of law to be decided.

*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 applicant wants to present the applicant's case in writing under division 5.2.6 (Written cases), the application must state that the applicant wants to do so.

**5802 Reference appeals to Court of Appeal—service of application or amended application for reference appeal**

(SCR o 86 r 73)

The application or an amended application (if any) must be served on each interested party within 7 days after the day the application is filed in the court.

**5803 Reference appeals to Court of Appeal—notice of intention to respond by interested party in reference appeal**

(SCR o 86 r 74)

- (1) An interested party may file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—
  - (a) the application were an originating application; and
  - (b) the party were a defendant; and
  - (c) the applicant were the plaintiff; and

- (d) any other necessary changes were made.
- (2) If an interested party is not represented in the appeal, counsel instructed by the applicant under the *Supreme Court Act 1933*, section 37S (5) appears for the party and must file the notice of intention to respond as mentioned in subrule (1).

**5804 Reference appeals to Court of Appeal—discontinuance of reference appeal**

(SCR o 86 r 75)

- (1) The applicant may file and serve on each interested party a notice of discontinuance of the reference appeal or part of the reference appeal—
  - (a) at any time before the hearing of the reference appeal, without the leave of the Court of Appeal; or
  - (b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.
- (2) However, if a reference appeal is to be decided on written cases without oral argument, the applicant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before (and including) the last day that the applicant may file written submissions under rule 5606 (3), (Filing and serving written case—appeal), without the leave of the Court of Appeal; or
  - (b) after the period mentioned in paragraph (a), with the leave of the Court of Appeal.

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- (3) If the applicant files and serves a notice of discontinuance of a reference appeal or part of a reference appeal, the appeal or part of the appeal is abandoned by the applicant.

**5805 Reference appeals to Court of Appeal—application of certain rules to reference appeals**

(SCR o 86 r 76)

- (1) The rules mentioned in subrule (2) apply to a reference appeal as if—
- (a) a reference to an appeal were a reference to the reference appeal; and
  - (b) a reference to the appellant were a reference to the applicant; and
  - (c) a reference to the respondent were a reference to each interested party; and
  - (d) a reference to a notice of appeal were a reference to the application for a reference appeal; and
  - (e) any other necessary changes were made.
- (2) The rules applying to reference appeals are as follows:
- rule 5414 (Appeals to Court of Appeal—amending notice of appeal)
  - rule 5417 (Appeals to Court of Appeal—keeping exhibits)
  - rule 5418 (Appeals to Court of Appeal—date for settlement of appeal papers)
  - rule 5419 (Appeals to Court of Appeal—filing of things before settlement of appeal papers)
  - rule 5420 (Appeals to Court of Appeal—draft index of appeal papers)

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**Chapter 5**  
**Part 5.4**  
**Division 5.4.2**

Appellate proceedings  
Reference appeals  
Reference appeals to Court of Appeal following acquittals on indictment

Rule 5805

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- rule 5421 (Appeals to Court of Appeal—content of appeal papers)
- rule 5422 (Appeals to Court of Appeal—presentation of appeal papers)
- rule 5423 (Appeals to Court of Appeal—settlement of appeal papers)
- rule 5424 (Appeals to Court of Appeal—filing and serving appeal papers)
- rule 5425 (Appeals to Court of Appeal—setting appeal for hearing)
- rule 5426 (Appeals to Court of Appeal—power to change appeal hearing date)
- rule 5427 (Appeals to Court of Appeal—written summary and list for appeal hearing)
- rule 5428 (Appeals to Court of Appeal—summaries of arguments) other than subrule (1) (c)
- rule 5429 (Appeals to Court of Appeal—list of authorities, legislation and texts)
- rule 5430 (Appeals to Court of Appeal—abandonment of ground of appeal)
- rule 5432 (Appeals to Court of Appeal—absence of party).

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## Part 5.5 Cases stated

### Division 5.5.1 Questions referred to Supreme Court

#### 5850 Application—div 5.5.1

This division applies to a question referred to the Supreme Court from a proceeding in another court or a tribunal (the *referring court or tribunal*).

*Note 1* Div 2.15.3 (Separate decisions on questions) deals with questions for decision of the Supreme Court from a proceeding in the Supreme Court.

*Note 2* Div 5.5.2 deals with a case stated or question reserved by the Supreme Court for decision by the Court of Appeal.

#### 5851 Definitions—div 5.5.1

(SCR o 37 r 1A; NSW r 28.1; Qld r 482)

In this division:

*initiating party* means—

- (a) the party who requested that the question be referred; or
- (b) if the question was referred by the referring court or tribunal on its own initiative—the entity that made the decision to which the proceeding before the referring court or tribunal relates.

*question referred*, to the Supreme Court—a reference to a *question referred* to the Supreme Court includes a reference to a case stated to, or question reserved for, (however described) the Supreme Court.

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*referring court or tribunal*—see rule 5850.

*Supreme Court* means the Supreme Court other than when it is the Court of Appeal.

*tribunal* includes an entity (other than a court) that may refer a question to the Supreme Court.

**5852 Question referred to Supreme Court—form**

(SCR o 86 r 67)

- (1) A question referred to the Supreme Court must be in the form of a special case.

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

- (2) The special case must—
- (a) state the questions to be decided; and
  - (b) briefly state the facts, and have attached all documents, necessary to allow the Supreme Court to decide the questions raised by the special case; and
  - (c) be divided into paragraphs numbered consecutively.

**5853 Special case to Supreme Court—preparation and settling**

(SCR o 37 r 1A and r 3)

Unless the referring court or tribunal otherwise directs, the special case must—

- (a) be prepared in draft by the initiating party after consultation with each other active party; and
- (b) contain an address for service for each active party; and

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

- (c) be settled by the referring court or tribunal; and
- (d) be served on each active party; and
- (e) be filed in the Supreme Court by the initiating party on behalf of the referring court or tribunal.

**5854 Special case to Supreme Court—person with legal disability**

(SCR o 37 r 5)

- (1) If a person with a legal disability is a party to the special case, the special case must not be set down for hearing without the Supreme Court's leave.

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

- (2) The application for leave must be supported by sufficient evidence that the statements contained in the special case are true, as far as they affect the interests of the person with a legal disability.

**5855 Special case to Supreme Court—directions hearing**

(SCR o 37 r 6)

After the special case is filed under rule 5853, the registrar must—

- (a) set a date for a directions hearing; and
- (b) tell the parties the date set for the hearing.

**5856 Special case to Supreme Court—setting down for hearing**

(SCR o 86 r 69)

At the directions hearing, the registrar must—

- (a) if satisfied that all the active parties have been served with the special case, and the special case is ready for hearing—

- (i) set a date for the hearing of the special case; and
- (ii) tell the parties the date set for the hearing; or
- (b) adjourn the directions hearing.

**5857 Special case to Supreme Court—insufficient statement of case**

(SCR o 37 r 6A)

- (1) This rule applies if it appears to the Supreme Court that the special case does not state the facts, and have attached the documents, necessary to allow the Supreme Court to decide the questions raised by the special case or otherwise to hear and decide the proceeding on the special case.
- (2) The Supreme Court may—
  - (a) with each active party’s agreement, amend the special case; or
  - (b) send the special case back to the initiating party for the party to amend the special case in the way stated by the court; or
  - (c) for a proceeding that is a civil proceeding—receive evidence, make findings of fact, and amend the special case accordingly.

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

**5858 Special case to Supreme Court—court can draw inferences**

(SCR o 86 r 70)

For a special case under this division, the Supreme Court may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at a trial.

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## Division 5.5.2 Cases stated and questions reserved to Court of Appeal

### 5870 Meaning of *Supreme Court*—div 5.5.2

(SCR o 86 r 1)

- (1) In this division:

*Supreme Court* means the Supreme Court other than when it is the Court of Appeal.

- (2) However, *Supreme Court* does not include—

- (a) the Full Court exercising appellate jurisdiction; or
- (b) the registrar.

### 5871 Case stated or question reserved to Court of Appeal—form

(SCR o 86 r 67; Qld r 781 (1))

- (1) A case stated or question reserved by the Supreme Court to the Court of Appeal must be in the form of a special case.

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

- (2) The special case must—

- (a) state the questions to be decided; and
- (b) briefly state the facts, and have attached all documents, necessary to allow the Court of Appeal to decide the questions raised by the special case; and
- (c) be divided into paragraphs numbered consecutively.

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- (3) If the special case is to be presented in writing under division 5.2.6 (Written cases), the special case must state that it is to be presented in that way.

**5872 Special case to Court of Appeal—preparation and settling**

(SCR o 86 r 68)

Unless the Supreme Court otherwise orders, the special case must be—

- (a) prepared in draft by the party having conduct of the special case after consultation with each other active party; and
- (b) settled by the Supreme Court; and
- (c) served on each active party; and
- (d) filed in the Supreme Court.

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

**5873 Special case to Court of Appeal—setting down for hearing**

(SCR o 86 r 69; Qld r 781 (2))

On filing of the special case in the Supreme Court, the registrar, if satisfied that all active parties have been served with the special case, must—

- (a) set a date for hearing of the special case; and
- (b) tell the parties the date set for the hearing.

**5874 Special case to Court of Appeal—court can draw inferences**

(SCR o 86 r 70; Qld r 781 (3) (b))

For a special case under this division, the Court of Appeal may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at trial.

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## **Chapter 6**                    **General rules for all proceedings**

### **Part 6.1**                    **Introductory provisions—ch 6**

#### **6000**                    **Application—ch 6**

- (1) This chapter applies to every proceeding in the Supreme Court or Magistrates Court to which these rules apply.

*Note 1*    Rule 4 (Application of rules) deals with the proceedings to which these rules apply.

*Note 2*    The Magistrates Court includes the Childrens Court (see *Children and Young People Act 1999*, s 53) and the Small Claims Court (see *Magistrates Court Act 1930*, s 279).

- (2) However, this chapter does not apply to a proceeding as far as—
- (a) this chapter provides that it does not apply to the proceeding; or
  - (b) another chapter makes provision for the proceeding or provides that this chapter does not apply to the proceeding; or
  - (c) another territory law provides that this chapter does not apply to the proceeding.

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## Part 6.2 Applications in proceedings

### 6005 Definitions—pt 6.2

(SCR o 54 r 1 and r 4 (6) and o 80 r 3)

In this part:

*application* in a proceeding—see rule 6006.

*schedule of correspondence*—a *schedule of correspondence* may include a copy of any of the following:

- (a) an email;
- (b) a fax;
- (c) a legible, contemporaneous diary or file note of a conversation.

*supporting material*, for an application in a proceeding, means an affidavit, schedule of correspondence or anything else required by these rules to be, or otherwise properly, filed in the court in support of the application.

### 6006 Application—pt 6.2

- (1) This part applies to an application in a proceeding in the court.
- (2) 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.

#### Examples

- 1 an application under part 2.18 (Enforcement) for an order appointing a receiver, or an order for seizure and detention of property

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- 2 an application under rule 1603 (Orders—set off between enforceable money orders) for an order that a money order be set off against another money order of the same court
- 3 an application for leave to appeal to the Court of Appeal under rule 5311 (Application for leave to appeal to Court of Appeal—interlocutory judgment)
- 4 an application for leave to appeal to the Court of Appeal under rule 5332 (Application for leave to appeal to Court of Appeal out of time—final judgment)

*Note 1* For the making of orders before a proceeding starts, see r 706 (Urgent orders before start of proceeding).

*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) However, an **application** in a proceeding does not include an application if these rules provide that this part does not apply to the application.

### **6007 Application in proceeding—contents**

(SCR o 54 r 3 and o 80 r 3; MC(CJ)R s 123; NSW r 18.3; Qld r 31)

- (1) An application in a proceeding must identify the person making the application—
  - (a) if the person is already a party to the proceeding—as the party (for example, as plaintiff or defendant); or
  - (b) if the person is not yet a party to the proceeding—as the applicant.

*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) An application in a proceeding must name as a person against whom relief is sought anyone whose interests may be affected by the granting of the relief.
- (3) An application in a proceeding must identify each person against whom relief is sought—
  - (a) if the person is already a party to the proceeding—as the party (for example, as plaintiff or defendant); or
  - (b) if the person is not yet a party to the proceeding—as the respondent.
- (4) If the person making the application is not already an active party, the application must state an address for service for the person.

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

- (5) The application—
  - (a) may be supported by—
    - (i) an affidavit setting out the facts relied on; or
    - (ii) a schedule of correspondence; or
    - (iii) anything else properly filed in support of the application; and
  - (b) must be supported by anything required by these rules to be filed in the court in support of the application; and
  - (c) must be accompanied by anything required by these rules to accompany the application.

*Note* Rule 6746 (Div 6.10.3 application—hearing) provides that the court may receive affidavit evidence in relation to a div 6.10.3 application only if the court directs.

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- (6) If the court considers that the supporting material (if any) is insufficient to support the application, it may—
- (a) adjourn the hearing of the application; and
  - (b) make any other orders it considers appropriate, including an order that supporting material or further supporting material be prepared.
- (7) If the court orders that supporting material or further supporting material be prepared, the material must be filed in the court and served at least 2 days before the return date for the application.

*Note* See example to r 6008 (1).

**6008 Application in proceeding—filing and service**

(SCR o 54 r 4 and r 9 and o 80 r 3; MC(CJ)R s 123; NSW r 18.2 (1), r 18.4 and r 18.5)

- (1) An application in a proceeding must be filed in the court, and, unless these rules otherwise provide, a stamped copy served on each other party, not later than 2 days before the return date for the application.

**Example**

If the return date is Friday, that day and the day the application is served are not counted in working out the 2 days. For service to be valid, the application must be served on or before the Tuesday before the return date.

*Note 1* See r 6015 (Application in proceeding—applications under r 40).

*Note 2* See the Legislation Act, s 151 (Working out periods of time generally) and these rules, pt 6.7 (Time).

*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).

- (2) However, a party to the proceeding who is not an active party need not be served with the application unless the application seeks an order requiring the party to do, or not to do, something.
- (3) If the application is to be served on a person who is not an active party, the application must be served—
  - (a) personally unless the court otherwise orders; and
  - (b) not later than 2 days before the return date.

*Note* This part applies to an application for an order otherwise ordering.

- (4) The court may order service of the application on anyone it considers appropriate.

*Note* This part applies to an application for an order under r (4).

**6009 Application in proceeding—filing and service of supporting material**

(SCR o 54 r 2 and o 80 r 3)

- (1) If an application in a proceeding is to be filed in the court, the supporting material (if any) for the application must be filed with the application.
- (2) If an application in a proceeding is to be served, the supporting material (if any) for the application must be served with the application.

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**6010 Application in proceeding—absence of party**

(SCR o 54 r 10 and o 80 r 3; NSW r 18.7)

The court may hear and decide an application in a proceeding in the absence of a party to the proceeding if—

- (a) service of the application on the absent party is not required under these rules or by an order of the court; or
- (b) the application has been served on the absent party in accordance with these rules; or
- (c) these rules provide that the application may be heard in the absence of the party.

**6011 Application in proceeding—dismissal or adjournment if application not served etc**

(SCR o 54 r 11 and o 80 r 3)

- (1) This rule applies if—
  - (a) a person has not been served with an application in a proceeding; and
  - (b) on the hearing of the application, the court considers that the person should have been served.
- (2) The court may—
  - (a) dismiss the application; or
  - (b) adjourn the hearing of the application so that the application can be served on the person.

**6012 Application in proceeding—adjournment generally**

(SCR o 54 r 13, o 56A r 2 and o 80 r 3)

- (1) The court may adjourn the hearing of an application in a proceeding.  
*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.
- (2) Without limiting subrule (1), the court may adjourn the hearing of an application in a proceeding if, at the hearing—
  - (a) a party to the application who is represented by a solicitor does not appear either personally or by the solicitor; and
  - (b) the applicant produces to the court a copy of the application endorsed with the agreement of the party's solicitor to the adjournment of the hearing.

**6013 Application in proceeding—adjournment without attendance**

(SCR o 54 r 12, o 56A r 3 and o 80 r 3)

- (1) This rule applies if, at least 2 days before the return date for an application in a proceeding or a later date set by the court for hearing the application, a document is filed in the court that—
  - (a) states that each party to the application agrees to the adjournment of the application; and
  - (b) is signed by each party's solicitor.*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—
  - (a) adjourn the hearing without any of the parties attending before the court; or

- (b) direct the parties to attend before the court on a stated date.
- (3) If the court adjourns the hearing in the absence of the parties, the registrar must tell the parties the adjourned date for the hearing.

**6014 Application in proceeding—further hearing**

(SCR o 54 r 14 and o 80 r 3; NSW r 18.8)

- (1) This rule applies if—
  - (a) an application in a proceeding (the *original application*) has been filed in the court and served; and
  - (b) the application is not dealt with on the return date for the application.
- (2) The court may adjourn the application.
- (3) A further application must be filed if the court orders it to be filed.

*Note* This part applies to an application for an order under this rule.
- (4) The further application must be served on a party if—
  - (a) the court orders service on the party; or
  - (b) the party was not served with the original application.

**6015 Application in proceeding—application under r 40**

(SCR o 13 r 17 (3) (a))

An application for an order under rule 40 (Setting aside originating process etc) must be filed within the time mentioned in rule 102 (Notice of intention to respond or defence—filing and service) for filing a notice of intention to respond or, if no notice of intention to respond is filed, a defence.

**6016 Application in proceeding—oral applications**

(SCR o 54 r 4 (3) and o 80 r 3; MC(CJ)R s 123; Qld r 32)

A person may make an application in a proceeding to the court orally if—

- (a) the preparation of a written application, or the filing in the court or service of a written application, would cause unreasonable delay or other prejudice to the person; or
- (b) each active party to the proceeding, and, if the respondent to the application is not an active party, the respondent, agrees to the application being made orally; or
- (c) an application may be made under these rules without filing or serving the application; or
- (d) the court orders that the person does not have to file or serve a written application; or
- (e) these rules otherwise allow the application to be made orally.

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## **Part 6.3                    Documents**

### **Division 6.3.1            General provisions about documents for filing**

#### **6100            Application—div 6.3.1**

(SCR o 66 r 1 and o 80 r 3; NSW r 4.1; Qld r 960)

- (1) This division applies to a document that is prepared by a party to a proceeding for use by or in the court, and includes an originating process or other document starting a proceeding.
- (2) However, this division does not apply to an annexure or exhibit except to the extent otherwise expressly provided.

#### **6101            Documents—compliance with approved form**

- (1) If an approved form for a document requires particular information to be included in the document or a particular document (including an annexure or exhibit) to be attached to, or filed with the document, the document is properly completed only if the requirement is complied with.

*Note 1*    Substantial compliance with an approved form is otherwise sufficient (see Legislation Act, s 255 (4)), unless the Legislation Act, s 255 (5) applies (see note to r (3)).

*Note 2*    The court may, by order, dispense with compliance with these rules (see r 6 (Dispensing with rules)).

- (2) Subrule (1) has effect despite the Legislation Act, section 255 (6).

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- (3) To remove any doubt, this rule does not affect the Legislation Act, section 255 (5).

*Note* Under the Legislation Act, s 255 (5), if a form requires any of the following, substantial compliance with the form is not sufficient and the form is properly completed only if the requirement is complied with:

- (a) the form to be signed;
- (b) the form to be prepared in a particular way (for example, on paper of a particular size or quality or in a particular electronic form);
- (c) the form to be completed in a particular way;
- (d) particular information to be included in the form, or a particular document to be attached to or given with the form;
- (e) the form, information in the form, or a document attached to or given with the form, to be verified in a particular way (for example, by statutory declaration).

## **6102 Documents—general heading style**

(SCR o 66 r 2 and o 80 r 3; MC(CJ)R s 472; NSW r 4.2; Qld r 6)

- (1) A document for use in relation to a proceeding, and for which there is an approved form, must be headed in the way set out in the form.
- (2) However, a document in a civil proceeding may be headed using an abbreviation of title sufficient to identify the proceeding.

### **Example**

AB and others  
Defendants

*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) Subrule (2) does not apply to—
  - (a) an originating process; or

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- (b) a document to be served on a person not a party to the proceeding; or
  - (c) an order.
- (4) If the parties to a proceeding change, the names of the parties on each document filed after the change must reflect the state of the parties after the change.

**6103 Documents—layout etc**

(SCR o 66 r 3 to r 5 and r 7 and o 80 r 3; MC(CJ)R s 473 (1); NSW r 4.3; Qld r 961)

- (1) A document—
- (a) must be on A4 size paper that—
    - (i) is white; and
    - (ii) is durable; and
    - (iii) is free from discolouration or blemishes; and
  - (b) may be single-sided (that is, with writing on 1 side of each sheet) or double-sided (that is, with writing on both sides of each sheet), but not partly single-sided and partly double-sided); and
  - (c) must have all its pages and all attachments securely bound together in a way satisfactory to the registrar; and
  - (d) must have pages (that is, the sides of the sheets that have writing) that are numbered consecutively after the first page (if any); and
  - (e) must have clear margins no smaller than 20mm on the top, bottom and right sides; and

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- (f) must have a clear margin on the left side no smaller than 25mm; and
- (g) must be written—
  - (i) if handwritten—in legible writing; and
  - (ii) if typewritten—with type no smaller than 1.8mm (10 point); and
  - (iii) with each line of writing separated from any previous line of writing by a space no smaller than 3mm; and
  - (iv) in a way that is permanent and can be photocopied to produce a copy satisfactory to the registrar.
- (2) Subrule (1) (a) and (b) apply to an annexure or exhibit to a document if the annexure or exhibit is a copy of a document.
- (3) Subrule (1) (c) and (d) apply to an annexure to a document as if the annexure formed part of the document.

**Example**

The pages of a document and its annexure must be numbered consecutively through the document and annexure (after the first page).

*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).

- (4) Subrule (1) (c) and (d) apply to an exhibit to a document.
- (5) This rule does not apply to a document to the extent to which the nature of the document makes compliance impracticable.
- (6) The registrar may dispense with compliance with any requirement of this rule.

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**6104 Documents—use of copies**

On application by a party to a proceeding or on its own initiative, the court may give leave for a fax or other copy of a document to be used.

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

**6105 Documents—use of figures**

(SCR o 66 r 6 and o 80 r 3; MC(CJ)R s 473 (2); NSW r 4.7; Qld r 962)

Amounts, dates, mathematical expressions and numbers in a document must, as far as practicable, be expressed using figures and not words.

**6106 Documents—signing**

(SCR o 66 r 10 and o 80 r 3; MC(CJ)R s 16 and s 476; NSW r 4.4; Qld r 19)

- (1) If a party is represented by a solicitor in a proceeding, a document filed in the proceeding for the party that is required to be signed must be signed by—
  - (a) the solicitor; or
  - (b) a solicitor who is the solicitor's agent for the proceeding; or
  - (c) another solicitor belonging to the same firm or other entity (whether as partner or employee) as the solicitor or agent.
- (2) If a party is not represented by a solicitor in a proceeding, a document filed in the proceeding for the party that is required to be signed must be signed by—
  - (a) the party; or

- (b) someone else allowed under these rules to start, defend or carry on the proceeding for the party.

*Note* If the party is a person with a legal disability, anything required or allowed to be done in the proceeding may be done only by the party's litigation guardian (see r 275 (3) (Person with legal disability—litigation guardian to start proceeding etc)).

- (3) A person signing a document under subrule (1) or (2) (b) must state the capacity in which the person signs the document.

### **6107 Documents—alterations**

(SCR o 66 r 4 and o 80 r 3; MC(CJ)R s 473 (1) (d); Qld r 963)

- (1) An alteration on a document must be made by—
- (a) striking through the writing intended to be altered so that the original writing is still legible; and
  - (b) having the alteration signed or initialled by—
    - (i) if the document is signed—everyone who signed the document; or
    - (ii) if the document is signed and witnessed—everyone who signed and witnessed the document; or
    - (iii) if the document is not signed, or signed and witnessed—the party filing the document.
- (2) The alteration may be handwritten.
- (3) However, if the alteration is handwritten, it must be—
- (a) legible; and
  - (b) made in a way that is—
    - (i) permanent; and

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- (ii) can be photocopied to produce a copy satisfactory to the registrar.
- (4) A document cannot be filed if it contains an alteration that causes a material disfigurement.
- (5) In this rule:

*alteration* includes an alteration by omission, substitution or addition.

*Note*     Pt 2.7 (Amendment) deals with the amendment of filed documents.

### **Division 6.3.2            Filing documents**

#### **6120            Filing documents—number of copies**

(SCR o 2 r 16 (1) and o 80 r 3; MC(CJ)R s 13 (1); NSW r 4.12(1); Qld r 20)

When filing a document in the court, a person must file—

- (a) the original; and
- (b) enough copies for service and proof of service, if required by a territory law or an order of the court.

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

#### **6121            How documents may be filed**

(NSW r 4.10 (1); Qld r 967 (1))

A document may be filed in the court by—

- (a) delivering it to the registry personally; or
- (b) sending it to the registry by post in accordance with rule 6123 (Filing documents by post); or

- (c) delivering or sending it to the registry's document exchange box in accordance with rule 6124 (Filing documents by document exchange); or
- (d) faxing it to the registry's fax number for the filing of documents; or
- (e) if filing by electronic communication is allowed under a practice note—complying with the practice note.

**6122 Filing documents personally**

(NSW r 4.10; Qld r 968)

- (1) This rule applies to a document filed in the court by personal delivery to the registry.
- (2) However, this rule does not apply to an exhibit or another document that does not require sealing or stamping.
- (3) The registrar may—
  - (a) record the filing of the document and, if appropriate, seal or stamp the document; or
  - (b) reject the document under division 6.3.3 (Rejecting filed documents).
- (4) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping.

**6123 Filing documents by post**

(Qld r 969)

- (1) This rule applies to a document filed in the court by post.

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- (2) The person filing the document must send the document to the registry by prepaid post, addressed to the registrar, in an envelope marked with a note to the effect that it contains court documents.
- (3) The person filing the document must also ensure the document is accompanied by the following:
  - (a) any copies of the document for sealing or stamping;
  - (b) a stamped envelope addressed to the person filing the document or the person's solicitor;
  - (c) if a fee is determined under the *Court Procedures Act 2004*, section 13 for filing the document—the fee in a form satisfactory to the registrar.

*Note*     The Legislation Act, s 54 requires a filing fee to be paid before filing.

- (4) The registrar may—
  - (a) record the filing of the document and, if appropriate, seal or stamp the document; or
  - (b) reject the document under division 6.3.3 (Rejecting filed documents).
- (5) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping in the envelope provided by the person filing the document.
- (6) If the court enters a default judgment after a request for the judgment is filed by post, the registrar must return the default judgment in the envelope provided by the person filing the request.
- (7) A person files a document by post at the person's risk.

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**6124 Filing documents by document exchange**

- (1) This rule applies to a document filed in the court by delivering or sending the document to the registry's document exchange box.
- (2) The person filing the document must ensure the document is delivered or sent to the registry's document exchange box, addressed to the registrar, in an envelope marked with a note to the effect that it contains court documents.
- (3) The person filing the document must also ensure the document is accompanied by the following:
  - (a) any copies of the document for sealing or stamping;
  - (b) an envelope addressed to the document exchange box number of the person filing the document or the person's solicitor;
  - (c) if a fee is determined under the *Court Procedures Act 2004*, section 13 for filing the document—the fee in a form satisfactory to the registrar.

*Note* The Legislation Act, s 54 requires a filing fee to be paid before filing.

- (4) The registrar may—
  - (a) record the filing of the document and, if appropriate, seal or stamp the document; or
  - (b) reject the document under division 6.3.3 (Rejecting filed documents).
- (5) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping in the envelope provided by the person filing the document.

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- (6) If the court enters a default judgment after a request for the judgment is filed by document exchange, the registrar must return the default judgment in the envelope provided by the person filing the request.
- (7) A person files a document by document exchange at the person's risk.

**6125      Practice notes about filing**

(SCR o 34 r 27, Qld r 967 (2))

- (1) A practice note may make provision in relation to—
  - (a) the documents that must be filed in the court by being delivered to a registry personally; or
  - (b) the documents that must not be filed in the court using a particular method of filing; or
  - (c) filing documents in the court by electronic communication.
- (2) A practice note must be complied with despite anything in these rules.

**6126      Date of filing**

(SCR o 62 r 4 and r 5)

- (1) The registrar must record the date of filing in the court of each filed document.
- (2) For these rules, the *date of filing* is the date of—
  - (a) for a document filed in the court by personal delivery to the registry—the day it is delivered to the registry; or
  - (b) for a document filed in the court by post—the day it is received at the registry; or

- (c) for a document filed in the court by delivery or sending it to the registry's document exchange box—the day it is received at the registry; or
- (d) for a document filed in the court by being faxed to the registry's fax number before 4 pm on a day the registry is open—that day; or
- (e) for a document filed in the court by being faxed to the registry's fax number on a day the registry is not open or after 4 pm on a day the registry is open—the next day the registry is open; or
- (f) for a document filed in the court by electronic communication under a practice note—in accordance with the practice note.

*Note* See also r 6145 (Filed documents initially rejected).

- (3) However, if the registrar opens the registry for a document to be filed in the court under subrule (2) (e), the date of filing for the document is the date the document is faxed to the registry's fax number.
- (4) For this rule, a document is taken to have been faxed to the registry's fax number only if it is received at that number.
- (5) For this rule, it does not matter when the registrar records the date of filing.
- (6) The date of filing must be written on the filed document.

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## Division 6.3.3            Rejecting filed documents

### 6140            **Rejecting documents—noncompliance with rules etc**

(SCR o 66 r 10A (1) and o 80 r 3; MC(CJ)R s 475)

The registrar may reject a document that is filed in the court if—

- (a) the document does not comply with division 6.3.1 (General provisions about documents for filing) as far as the document can comply; or
- (b) there is an approved form for the document and the document is not properly completed; or

*Note*      See r 6101 (Documents—compliance with approved form).

- (c) a fee determined under the *Court Procedures Act 2004*, section 13 is payable for filing the document and the fee has not been paid; or

*Note*      The Legislation Act, s 54 requires a filing fee to be paid before filing.

- (d) the document does not otherwise comply with these rules.

### 6141            **Rejecting documents—inconvenient address for service**

(SCR o 10 r 14)

The registrar may reject a document that is filed in the court if the address for service stated in the document is manifestly inconvenient for a party or the court.

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

**6142 Rejecting documents—abuse of process etc**

(SCR o 66 r 10B and o 80 r 3; MC(CJ)R s 474; NSW r 5.15; Qld r 15 and r 973)

- (1) This rule applies if a document that is filed in the court appears to the registrar on its face to be an abuse of the court's process or to be frivolous or vexatious.
- (2) The registrar may—
  - (a) reject the document; or
  - (b) refer the document to a judicial officer for directions about how to deal with it.
- (3) If the registrar refers the document to a judicial officer, the judicial officer may direct the registrar—
  - (a) to accept the document; or
  - (b) to reject the document; or
  - (c) to reject the document unless the court gives leave to accept the document.

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

- (4) This rule applies to a written notification under rule 6613 (Documents and things in custody of court) as if it were a document filed in the court.
- (5) In this rule:

***judicial officer*** means—

- (a) for the Supreme Court—a judge or the master; or
- (b) for the Magistrates Court—a magistrate.

**6143        Rejecting document—registrar to give notice etc**

(MC(CJ)R s 475)

- (1) If the registrar rejects a document under this division—
  - (a) the registrar must give notice of the rejection, and of the grounds of the rejection, to the person who filed the document in the court; and
  - (b) the registrar must return the document and copies of the document filed with the document; and
  - (c) the document is taken not to have been filed.
- (2) Subrule (1) (c) is subject to rule 6145 (Filed documents initially rejected).

*Note*        See r 6144 in relation to costs incurred by a party in relation to a rejected document.

**6144        Rejecting document—costs**

(SCR o 66 r 10A (2) and o 80 r 3)

Costs incurred by a party in relation to a document rejected under this division may be disallowed on assessment of the party's costs.

**6145        Filed documents initially rejected**

- (1) This rule applies to a document if—
  - (a) the registrar rejects the document under this division; but
  - (b) either—
    - (i) the registrar subsequently accepts the document; or
    - (ii) the court or a judicial officer subsequently directs the registrar to accept the document.

- (2) The registrar must record the filing of the document in the court and, if appropriate, seal or stamp the document.
- (3) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping.
- (4) The document is taken to have been filed in the court on the day it would have been filed if the registrar had not rejected the document.

*Note* Rule 6126 (2) (Date of filing) deals with the date of filing.

- (5) If the document is rejected by the registrar (whether or not more than once), the document is taken to have been filed in the court on the day it was first filed.

## **EXPOSURE DRAFT**

## Part 6.4 Master

### 6200 Jurisdiction exercisable by master

(SCR o 61A r 1 and r 4)

- (1) The civil jurisdiction (including the inherent jurisdiction) of the Supreme Court that is exercisable by a single judge may be exercised by the master.

#### Examples

- 1 an appeal on a question of law from a tribunal to the court
- 2 referral of a question of law by a tribunal to the court

*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 master may exercise the jurisdiction of the Supreme Court—
- (a) in hearing and deciding applications for further time under the *Magistrates Court Act 1930*, section 209 (1) to file a notice of appeal; and
  - (b) in hearing and deciding applications for an order under the *Magistrates Court Act 1930*, section 210 about serving a notice of appeal.

*Note* The master also exercises jurisdiction under r 5415 (6) (Appeals to Court of Appeal—cross-appeal etc) and r 5423 (3) (Appeals to Court of Appeal—settlement of appeal papers).

## EXPOSURE DRAFT

**6201 Order that jurisdiction in proceeding be exercised by judge instead of master**

(SCA s 15)

- (1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the master, a judge may order that the jurisdiction of the court in the proceeding be exercised by a judge.
  - (2) A judge may make an order under this rule—
    - (a) on application by a party to the proceeding; and
    - (b) at any time before the end of the proceeding before the master.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) If a judge makes an order under this rule, the judge may—
    - (a) hear and decide the proceeding; or
    - (b) decide an issue in the proceeding and refer the proceeding back to the master and give the directions (if any) the judge considers appropriate in relation to the proceeding.

**6202 Master referring proceeding or issue to judge**

(SCA s 15; SCR o 61A r 4B)

- (1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the master, the master may refer the proceeding or an issue in the proceeding to a judge if the master considers that it would be appropriate for the proceeding or issue to be decided by a judge.

- (2) If the master refers the proceeding to a judge, the judge may—
  - (a) hear and decide the proceeding; or
  - (b) refer the proceeding back to the master and give the directions (if any) the judge considers appropriate in relation to the proceeding.
- (3) If the master refers an issue in the proceeding to a judge, the judge may decide the issue or refer the issue back to the master and give the directions (if any) the judge considers appropriate in relation to the proceeding.

## **EXPOSURE DRAFT**

## Part 6.5 Registrar

### 6250 Registrar's powers—general

(SCR o 61 r 3; NSW s 12; Qld r 451 and r 452)

- (1) The registrar may exercise the following jurisdiction of the court:
- (a) to hear and decide an application in a proceeding, other than an application under a provision of these rules mentioned in schedule 5, part 5.1;  
*Note* **Application** in a proceeding is defined in r 6006 (Application—pt 6.2).
  - (b) for the registrar of the Supreme Court to hear and decide an originating application mentioned in any of the following provisions of these rules:
    - rule 6 (4) (Dispensing with rules)
    - rule 30 (6) (Who may start and carry on a proceeding)
    - rule 211 (4) (Including parties—common issues of law or fact)
    - rule 280 (10) (Litigation guardian—appointment and removal by court)
    - rule 650 (2) (Discovery to identify potential defendant)
    - rule 651 (2) (Discovery to identify right to claim relief);
  - (c) in relation to an application for default judgment under rule 1118 (3) (Default judgment—generally) or rule 1138 (3) (Default judgment—partial defence);
  - (d) in relation to a directions hearing under rule 1303 (Directions hearing—category C proceedings) or rule 1308 (Directions hearing—category A, category B and category D proceedings);

## EXPOSURE DRAFT

- (e) in relation to a listing hearing under rule 1309 (Listing hearing);
- (f) in relation to the setting down under rule 1310 (Special fixture) of a proceeding for trial as a special fixture;
- (g) to hear and decide a proceeding on an application for directions under rule 1403 (Decision in proceeding);
- (h) the setting of a date for a directions hearing under rule 1522 (Separate decisions on questions—directions);
- (i) in relation to an application mentioned in any of the following rules:
  - rule 2010 (Enforcement—enforcement of Magistrates Court order in Supreme Court)
  - rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers)
  - rule 2100 (Enforcement hearing—application by enforcement creditor)
  - rule 2101 (Enforcement hearing—otherwise than on enforcement creditor’s application)
  - rule 2151 (Instalment order—application by enforcement debtor)
  - rule 2201 (Seizure and sale order—application)
  - rule 2218 (Seizure and sale order—additional provisions relating to land)
  - rule 2219 (Seizure and sale order—power of entry for auction of land)
  - rule 2302 (Debt redirection order—application)
  - rule 2311 (Debt redirection order—third person disputes liability)

## **EXPOSURE DRAFT**

- rule 2351 (Earnings redirection order—application)
  - rule 2402 (Charging order—application)
  - rule 2451 (Order for delivery of possession of land—making)
  - rule 2460 (Order for seizure and delivery of goods—making);
- (j) in relation to an enforcement hearing under division 2.18.3 (Enforcement of money orders—enforcement hearings);
- (k) in relation to an instalment order agreement under rule 2157 (Instalment order—instalment order agreement);
- (l) in relation to the giving of directions under rule 2307 (Debt redirection order—claim by someone else);
- (m) in relation to a notice of objection under rule 2311 (Debt redirection order—third person disputes liability);
- (n) in relation to the taking of accounts under division 2.20.1 (Taking of accounts) or the making of inquiries under division 2.20.2 (Making of inquiries);
- (o) for the registrar of the Supreme Court—in relation to an application under part 3.8 (Foreign judgments—reciprocal enforcement);
- (p) for the registrar of the Supreme Court—the setting of a date for a directions hearing under rule 3564 (Judicial review—setting directions hearing) and in relation to a directions hearing under rule 3565 (Judicial review—directions hearing);
- (q) in relation to settling appeal papers under rule 5022 (Appeals—settlement of appeal papers);

## **EXPOSURE DRAFT**

- (r) in relation to an application under rule 6439 (Service of originating application to recover unoccupied land);
- (s) in relation to an application for leave under rule 6481 (Subpoena—service on medical expert);
- (t) in relation to the making of an order under rule 6510 (9) (Service outside Australia—service in convention countries) or rule 6511 (14) (Service outside Australia—service in non-convention countries);
- (u) in relation to an application for leave under rule 6603 (Subpoena to produce—leave to serve late);
- (v) under the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):
  - section 11 (8) (Proof of service)
  - section 17 (1) (b) (Time for appearance)
  - section 30 (1) (b) (Time for service)
  - section 35 (3) (Entitlement to expenses)
  - section 45 (3) (Entitlement to expenses)
  - section 105 (4) (Enforcement of judgments);
- (w) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence);
- (x) under the following provisions of the *Commercial Arbitration Act 1986*:
  - section 17 (Subpoenas to attend etc)
  - section 34 (2) (Costs).

## EXPOSURE DRAFT

- (2) The registrar of the Supreme Court may exercise the jurisdiction of the court—
- (a) under the *Legal Profession Act 2006*, division 3.2.7 (Costs review); and
  - (b) under a provision of the Corporations Act mentioned in column 2, or a provision of schedule 6 mentioned in column 3, of an item in schedule 5, part 5.2; and
  - (c) under a provision of the *Australian Securities and Investments Commission Act 2001* (Cwlth) mentioned in column 2 of an item in schedule 5, part 5.3.

*Note 1* The registrar of the Supreme Court also exercises jurisdiction under r 5415 (6) (Appeals to Court of Appeal—cross-appeal etc), r 5423 (3) (Appeals to Court of Appeal—settlement of appeal papers) and r 5535 (3) (Appeals to Court of Appeal against convictions and sentences—order for production of prisoner).

*Note 2* The court may order the registrar to do, or not do, an act relating to the registrar's duties (see r 6903 (Mandatory order to registrar etc)).

- (3) If, under subrule (1) or (2), the registrar may exercise the jurisdiction of the court in relation to a matter, the registrar may exercise the jurisdiction of the court to make any order the court could make, and do anything else the court could do, in relation to the matter, including making any order that the court could make, or doing anything the court could do, on its own initiative in relation to the matter.

**Example of thing court could do**

issue warrant

*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

**6251 Registrar's powers—postponement of hearing**

(MC(CJ)R s 193)

- (1) This rule applies if a judicial officer—
  - (a) is not available to exercise the jurisdiction of the court at the time set for the hearing of a proceeding; and
  - (b) is unlikely to become available within a reasonable time.
- (2) The registrar may, if asked by a party to the proceeding, postpone the hearing to another date or time set by the registrar.
- (3) In this rule:

*judicial officer* means—

  - (a) for the Supreme Court—a judge or the master; or
  - (b) for the Magistrates Court—a magistrate.

**6252 Registrar's powers—subpoenas**

(SCR o 61 r 3AA)

- (1) This rule applies to a subpoena issued in a proceeding if the jurisdiction of the court in the proceeding is to be, or is being exercised, by the registrar.
- (2) The registrar may hear and decide an objection under rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) in relation to the subpoena instead of referring the objection to the court.

**6253 Order that jurisdiction in proceeding be exercised by  
judicial officer other than registrar**

(SCR o 61 r 3A; NSW r 45.17 and r 45.18; Qld r 453, r 456 and r 457)

- (1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the registrar, a judicial officer of the court may order that the jurisdiction of the court in the proceeding be exercised by a judicial officer of the court.
- (2) A judicial officer may make an order under this rule—
  - (a) on application by a party to the proceeding; and
  - (b) at any time before the end of the proceeding before the registrar.

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

- (3) If a judicial officer makes an order under this rule, the judicial officer exercising the jurisdiction of the court in the proceeding may—
  - (a) hear and decide the proceeding; or
  - (b) decide an issue in the proceeding and refer the proceeding back to the registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.
- (4) In this rule:  
*judicial officer* means—
  - (a) for the Supreme Court—a judge or the master; or
  - (b) for the Magistrates Court—a magistrate.

**6254 Registrar referring proceeding or issue to judicial officer**

(SCR o 61 r 4; NSW r 45.16 and r 45.18; Qld r 455, r 457 and r 982)

- (1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the registrar, the registrar may refer the proceeding or an issue in the proceeding to a judicial officer of the court if the registrar considers that it would be appropriate for the proceeding or issue to be decided by a judicial officer.
- (2) If the registrar refers the proceeding to a judicial officer, the judicial officer may—
  - (a) hear and decide the proceeding; or
  - (b) refer the proceeding back to the registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.
- (3) If the registrar refers an issue in the proceeding to a judicial officer, the judicial officer may decide the issue or refer the issue back to the registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.
- (4) In this rule:

*judicial officer* means—

  - (a) for the Supreme Court—a judge or the master; or
  - (b) for the Magistrates Court—a magistrate.

**6255 Appeals from registrar's orders etc**

(CPA s 133; SCR o 61 r 5 (1) (h) and (i); MC(CJ)R s 483; NSW r 45.19; Qld r 791)

- (1) This rule applies in relation to—
  - (a) an order made by the registrar in a proceeding in the court in the exercise of jurisdiction given under rule 6250 (Registrar's powers—general) or rule 6252 (Registrar's powers—subpoenas); or
  - (b) a decision made, or anything else done or omitted to be done, by the registrar in a proceeding in the court in the exercise of jurisdiction given under rule 6250 or rule 6252.
- (2) If a party to the proceeding is dissatisfied with the order, decision, act or omission, the party may appeal, in accordance with these rules—
  - (a) for the registrar of the Supreme Court—to the Supreme Court constituted by a judge or the master; and  
*Note* See the *Supreme Court Act 1933*, s 8 (Exercise of jurisdiction) and r 6200 (Jurisdiction exercisable by master).
  - (b) for the registrar of the Magistrates Court—to the Magistrates Court constituted by a magistrate.  
*Note* See the *Magistrates Court Act 1930*, s 4 (Constitution of court).
- (3) The appeal is a rehearing of the matter anew.
- (4) However, each party to the appeal may, subject to subrule (5) and any proper objections about admissibility, rely on any affidavit used, and any evidence given orally, before the registrar.

**EXPOSURE DRAFT**

- (5) If a party to an appeal to a court requires the attendance of someone for examination at the hearing of the appeal, an affidavit made, or evidence given, by the person must not be used unless the person attends for examination or the court gives leave.
- (6) The court may confirm, amend or set aside the registrar's order, decision, act, or omission and may make any other order the court considers appropriate.

*Note* See pt 5.1 for the procedure to be followed for an appeal against an order etc of the registrar.

## **EXPOSURE DRAFT**

## **Part 6.6 Registry**

### **6300 Office hours**

(SCR o 63 r 1 and r 2 and o 80 r 3; MCR s 5; Qld r 976)

- (1) The registry must 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*.
- (2) The registrar may open or close the registry at other times.
- (3) The registrar may direct that the registry is to be closed between 1.00 pm and 2.00 pm.

### **6301 Registrar's duties**

(MCR s 6 (1) (a)-(c))

The registrar must—

- (a) register all records, orders and convictions of the court; and
- (b) keep an account of all proceedings of the court; and
- (c) take charge, and keep an account, of all court fees, fines, penalties and costs and other amounts payable or paid into court, and of all amounts paid out of court.

## **EXPOSURE DRAFT**

**6302 Cause book**

(SCR o 2 r 19)

- (1) The registrar may keep a cause book.
- (2) The cause 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 cause book, for each originating process filed—
  - (a) the distinguishing number or other unique identifier given to the proceeding under rule 71 (Numbering etc of proceedings); and
  - (b) the date when—
    - (i) the process was filed in the court; or
    - (ii) if the proceeding was started by oral originating application—the application was made; and
  - (c) the other information that the court directs; and
  - (d) any other information required under a territory law.

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

- (4) The registrar must also include in the cause book any other information required under a territory law.

*Note* Rule 3310 (Cross-vesting—procedure following transfer of proceeding to court) requires certain information to be included in the cause book.

- (5) The registrar may record any other information in the cause book.
- (6) This rule applies only to the Supreme Court.

**6303 Registrar to keep seals**

(SCA s 64; MC(CJ)R s 478; MCR s 101; Qld r 978)

- (1) The registrar of the Supreme Court must keep the following seals:
  - (a) the seal of the Court of Appeal;
  - (b) the seal of the Supreme Court.
- (2) The registrar of the Magistrates Court must keep the following seals:
  - (a) the seal of the Magistrates Court;
  - (b) the seal of the Coroner's Court;
  - (c) the seal of the Childrens Court;
  - (d) the seal of the Small Claims Court.

**6304 Documents—sealing and stamping**

(SCR o 1 r 8, o 62 r 1 and r 1A and o 80 r 3; MC(CJ)R s 478 (3); MCR s 101; Qld r 978)

- (1) A document must be sealed if the document is—
  - (a) issued by the court; and
  - (b) required to be sealed under these rules.
- (2) The registrar may stamp a copy of a document to indicate that it is a copy of a filed document if—
  - (a) the document has been filed by a party; and
  - (b) a copy of the document must or may be served on another party.

**EXPOSURE DRAFT**

**6305 Issue of commissions**

(Qld r 979)

If a territory law requires the court to issue a commission, the registrar must issue the commission.

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

**6306 Duplicate sealed etc documents**

(MC(CJ)R s 477)

- (1) This rule applies if the registrar is satisfied, by affidavit or otherwise, that a sealed or stamped document has been lost or destroyed.
- (2) The registrar may issue a duplicate copy of the document.

**6307 Delegation by registrar**

(SCR o 61 r 2; SCQA s 930)

- (1) The registrar of the court may delegate the registrar's functions under a territory law to a public servant.
- (2) This rule does not apply to functions in the exercise of the court's jurisdiction.

*Note 1* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

*Note 2* A **territory law** includes these rules (see Legislation Act, s 98).

## Part 6.7 Time

*Note* The Legislation Act contains provisions that apply in working out periods of time, including the following:

- s 151 (Working out periods of time generally)
- s 151A (Periods of time ending on non-working days)
- s 151B (Doing things for which no time is fixed).

### 6350 Time—certain days excluded in working out

(SCR o 64 r 1 and r 3 and o 80 r 3; MC(CJ)R s 489; NSW r 1.11 (3); FCR o 3 r 2 (3) and (4A))

- (1) This rule applies if, under these rules or an order of the court, something must or may be done within a particular period of time.
- (2) If the period is 5 days or less, any day when the registry is closed is excluded in working out when the thing must or may be done.

#### Example

An application must be served at least 2 days before the return date for the application under rule 6008 (Application in proceeding—filing and service). If the return date is a Monday, the weekend before the return date is excluded in working out the 2-day period, and the application must be served no later than Wednesday before the return date.

*Note* An example is part of these 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) Any day in the period beginning on 25 December and ending on 1 January is excluded in working out when the thing must or may be, or is, done.

## EXPOSURE DRAFT

**6351 Time—extending and shortening by court order**

(SCR o 64 r 5; MC(CJ)R s 490 (1); NSW r 1.12; FCR o 3 r 3)

- (1) This rule applies if, under these rules or an order of the court, something must or may be done in a proceeding within a particular period of time (however expressed).
- (2) On application by a party to the proceeding, the court may, by order, extend or shorten the period.

*Note 1* The Legislation Act, s 151C (Power to extend time) applies to this power.

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

*Note 3* 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.

**6352 Time—fixing by court order**

(MC(CJ)R s 491; FCR o 3 r 4; NSW r 1.13)

- (1) This rule applies if—
  - (a) under these rules or an order of the court, something must or may be done in or in relation to a proceeding; but
  - (b) no time is provided for doing the thing.
- (2) On application by a party to the proceeding, the court may, by order, fix the period within which the thing may or must be done.

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

## Part 6.8 Service

### Division 6.8.1 Service—preliminary

#### 6400 Application—pt 6.8

(SCR o 10 r 1)

This part applies to a document that is required or allowed under these rules to be served, whether the word ‘serve’, ‘give’, ‘notify’, ‘send’, ‘tell’ or any other word is used.

*Note* The following rules do not apply to a criminal proceeding:

- r 6421 (Service by filing)
- r 6437 (Service on detainees)
- r 6438 (Service if no-one found at party’s address for service)
- r 6461 (Informal service)
- r 6469 (Change of address for service).

#### 6401 Service of filed documents

(NSW r 10.1 (1))

- (1) If a party files a document in a proceeding, the party must serve sealed or stamped copies of the document on each other active party.
- (2) This rule does not apply to an application allowed under a territory law to be filed in the court without being served on another party.

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

## EXPOSURE DRAFT

## Division 6.8.2            Personal service

### 6405            How document is personally served

(SCR o 1 r 4 def *personal service*; MC(CJ)R s 23 (a) and s 32; NSW r 10.21; Qld r 106)

- (1) To serve a document personally on a person, the person serving the document must give the person—
  - (a) if the original of the document is sealed—a sealed copy of the document; or
  - (b) in any other case—a stamped copy of the document.
- (2) However, if the person does not accept the copy, the person serving the document may serve it by putting the copy down in the person's presence and telling the person in general terms what it is.
- (3) Also, if the person serving the document is prevented from approaching the person by violence or threat of violence, the person serving the document may serve it by putting the copy down as near as practicable to, but in the sight of, the person being served.
- (4) For this rule, it is not necessary to show that the original of the document was served.

## Division 6.8.3            Service—Magistrates Court

### 6410            Application—div 6.8.3

(Qld r 111)

All documents in a proceeding in the Magistrates Court, including a document required by these rules to be served on a person personally, may be served in accordance with this division, unless a territory law expressly provides otherwise.

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

## EXPOSURE DRAFT

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**6411 Service on individuals generally—Magistrates Court**

(MC(CJ)R s 23; Qld r 112)

- (1) A document in a proceeding may be served on an individual—
  - (a) by serving the document personally on the individual; or
  - (b) by serving the document on the individual in accordance with rule 6420 (Ordinary service—address for service); or
  - (c) if the individual does not have an address for service—by leaving a sealed or stamped copy of the document at the last-known home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

*Note* Rule 6431 (Service on corporations—generally) and r 6432 (Service on corporations—additional ways for all corporations) deal with service on corporations.

- (2) To remove any doubt, subrule (1) (b) and (c) apply to the document whether or not the document is required by these rules to be served personally.

**6412 Service of originating process by post—Magistrates Court**

(MC(CJ)R s 24; NSW r 10.20 (2) (b) (iii) and (3))

- (1) The plaintiff may serve an originating process by post by sending a sealed copy by prepaid post in accordance with subrule (2) if the defendant's address stated in the process is an address in the ACT.
- (2) The copy must be sent in an envelope—
  - (a) addressed to the defendant at the defendant's address stated in the originating process; and
  - (b) marked with a return address.

- (3) The return address must be the registry’s address, but must not be identified as such.
- (4) If the plaintiff serves an originating process under this rule, the plaintiff must complete and file a certificate of postal service for the process.

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

- (5) If the plaintiff completes and files a certificate of postal service for the originating process, the plaintiff is taken to have served the process personally on the defendant.
- (6) However, if the envelope containing the originating process is returned to the registry by the postal authority as not having been delivered to the defendant—
  - (a) the plaintiff is not taken to have served the process on the defendant; and
  - (b) the registrar must—
    - (i) if judgment has been entered on the basis of the postal service—
      - (A) set aside the judgment; and
      - (B) if an enforcement proceeding has been issued—withdraw the proceeding; and
    - (ii) tell the plaintiff—
      - (A) that the process has not been served; and
      - (B) if judgment has been set aside—that judgment has been set aside.

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**6413 Doubtful service—Magistrates Court**

(MC(CJ)R s 31 (1))

- (1) This rule applies if—
  - (a) an originating process or other document in a proceeding has been served on a person under rule 6411 (1) (c) (Service on individuals generally—Magistrates Court) or rule 6412 (Service of originating process by post—Magistrates Court); and
  - (b) the court is satisfied that—
    - (i) the document did not come to the knowledge of the person within a reasonable time; or
    - (ii) there is doubt about whether the document came to the knowledge of the person within a reasonable time.
- (2) The court must not allow any further step in the proceeding to be taken against the person.
- (3) On application by the person or a party to the proceeding, or on its own initiative, the court must—
  - (a) strike out or adjourn the proceeding; or
  - (b) order that the document be re-served on the person in the way (if any) stated in the order; or
  - (c) if judgment has been entered because the document was taken to be served—set aside the judgment; or
  - (d) make any other order it considers appropriate.

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

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## **Division 6.8.4            Ordinary service**

### **6420            Ordinary service—address for service**

(SCR o 10 r 4; MC(CJ)R s 26 (2), s 27 and s 29; NSW r 10.5; Qld s 112)

If a document is not required by these rules to be served personally on a person, the document may be served on the person—

- (a) by serving it personally on the person; or
- (b) by leaving a sealed or stamped copy at the person's address for service; or
- (c) by sending a sealed or stamped copy by prepaid post, addressed to the person, at the person's address for service; or
- (d) if the person's address for service includes a postbox at a post office in the ACT—by sending a sealed or stamped copy by prepaid post, addressed to the person, at the person's postbox; or
- (e) if the person's address for service includes a document exchange box number—by leaving a sealed or stamped copy, addressed to the person, in the exchange box or at a collection point of the document exchange for delivery to the exchange box; or
- (f) if the person's address for service includes a fax number—by faxing a sealed or stamped copy to the fax number; or
- (g) if the person's address for service includes an email address—by sending a copy by electronic communication to the email address; or
- (h) if the document to be served is from the registrar's office, the person has a solicitor, and the solicitor has a collection box in

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the office—by leaving a copy of the document in the solicitor’s collection box.

**6421 Service by filing**

(SCR o 10 r 5; NSW r 10.16)

- (1) This rule—
  - (a) applies if a defendant—
    - (i) has not filed in the court a notice of intention to respond or defence; or
    - (ii) has not given an address for service; and
  - (b) does not apply to a document that must be served personally.

*Note* This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4007 (Criminal proceedings—service on accused person by filing if no address for service)).

- (2) A document may be served on the defendant by—
  - (a) filing it in the court; and
  - (b) sending a sealed or stamped copy by prepaid post, addressed to the defendant, at the defendant’s last-known address.
- (3) A document filed under this rule must state on its first page that it is filed under this rule.

**Division 6.8.5 Service—particular cases**

**6430 Service in Australia but outside ACT**

- (1) This rule applies only to service of an originating process outside the ACT but in Australia.

(2) The originating process must be served in accordance with the *Service and Execution of Process Act 1992* (Cwlth).

(3) In this rule:

*Australia* includes the external territories.

### **6431      Service on corporations—generally**

(SCR o 10 r 11; NSW r 10.22; Qld r 107)

(1) A document may be served on a corporation under these rules in a way provided—

(a) for the service of documents on the corporation under the Corporations Act or another applicable law; or

(b) by rule 6432 (Service on corporations—additional ways for all corporations).

*Note 1*      **Meaning of corporation**

**Corporation** includes a body politic or corporate (see Legislation Act, dict, pt 1).

*Note 2*      **Corporations Act**

- the Corporations Act, s 109X provides non-exhaustively for the service of documents on a company registered under that Act. The section does not apply to a document that may be served under the *Service and Execution of Process Act 1992* (Cwlth) (**SEPA**), s 9 (see s 9 (9))
- the Corporations Act, s 601CX provides for service of documents on a body corporate registered under that Act, pt 5B.1 (Registering a body corporate as a company). The section does not apply to a document that may be served under SEPA, s 9 (see s 9 (9)).

*Note 3*      **Service and Execution of Process Act**

SEPA, s 9 provides exhaustively for service of documents under that Act on a company or registered body corporate (see also s 15 (3)). SEPA, s 10 provides non-exhaustively for service of documents under

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that Act on any other body corporate (but see s 15 (4) for an originating process). SEPA, s 15 (5) provides for service of an originating process under that Act on a body politic.

*Note 4* **ACT legislation—general**

The Legislation Act, pt 19.5 provides non-exhaustively for the service of documents on corporations generally (including territory agencies).

*Note 5* **ACT legislation—specific**

- the *Associations Incorporation Act 1991*, s 122 provides non-exhaustively for the service of documents and process on an incorporated association under that Act
- the *Business Names Act 1963*, s 31 provides non-exhaustively for the personal service of documents on a person (including a corporation) who carries on business under a business name registered under that Act
- the *Community Title Act 2001*, s 59 provides for an address for service for a body corporate under that Act (see also Legislation Act, s 246, def **business address**)
- the *Cooperatives Act 2002*, s 461 provides non-exhaustively for the service of documents on a foreign cooperative by post
- the *Unit Titles Act 2001*, s 79 provides non-exhaustively for the service of documents on an owners corporation under that Act.

*Note 6* **Service on governments**

The *Judiciary Act 1903* (Cwlth), s 63 provides for service of process on the Commonwealth or a State. The *Court Procedures Act 2004*, s 33 and s 34 provide for service on the Territory and its Ministers.

- (2) For any provision of these rules requiring personal service of a document, service of the document on a corporation in a way mentioned in subrule (1) is taken to be personal service of the document on the corporation.

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**6432      Service on corporations—additional ways for all corporations**

- (1) A document may be served on a corporation under these rules by leaving it at, or sending it by post to, the corporation’s registered office.
- (2) This rule does not affect the operation of any other law that authorises or requires service of a document otherwise than as provided under this rule.

*Note*      The note to r 6431 (1) sets out other applicable laws.

- (3) In this rule:  
*registered office*, for a corporation, includes—
  - (a) if the corporation has a registered office under the Corporations Act—that office; and
  - (b) if under a territory law or a law of the Commonwealth a document may be served on the corporation by leaving it at, or sending it by post to, a place—that place; and
  - (c) if paragraphs (a) and (b) do not apply in relation to the corporation but it has an office or place of business in the ACT—that office or place.

**6433      Service on partnership**

(SCR o 2 r 18D; NSW r 10.11; Qld r 114)

- (1) An originating process against a partnership must be served in accordance with these rules—
  - (a) on at least 1 of the partners; or

- (b) on someone at the partnership's main place of business in the ACT who appears to have control or management of the partnership's business at the place; or
  - (c) for an incorporated limited partnership—at the partnership's registered office.
- (2) If the originating process is served under subrule (1), each of the partners who were partners in the partnership when the originating process was issued, including a partner who was outside the ACT at the time, is taken to have been served.
  - (3) However, if the plaintiff knows that the partnership has been dissolved before the proceeding is started, the originating process must be served on everyone sought to be made liable.
  - (4) To remove any doubt, if the partnership has been dissolved before the proceeding is started, but the plaintiff does not know it has been dissolved, subrules (1) and (2) apply as if the partnership had not been dissolved.
  - (5) The originating process must also be served on anyone the plaintiff seeks to make liable as a partner but who was not a partner when the originating process was issued.
  - (6) In this rule:  
*registered office*, of an incorporated limited partnership, means the registered office kept under the *Partnership Act 1963*, section 90.

**6434 Service on defendant operating under unregistered business name**

(NSW r 10.9; Qld r 113)

- (1) This rule applies in relation to a person if—

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- (a) the person (the *defendant*) is carrying on business under a business name that is not registered under the *Business Names Act 1963* (the *unregistered name*); and
- (b) a proceeding is started against the defendant under the unregistered name.

*Note*        For service on a defendant carrying on a business under a registered business name, see the *Business Names Act 1963*, s 31 (2).

- (2) The originating process for the proceeding may be served on the defendant by serving it personally on someone at the place of business who appears—
  - (a) to have control or management of the business at the place; and
  - (b) to be at least 16 years old.
- (3) Any other document for the proceeding may be served on the defendant—
  - (a) as mentioned in subrule (2); or
  - (b) by sending it by prepaid post, addressed to the defendant, to any place where business is carried on under the unregistered name, whether or not the place is in the ACT.
- (4) For any provision of these rules requiring personal service of a document on the defendant, service of the document in accordance with subrule (2) or (3) is taken to be personal service of the document on the defendant.

**6435        Service on children**

(SCR o 10 r 7; MC(CJ)R s 98; NSW r 10.12; Qld r 108)

- (1) A document otherwise required or allowed under these rules to be served on a child for a proceeding must be served instead on the person who is the child's litigation guardian for the proceeding.

*Note* The Legislation Act, dict, pt 1 defines *child* as an individual who is under 18 years old.

- (2) If the child does not have a litigation guardian for the proceeding, the document must be served instead on—
- (a) if the child is at least 16 years old—the child; or
  - (b) the child's parent or guardian; or
  - (c) if there is no parent or guardian—
    - (i) an adult who has parental responsibility for the child under the *Children and Young People Act 1999*, section 18; or
    - (ii) if there is no-one under subparagraph (i)—an adult who otherwise has care of the child or with whom the child lives.
- (3) For any provision of these rules requiring personal service of a document, personal service of the document on a person (including the child) under subrule (1) or (2) is taken to be personal service on the child.

**6436 Service on people with mental disabilities**

(SCR o 10 r 8; MC(CJ)R s 98; NSW r 10.12; Qld r 109)

- (1) A document otherwise required or allowed under these rules to be served on a person for a proceeding with a mental disability who is an adult (the *relevant person*) must be served instead on—
- (a) the person who is the relevant person's litigation guardian for the proceeding; or

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- (b) if there is no-one under paragraph (a)—a person who is entitled under rule 276 (2) (Who may be litigation guardian) to be the relevant person’s litigation guardian for the proceeding; or
- (c) if there is no-one under paragraph (a) or (b)—
  - (i) an adult who has the care of the relevant person; or
  - (ii) an adult with whom the relevant person lives.

*Note*     **Person with a mental disability** is defined in the dictionary.

- (2) For any provision of these rules requiring personal service of a document, personal service of the document on a person under subrule (1) is taken to be personal service on the relevant person.

#### **6437     Service on detainees**

(SCR o 80 r 8; NSW r 10.25; Qld r 110)

- (1) A document otherwise required or allowed under these rules to be served on a detainee must be served on the person in charge of the place where the detainee is being detained.
- (2) For any provision of these rules requiring personal service of a document, personal service of the document on a person under subrule (1) is taken to be personal service on the detainee.
- (3) In this rule:

***detainee*** means a person who is a full-time detainee under the *Crimes (Sentence Administration) Act 2005*.

*Note*     This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4009 (Criminal proceedings—service of documents when unrepresented accused person in custody)).

**6438 Service if no-one found at party's address for service**

(SCR o 10 r 6; Qld r 112 (1) (b))

- (1) This rule applies to a party to a proceeding if the party does not have a solicitor, and no-one can be found at the party's address for service.

*Note* This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4008 (Criminal proceedings—service if no-one found at accused person's address for service)).

- (2) Any document in the proceeding may be served on the party by leaving a copy at the party's address for service in a position where it is reasonably likely to come to the party's attention.
- (3) This rule does not apply to a document that is required under a territory law to be served personally on the party.

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

**6439 Service of originating application to recover unoccupied land**

(SCR o 2 r 18B; NSW r 10.15)

- (1) This rule applies if an originating application in a proceeding to recover unoccupied land cannot be served on the defendant without unreasonable delay or expense.
- (2) The court may order that the application may be served by attaching a stamped copy of the application to a door of a house, or to something else at another conspicuous place, on the land.
- (3) An order under subrule (2) may direct that the application be taken to be served on the defendant at the end of a stated time.
- (4) If an application has been served by attaching a stamped copy of the application to something at a conspicuous place on the land other

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than under an order subrule (2), the court may order that the application be taken to be served on the defendant on a date stated in the order.

- (5) Service under this rule is taken to be personal service.
- (6) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (7) 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 order.
- (8) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (9) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

*Note*     For the jurisdiction of the Magistrates Court in relation to title to land, see the *Magistrates Court Act 1930*, s 264 (Proceedings affecting title to land).

## **Division 6.8.6            Time of service**

### **6450            Time of service at address for service**

(SCR o 10 r 4; MC(CJ)R s 29; NSW r 10.5 (3); Qld s 112)

Service of a document at an address for service is taken to have been made—

- (a) if the document is left with someone or at a place in accordance with these rules—

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- (i) if the document is left before 4 pm on a day—on that day;  
or
- (ii) if the document is left at or after 4 pm on a day—on the next day; or
- (b) if the document is served by post in Australia or an external territory in accordance with these rules—4 days after the day it is posted, unless the contrary is proved; or
- (c) if the document is left in a document exchange box or at a collection point of an authorised DX system in accordance with these rules—2 days after the day it is left; or
- (d) if the document is faxed in accordance with these rules—1 day after the day it is faxed; or
- (e) if the document is sent by electronic communication to an email address in accordance with these rules—
  - (i) if the document is sent before 4 pm on a day—on that day; or
  - (ii) if the document is sent at or after 4 pm on a day—on the next day.

## **Division 6.8.7      Service—other**

### **6460      Substituted service**

(SCR o 10 r 12; MC(CJ)R s 25; NSW r 10.14; Qld r 116)

- (1) This rule applies if these rules require or allow a document in a proceeding to be served in a particular way (the *authorised way*).

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- (2) A party to the proceeding may apply to the court for an order allowing the document to be served in another way (the *alternative way*).

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

- (3) The court may make the order if satisfied that—
- (a) it is impracticable, for any reason, for the document to be served in the authorised way; and
  - (b) the alternative way is reasonably likely to bring the document to the attention of the person to be served.
- (4) If the court makes the order, it may, in the order, provide that the document is taken to have been served on the happening of a stated event, at a stated time or at the end of a stated period.
- (5) The court may make an order under this rule even though the person to be served is not in the ACT or Australia or was not in the ACT or Australia when the proceeding started.
- (6) For any provision of these rules requiring personal service of a document on a person, service of the document on the person in accordance with an order under subrule (3) is taken to be personal service of the document on the person.

**6461     Informal service**

(Qld r 117)

- (1) This rule applies if—
- (a) a document is not served on a person as required or allowed by this part but the document or a copy of it comes to the notice of the person; and

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- (b) the court is satisfied that the document came to the person's notice on or before a particular day.

*Note* This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

- (2) The court may, by order, decide that the document was served on the person on the day stated in the order.

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

- (3) For any provision of these rules requiring personal service of a document on a person, the document is taken to have been personally served on the person on that day.

## **6462 Service on agent**

(Qld r 118)

- (1) This rule applies if a person living or carrying on a business outside the ACT (the *principal*) enters into a contract in the ACT through an agent living or carrying on business in the ACT.
- (2) The court may, without deciding the agent's authority or business relationship with the principal, give leave to a person to serve an originating process or notice of appeal relating to a proceeding arising out of the contract on the agent.

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

- (3) If the court gives leave under subrule (2), the court must state the time within which the principal must file a notice of intention to respond or defence.
- (4) If the person serves the originating process or notice of appeal on the agent under this rule, the person must immediately send to the principal by prepaid post, addressed to the principal, at the principal's address outside the ACT a copy—

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- (a) of the originating process or notice of appeal; and
- (b) of the order giving leave under subrule (2).

**6463      Service under contract**

(Qld r 119)

- (1) This rule applies if, before or after a proceeding starts, parties to the proceeding agree that a document relating to the proceeding may be served on 1 or more of the parties, or someone else for 1 or more of the parties, in a way or at a place, in the ACT or somewhere else, stated in the agreement.
- (2) The document may be served in accordance with the agreement.
- (3) For any provision of these rules requiring personal service of a document on a party to the agreement, service of the document on the party in accordance with the agreement is taken to be personal service on the party.

**6464      Acceptance of service by solicitor**

(SCR o 10 r 3; MC(CJ)R s 26 (1); NSW r 10.13; Qld r 115)

- (1) A solicitor may accept service of a document for a person (the *relevant person*).
- (2) The solicitor must—
  - (a) make a note on a copy of the document to the effect that the solicitor accepts service for the relevant person; and
  - (b) give the copy to the person serving the document.
- (3) The relevant person is taken to have been served with the document on the day the solicitor accepts service of the document, unless the relevant person proves the solicitor did not have authority to accept service for the relevant person.

- (4) For any provision of these rules requiring personal service of a document, service of the document on the solicitor under this rule is taken to be personal service on the relevant person.

**6465 Special requirements for service by fax**

(Qld r 122)

- (1) A document served by fax must include a cover page stating the following:
- (a) the sender's name and address;
  - (b) the name of the person to be served;
  - (c) the date and time of transmission;
  - (d) the total number of pages, including the cover page, transmitted;
  - (e) the phone number from which the document is transmitted;
  - (f) the name and phone number of a person to contact if there is a problem with the transmission;
  - (g) that the transmission is for service under these rules.
- (2) An affidavit of service of a document by fax must include, as an annexure, the transmission advice, generated by the sender's fax machine, indicating the transmission was successful.

**6466 Email service—other matters**

(SCR o 10 r 16)

- (1) This rule applies if a document (the *emailed document*) is served by electronic communication under these rules.
- (2) The emailed document must be capable of being printed by the recipient with the content and in the form in which it was created.

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- (3) The electronic communication for the emailed document must include the following:
- (a) the name and phone number of a person to contact if there is a problem with the electronic communication;
  - (b) that the electronic communication is for service under these rules.
- (4) If these rules require or allow the emailed document to be signed, it is sufficient compliance if the person who serves the emailed document—
- (a) identifies himself or herself in the electronic communication by stating his or her name and business address; and
  - (b) states in the electronic communication that the original of the emailed document was signed and by whom.
- Note*     **These rules** is defined in the dictionary.
- (5) If these rules require or allow service of a sealed or stamped copy of a document, it is sufficient compliance if—
- (a) the emailed document is a copy of a document that was sealed or stamped; and
  - (b) the person who serves the emailed document states in the electronic communication that the original of the emailed document was sealed or stamped.
- (6) If the emailed document is a copy of an affidavit, the original affidavit is taken to have been sworn if—
- (a) the original affidavit was properly sworn; and
  - (b) the person who serves the copy of the affidavit states in the email that the original was properly sworn.

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**6467 Proof of service**

(SCR o 10 r 13; MC(CJ)R s 30; NSW r 35.8; Qld r 120)

- (1) Service of a document may be proved—
  - (a) by affidavit of service made by the person who served the document; or
  - (b) by the person who served the document giving sworn evidence about the service; or
  - (c) if the document was served under rule 6412 (Service of originating process by post—Magistrates Court)—by production of the certificate of postal service; or
  - (d) in another way that the court directs is to be treated as appropriate.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for a direction.

- (2) If an affidavit of service of a document is required or allowed under a territory law, the affidavit—
  - (a) for service in accordance with rule 6405 (How document is personally served)—must be made by the person who served the document and include the following:
    - (i) the person's full name;
    - (ii) the time, day and date the document was served;
    - (iii) the place of service;
    - (iv) the name of the person served and how the person was identified; or
  - (b) for any other kind of service—

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- (i) must state how the document was served; and
- (ii) must state the relevant dates and the facts showing service; and
- (iii) if service was made in a way that required the person served to be identified—how the person was identified; and
- (iv) may be made on information given to, or the belief of, the person causing the service; and
- (v) if made on information given to the person causing the service—must state the source of the information.

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

- (3) For subrule (2) (b) (ii), if the document was served by post, the affidavit must state the following:
  - (a) that it was sent by prepaid post to a stated address;
  - (b) that it was addressed to the person or, if it was sent to an address for service that is the office of a solicitor, to that solicitor;
  - (c) the date the document was posted.
- (4) Subrules (2) and (3) do not limit the matters to be stated in the affidavit.
- (5) If the court gives leave to serve a document—
  - (a) a sealed copy of the order giving leave must be served with the document; and
  - (b) any affidavit of service for the document must deal with the service of the order as well as the service of the document.

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- (6) An affidavit of service of a document must—
- (a) have the document filed with it as an annexure or exhibit or be written on the document; or
  - (b) if the document has been filed in the court—mention the document in a way sufficient to enable the document to be identified.

**6468 Identity of person served**

(NSW r 10.27; Qld r 121; SEPA s 11 (7))

For proving service, a statement by the person served of his or her identity or that the person holds a particular position is evidence of the identity or that the person holds the position.

**6469 Change of address for service**

(SCR o 10 r 15; MC(CJ)R s 28 (4); Qld r 17 (5))

- (1) This rule applies if a person has given the court an address for service in a proceeding and the person's address for service changes in any way before the proceeding is finally disposed of.

*Note* This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

- (2) The person must—
- (a) file in the court a notice stating the new address (the *new address notice*); and
  - (b) serve a sealed or stamped copy of the new address notice on every other active party to the proceeding.

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## **Division 6.8.8            Service of subpoenas and notices instead of subpoenas—general**

### **6480            Subpoena—service on solicitor**

(SCR o 10 r 17; NP 03.03.93)

If the addressee for a subpoena in a proceeding is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's agreement, be served on the addressee by leaving it at the addressee's address for service.

### **6481            Subpoena—service on medical expert**

(SCR o 10 r 17; NP 03.03.93)

- (1) A subpoena is taken to be served personally on a medical expert if, at a place where the expert's practice is carried on—
  - (a) it is given to a person apparently engaged (whether as employee or otherwise) in relation to the practice and apparently at least 16 years old; or
  - (b) if a person mentioned in paragraph (a) does not accept the subpoena—the subpoena is put down in the person's presence and the person is told in general terms what it is.
- (2) A subpoena requiring a medical expert to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding (the *hearing date*) unless the subpoena is served in accordance with leave given under subrule (3) or (8).
- (3) The court may give leave for a subpoena to be served on a medical expert requiring the expert to attend to give evidence later than 6 weeks before the hearing date.

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- (4) An application for leave under subrule (3) is made by filing—
- (a) the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 6 weeks before the hearing date; and
  - (b) an affidavit in support of the application.
- (5) The affidavit in support of the application must state—
- (a) the need for the medical expert to give evidence in the proceeding; and
  - (b) the reason the subpoena was not issued in enough time to enable it to be served at least 6 weeks before the hearing date; and
  - (c) whether the expert has been told about the hearing and, if so, whether the expert is able to attend the hearing; and
  - (d) the earliest date when the subpoena can be served.
- (6) Part 6.2 (Applications in proceedings) does not apply to an application for leave under subrule (3).
- (7) If the court gives leave under subrule (3), it must set a date for the last date of service for the subpoena.
- (8) If a medical expert to whom a notice has been given in accordance with rule 6482 fails to attend the court on the date and at the time stated in the notice, the court may give leave for the service of a subpoena on the expert requiring the attendance of the expert.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for leave under r (8).

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**6482      Medical expert—notice instead of subpoena**

(SCR o 10 r 18)

- (1) In a proceeding, a notice stating the date and time set for the hearing for the proceeding and requesting a medical expert's attendance may be given to the expert instead of a subpoena.
- (2) The notice may be given in the same way as a subpoena may be served on a medical expert.
- (3) However, the notice must not be given later than 6 weeks before the date set for the hearing.

**6483      Medical expert—no shortening of time for service of notice**

(SCR o 10 r 19)

The parties to a proceeding cannot, by agreement, shorten the time for service of a subpoena on, or the giving of a notice under rule 6482 to, a medical expert.

**Division 6.8.9            Service outside Australia—general**

**6500      Definitions—div 6.8.9**

(NSW r 11.1 (2) and r 11.9; Qld r 100)

In this division:

*Australia* includes the external territories.

*convention* means an agreement, arrangement, treaty or convention, relating to legal proceedings in civil matters, made between Australia and another country.

*convention country* means a country other than Australia to which a convention applies.

*non-convention country* means a country other than Australia to which a convention does not apply.

**6501 Service outside Australia—service of originating process without leave**

(SCR o 12 r 2; FCR o 8 r 1; NSW r 11.2 and sch 6; Qld r 124)

- (1) An originating process for any of the following may be served on a person outside Australia without the court's leave:
- (a) a proceeding based on a cause of action arising in the ACT;
  - (b) a proceeding in relation to—
    - (i) property in the ACT; or
    - (ii) obtaining evidence for a future claim about property in the ACT;
  - (c) a proceeding for the interpretation, rectification, setting aside or enforcement of a law, deed, will, contract, obligation or liability affecting property in the ACT;
  - (d) a proceeding for relief against—
    - (i) a person domiciled or ordinarily resident in the ACT; or
    - (ii) a corporation incorporated in the ACT or under a territory law; or
    - (iii) a company taken to be registered in the ACT; or
    - (iv) a company or other corporation carrying on business in the ACT;
  - (e) a proceeding for—
    - (i) the administration of the estate of a person who died domiciled in the ACT; or

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- (ii) relief that might be obtained in a proceeding for the administration of the estate of a person who died domiciled in the ACT;
- (f) a proceeding for the execution of a trust if—
  - (i) the trust is created or declared by an instrument; and
  - (ii) the person is a trustee or beneficiary; and
  - (iii) the execution relates to trust property in the ACT; and
  - (iv) the trust ought to be executed under ACT law;
- (g) a proceeding in relation to a contract—
  - (i) made in the ACT; or
  - (ii) made by 1 or more parties carrying on business or living in the ACT; or
  - (iii) made by or through an agent carrying on business or living in the ACT on behalf of a principal carrying on business or living outside the ACT; or
  - (iv) governed by ACT law;
- (h) a proceeding based on a breach in the ACT of a contract (wherever made), whether or not the breach was preceded or accompanied by a breach (wherever happening), that makes impossible the performance of a part of the contract that ought to be performed in the ACT;
- (i) a proceeding based on a contract containing a condition by which the parties agree to submit to the jurisdiction of the court;
- (j) a proceeding for the recovery of an amount payable under a law to an entity in the ACT;

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- (k) a proceeding based on a tort committed in the ACT;
- (l) a proceeding for damage—
  - (i) all or part of which was suffered in the ACT; and
  - (ii) caused by a tortious act or omission (wherever happening);
- (m) a proceeding affecting a person in relation to—
  - (i) membership of, or office holding in, a corporation incorporated in the ACT or under a territory law; or
  - (ii) membership of, or office holding in, a company taken to be registered in the ACT; or
  - (iii) membership of, or office holding in, a company or other corporation carrying on business in the ACT; or
  - (iv) membership of, or office holding in, an unincorporated partnership, association or other entity formed, or carrying on any part of its affairs, in the ACT; or
  - (v) the person's conduct as a member or officer of such a company, other corporation, or unincorporated partnership, association or other entity;
- (n) a proceeding for a contribution or indemnity for a liability enforceable in the court;
- (o) a proceeding in which a division 2.9.4 order in relation to anything to be done, or not done, in the ACT is the principal relief claimed (whether or not damages are also claimed);
- (p) a proceeding properly brought in the ACT against a person in which someone else outside the ACT is a necessary or proper party to the proceeding;

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- (q) a proceeding brought under the *Civil Aviation (Carrier's Liability) Act 1959* (Cwlth)—
  - (i) by a resident of the ACT; or
  - (ii) in relation to damage that happened in the ACT;
- (r) a proceeding in which a person has submitted or agreed to submit to the jurisdiction of the court;
- (s) a proceeding in which the subject matter of the proceeding, as far as it concerns the person, is property in the ACT;
- (t) a proceeding about the interpretation, effect or enforcement of—
  - (i) an ACT law; or
  - (ii) a law of the Commonwealth (including an Imperial Act applying as a law of the Commonwealth) affecting property in the ACT;
- (u) a proceeding in relation to the effect or enforcement of an executive, ministerial or administrative act done, or purported to have been done, under a law;
- (v) a proceeding—
  - (i) in relation to an arbitration held in the ACT or governed by ACT law; or
  - (ii) to enforce in the ACT an arbitral award wherever made; or
  - (iii) for orders to carry into effect in the ACT all or part of an arbitral award wherever made;
- (w) a proceeding to enforce in the ACT a judgment wherever given;

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- (x) a proceeding in relation to a person with a legal disability who is domiciled or present in, or a resident of, the ACT;
- (y) a proceeding, as far as it relates to the person to be served, falling partly within 1 or more of paragraphs (a) to (x).

*Note* Rule 6505 (Service outside Australia—leave for service) provides for the giving of leave for service of an originating process that is not allowed under r (1).

- (2) Any other originating process must not be served outside Australia without the court's leave.

*Note* Rule 6505 (Service outside Australia—leave for service) provides for the giving of leave for service of an originating process that is not mentioned in r (1).

- (3) Each paragraph of subrule (1) is a separate ground for deciding whether an originating process may be served outside Australia under that subrule.
- (4) This rule does not limit or extend the jurisdiction the court has apart from this rule.

## **6502 Service outside Australia—counterclaim or third-party notice**

(Qld r 125)

- (1) This rule applies to—
  - (a) a counterclaim against a plaintiff and someone else if the other person is not already a party to the proceeding; or
  - (b) a third-party notice.
- (2) If the claim made by the defendant in the counterclaim or third-party notice is of a kind that, if the claim were made by originating process, the process could be served outside Australia under

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rule 6501 (Service outside Australia—service of originating process without leave), the counterclaim or third-party notice may be served outside Australia without the court’s leave.

- (3) If subrule (2) does not apply to the counterclaim or third-party notice, the counterclaim or third-party notice must not be served outside Australia without the court’s leave.

*Note* Rule 6505 (Service outside Australia—leave for service) provides for the giving of leave for service of a counterclaim or third-party notice that is not mentioned in r (1).

**6503 Service outside Australia—setting aside service of originating process etc**

(SCR o 13 r 17 (2); NSW r 11.7; Qld r 126)

- (1) This rule applies to an originating process, counterclaim or third-party notice that has been served on a defendant outside Australia without the court’s leave.
- (2) On application by the defendant, the court may make an order of the kind mentioned in rule 40 (Setting aside originating process etc).

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

- (3) Without limiting subrule (2), the court may make an order under this rule on the ground that—
- (a) for an originating process—service of the originating process was not allowed under rule 6501 (Service outside Australia—service of originating process without leave); or
- (b) for a counterclaim or third-party notice—service of the counterclaim or third-party notice was not allowed under rule 6502 (Service outside Australia—counterclaim or third-party notice); or

(c) the court is an inappropriate forum for the proceeding.

**6504 Service outside Australia—service of other documents in proceeding**

(NSW r 11.5)

A document in a proceeding (other than an originating process, counterclaim or third-party notice) may be served outside Australia only with the court's leave, unless these rules otherwise provide.

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for leave.

*Note 2* Service may subsequently be confirmed under r 6506 (Service outside Australia—confirmation of service of other process).

*Note 3* See also r 744 (Freezing orders—service outside Australia of application for freezing order or ancillary order).

*Note 4* See also div 6.8.10 (Service of subpoenas in New Zealand).

**6505 Service outside Australia—leave for service**

(SCR o 12 r 4 and r 9; NSW r 11.5; Qld r 127)

- (1) The court may give leave for service outside Australia of—
- (a) an originating process if service outside Australia is not allowed under rule 6501 (Service outside Australia—service of originating process without leave); or
  - (b) a counterclaim or third-party notice if service outside Australia is not allowed under rule 6502 (Service outside Australia—counterclaim or third-party notice); or
  - (c) a document in a proceeding other than an originating process, counterclaim or third-party notice.

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

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- (2) An application for leave under this rule must be supported by affidavit or other evidence—
- (a) for an originating process mentioned in subrule (1) (a)—establishing the plaintiff’s belief that the plaintiff has a good cause of action; and
  - (b) showing in what place or country the person on whom the document is to be served is, or probably may be found; and
  - (c) stating the grounds on which the application is made.

**6506            Service outside Australia—confirmation of service of other documents in proceeding**

(NSW r 11.5)

The court may confirm the service of a document in a proceeding other than an originating process, counterclaim or third-party notice if the document was served outside Australia without leave being sought under rule 6505.

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

**6507            Service outside Australia—directions etc**

(SCR o 12 r 6; Qld r 128)

- (1) If the court gives leave for a document to be served outside Australia, it may give directions about the time for filing a notice of intention to respond or defence or anything else.

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

- (2) If a document is served outside Australia with the court's leave, a copy of each of the following must be served with the document:
- (a) a sealed copy of the order giving leave;
  - (b) each affidavit filed in the court in support of the application for the leave;
  - (c) an exhibit mentioned in the affidavit.

**6508 Service outside Australia—leave to proceed against defendant**

(NSW r 11.4)

- (1) A plaintiff in a proceeding may, with the court's leave, proceed against a defendant if—
- (a) the originating process, counterclaim or third-party notice in the proceeding was served on a defendant outside Australia; and
  - (b) for a proceeding started by originating claim—
    - (i) the defendant does not file a notice of intention to respond or defence within the time required by rule 102 (Notice of intention to respond or defence—filing and service) or any further period agreed between the relevant parties or allowed by the court; or
    - (ii) the defendant files a notice of intention to respond within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but does not file a defence within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court; or

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- (iii) the defendant files a conditional notice of intention to respond that becomes an unconditional notice of intention to respond but does not file a defence within the time required by rule 111 (Conditional notice of intention to respond) or any further period agreed between the relevant parties or allowed by the court; or
- (iv) the defendant files a defence but the court orders the defence to be struck out; and

*Note*     In this rule, ‘defendant’ includes a person not a party to the original proceeding who is included as a party by a counterclaim (see r 462 (4) (c)).

- (c) for a counterclaim—
  - (i) the defendant to the counterclaim does not file an answer to the counterclaim within the time required by rule 466 (3) (Counterclaim—answer to) or any further period agreed between the relevant parties or allowed by the court; or
  - (ii) the defendant to the counterclaim files an answer to the counterclaim but the court orders the answer to be struck out; and
- (d) for a third-party notice—
  - (i) the third party does not file a notice of intention to respond or defence within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court; or
  - (ii) the third party files a notice of intention to respond within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but does not file a defence within the time required by

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rule 102 or any further period agreed between the relevant parties or allowed by the court; or

- (iii) the third party files a conditional notice of intention to respond that becomes an unconditional notice of intention to respond but does not file a defence within the time required by rule 111 or any further period agreed between the relevant parties or allowed by the court; or
- (iv) the third party files a defence but the court orders the defence to be struck out.

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

*Note 2* Pt 2.3 (Notice of intention to respond and defence) applies to a third-party notice (see r 311 (Third-party notice—notice of intention to respond and defence)).

*Note 3* Rule 425 (Pleadings—striking out) deals with striking out of defences and answers.

*Note 4* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

- (2) However, the plaintiff may not proceed against a defendant under subrule (1) if—
  - (a) for a proceeding started by originating claim—
    - (i) the proceeding is stayed under rule 1102 (Stay of debt etc proceeding on payment of amount sought); or
    - (ii) the defendant files a statement under rule 1104 (Judgment on acknowledgment of debt or liquidated demand); or
    - (iii) the defendant files a defence after the time required by rule 102 or any further period agreed between the relevant

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parties or allowed by the court, but before a default judgment is entered against the defendant; or

- (b) for a counterclaim—the defendant to the counterclaim files an answer to the counterclaim after the time required by rule 466 (3) or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the defendant to the counterclaim; or
- (c) for a third-party notice—the third party files a defence after the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the third party.

**6509            Service outside Australia—how service is made**

(NSW r 11.6; Qld r 129)

- (1) If service outside Australia of an originating process, counterclaim or a third-party notice is authorised under this division, divisions 6.8.1 to 6.8.7 apply to the service.
- (2) However, these rules do not require or allow the doing of anything in a country in which service is to be made that is contrary to the law of the country.

**6510            Service outside Australia—service in convention countries**

(SCR o 12 r 10; FCR o 8 rr 6-12; NSW rr 11.9-11.12; Qld r 130)

- (1) This rule applies if a person (the *relevant person*)—
  - (a) is required by a convention to serve a document in a convention country in accordance with the convention; or
  - (b) otherwise wants to serve a document in a convention country in accordance with a convention.

- (2) The relevant person must give the registrar—
  - (a) the document to be served; and
  - (b) if a particular way of service is required—a request for service in that way; and
  - (c) if English is not an official language of the convention country—a written translation of the documents mentioned in paragraphs (a) and (b) in an official language of the country; and
  - (d) the further copies of each of the documents mentioned in paragraphs (a) to (c) that the registrar directs; and
  - (e) a request in accordance with subrule (5).
- (3) The translation of a document mentioned in subrule (2) (c) must be certified, in writing, by the person making it to be a correct translation of the document.
- (4) The certificate of the person making the translation must also state the person's full name and address and qualifications for making the translation.
- (5) The request given to the registrar under subrule (2) (e) must—
  - (a) ask the registrar to send a sealed copy of the document to be served to the convention country for service on a stated person; and
  - (b) refer to the relevant convention; and

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- (c) include an undertaking by the relevant person, or the relevant person's solicitor, to be responsible for all expenses incurred by the court, or by anyone at the court's request, in complying with the request (the *incurred expenses*) and to pay the registrar the amount of the incurred expenses on being given an account of them by the registrar.
- (6) The registrar must give the Attorney-General for transmission for service—
- (a) a sealed copy of the documents given to the registrar; and
- (b) if the judicial authority of the convention country requires a letter of request—the request.
- (7) If—
- (a) a certificate of service, attempted service or non-service is filed; and
- (b) the certificate purports to be a certificate—
- (i) in relation to the document to be served; and
- (ii) from—
- (A) a judicial authority or other responsible person in the convention country; or
- (B) an Australian consular authority in the convention country;
- the certificate is evidence of the matters stated in the certificate.
- (8) The person giving the undertaking mentioned in subrule (5) (c) must pay the amount of the incurred expenses to the registrar not later than 7 days after the day the person is given an account of them by the registrar.

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- (9) If the amount of the incurred expenses is not paid in accordance with subrule (8), the court may, on its own initiative—
- (a) order the party who obtained the order to pay the unpaid amount of the incurred expenses; and
  - (b) if the party is a plaintiff—stay the proceeding, until the unpaid amount is paid, to the extent that it relates to all or part of a claim for relief by that party; and
  - (c) if the party is a defendant—make any order it considers appropriate, including an order that, until the unpaid amount is paid, the defendant be taken not to have filed a notice of intention to respond or defence.
- (10) Despite subrules (2) (e) and (6), the registrar may—
- (a) require the person giving the undertaking to provide security, in a form satisfactory to the registrar, for the anticipated incurred expenses; and
  - (b) refuse to give documents to the Attorney-General under subrule (6) until security is provided.

**6511 Service outside Australia—service in non-convention countries**

(FCR o 8 rr 13-16)

- (1) This rule applies if a person (the *relevant person*) wants to serve a document in a non-convention country.
- (2) The relevant person must give the registrar—
  - (a) the document to be served; and

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- (b) if English is not an official language of the non-convention country—a written translation of the document in an official language of the country; and
  - (c) the further copies of the documents mentioned in paragraphs (a) and (b) that the registrar directs; and
  - (d) a request in accordance with subrule (3); and
  - (e) a request addressed to the Attorney-General under subrule (4).
- (3) The request given to the registrar under subrule (2) (d) must—
- (a) ask the registrar to send the document through the diplomatic channel to the non-convention country for service or, if substituted service is allowed under subrule (8), for substituted service on a stated person at a stated address or somewhere else in the country; and
  - (b) include an undertaking by the relevant person, or the relevant person’s solicitor, to be responsible for all expenses incurred by the court, or by anyone at the court’s request, in complying with the request (the *incurred expenses*) and to pay the registrar the amount of the incurred expenses on being given an account of them by the registrar.
- Note*     If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (4) The request given to the registrar under subrule (2) (e) must—
- (a) be made by the head of jurisdiction to the Attorney-General; and
  - (b) ask that the Attorney-General transmit the document to the government of the non-convention country with the following requests:

- (i) that the document be served personally, or, if substituted service is allowed under subrule (8), by substituted service, on a stated person;
- (ii) that evidence of service of the document be officially certified or declared (on oath or otherwise) to the court in a way that is consistent with usage or practice of courts in the non-convention country in proving service of legal process;
- (iii) if the document is to be served personally—that, if efforts to serve the document personally prove ineffective, the government or a court of the non-convention country certify or declare (on oath or otherwise) that fact to the court.

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

- (5) The registrar must give the Attorney-General for transmission to the government of the non-convention country a sealed copy of the documents given to the registrar.
- (6) An official certificate or declaration (on oath or otherwise) transmitted to the court through the diplomatic channel by the government or a court of the non-convention country is sufficient proof of the service of the document if it certifies or declares that (or to the effect that) the document has been—
  - (a) served personally or, if substituted service was allowed under subrule (8), by substituted service; and
  - (b) served in accordance with the law of the non-convention country.

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- (7) An official certificate or declaration mentioned in subrule (6), when filed in the court, is taken to be a record of the service of the document and equivalent to an affidavit of service under these rules.
- (8) If an official certificate or declaration mentioned in subrule (6) certifies or declares that efforts to serve the document have been without effect, the court may, on application, order that the relevant person be allowed to request substituted service of the document.

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

- (9) A request for substituted service must be made by giving the registrar—
  - (a) the document to be served; and
  - (b) if English is not an official language of the non-convention country—a written translation of the document in an official language of the country; and
  - (c) the further copies of the documents mentioned in paragraphs (a) and (b) that the registrar directs; and
  - (d) a request that complies with subrule (3) (as if it were a request under subrule (2) (d)); and
  - (e) a request addressed to the Attorney-General that complies with subrule (4) (as if it were a request under subrule (2) (e)).
- (10) The translation of a document mentioned in subrule (2) (b) or (9) (b) must be certified, in writing, by the person making it to be a correct translation of the document.
- (11) The certificate of the person making the translation must also state the person's full name and address and qualifications for making the translation.

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- (12) The registrar must give to the Attorney-General for transmission to the government of the non-convention country a sealed copy of—
- (a) the order made by the court allowing substituted service; and
  - (b) the documents given to the registrar.
- (13) The person giving the undertaking mentioned in subrule (3) (b) must pay the amount of the incurred expenses to the registrar not later than 7 days after the day the person is given an account of them by the registrar.
- (14) If the amount of the incurred expenses is not paid in accordance with subrule (13), the court may, on its own initiative—
- (a) order the party who obtained the order to pay the unpaid amount of the incurred expenses; and
  - (b) if the party is a plaintiff—stay the proceeding, until the unpaid amount is paid, to the extent that it relates to all or part of a claim for relief by that party; and
  - (c) if the party is a defendant—make any order it considers appropriate, including an order that, until the unpaid amount is paid, the defendant be taken not to have filed a notice of intention to respond or defence.
- (15) Despite subrules (2) (d) and (5), the registrar may—
- (a) require the person giving the undertaking to provide security, in a form satisfactory to the registrar, for the anticipated incurred expenses; and
  - (b) refuse to give documents to the Attorney-General under subrule (5) until security is provided.

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**6512 Service outside Australia—other orders**

(SCR o 12 r 12)

The court may, with the Attorney-General's agreement, make any order for service (including substituted service) necessary to give effect to this division.

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

**Division 6.8.10 Service of subpoenas in New Zealand**

**6520 Application—div 6.8.10**

- (1) This division applies to the service in New Zealand under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), part 2 of a subpoena issued in any proceeding in the Supreme Court, Magistrates Court or Coroner's Court.

*Note 1* The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth) does not apply to a subpoena issued in a criminal proceeding or family proceeding. **Family proceeding** is defined in that Act, s 3 (1).

*Note 2* The *Evidence and Procedure (New Zealand) Regulations 1995* (Cwlth), reg 4 and sch 1, pt 1, item 1 prescribe the Supreme Court and Magistrates Court for the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 7 (b).

- (2) This rule has effect despite rule 4 (Application of rules).

*Note* This division applies to proceedings under the *Domestic Violence and Protection Orders Act 2001*.

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**6521 Terms used in Evidence and Procedure (New Zealand) Act**

(SCR o 83 r 2; NSW r 32.1 (2))

A term used in the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth) has the same meaning in this division.

**6522 Application for leave to serve subpoena in New Zealand**

(SCR o 83 r 3; NSW r 32.2 (1))

An application for leave to serve a subpoena in New Zealand must be made—

- (a) if the subpoena was issued in a proceeding in the Supreme Court—by application in the proceeding; or

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

- (b) if the subpoena was issued in a proceeding in the Magistrates Court or Coroner’s Court—by originating application filed in the Supreme Court.

*Note* Under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 9 leave must be given by a judge of the Supreme Court.

**6523 Supporting affidavit—application for leave to serve subpoena in New Zealand**

(SCR o 83 r 4; NSW r 32.2 (2))

- (1) An application for leave to serve a subpoena in New Zealand must be supported by an affidavit.
- (2) A sealed copy of the subpoena must be annexed to the affidavit.
- (3) The affidavit must state the following:
  - (a) the name, occupation and address of the addressee for the subpoena and whether the addressee is at least 18 years old;

- (b) the nature and significance of the evidence required from, or of the document or thing required to be produced by, the addressee;
- (c) details of the steps taken to find out whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the addressee;
- (d) the date by which it is intended to serve the subpoena;

*Note*        The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 9 (4) (a) requires any leave to be given on condition that the subpoena not be served after a specified day.

- (e) details of—
  - (i) the calculation of the amount sufficient to compensate the addressee for expense or loss reasonably incurred in complying with the subpoena; and
  - (ii) how the amount is proposed to be given to the addressee;

*Note 1*        **Expenses**, for a subpoena, is defined in the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 3 (1).

*Note 2*        Service of the subpoena is effective only if allowances and travelling expenses for the addressee's reasonable expenses of complying with the subpoena are given to the addressee before the addressee is to comply with the subpoena (see the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s11).

*Note 3*        The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 15 provides that the addressee is entitled to payment of a reasonable amount for expenses incurred in complying with the subpoena.

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- (f) if the subpoena is a subpoena to attend to give evidence—an estimate of the time that will be required for the addressee to attend to give evidence;
- (g) details of any facts or circumstances known to the person making the affidavit that may give cause for the subpoena to be set aside under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), section 14 (2) or (3) (Setting aside subpoenas).

**6524 Application for leave to serve subpoena in New Zealand need not be served etc**

(SCR o 83 r 5; NSW r 32.2 (3))

- (1) Unless the Supreme Court otherwise orders, an application for leave to serve a subpoena in New Zealand need not be served on the addressee for the subpoena or anyone else.

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

- (2) Unless the Supreme Court otherwise orders on its own initiative, the application may be heard and decided in the absence of the addressee.

**6525 Undertaking about paying loss or expense in complying with subpoena served in New Zealand**

(SCR o 83 r 6; NSW r 32.2 (4))

- (1) This rule applies to an application for leave to serve a subpoena in New Zealand if the addressee for the subpoena is not a party to the proceeding in which the subpoena was issued.

- (2) Before giving leave to serve the subpoena, the judge may require the applicant to undertake to pay the addressee the amount of any reasonable loss or expense incurred in complying with the subpoena.

**6526        Setting aside subpoena for service in New Zealand**

(SCR o 83 rr 11-15; NSW r 32.5)

- (1) This rule applies in relation to a subpoena issued by the Supreme Court, Magistrates Court or Coroner’s Court if leave to serve the subpoena in New Zealand has been given under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth) (the **Commonwealth Act**), section 9.
- (2) The person named in the subpoena may apply to the Supreme Court under the Commonwealth Act, section 13 for the subpoena to be set aside.

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

- (3) The application must be supported by an affidavit stating the facts and grounds on which the application is based.

*Note*        The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), s 13 (5) requires the registrar of the Supreme Court to serve a copy of the application and any supporting affidavit on the solicitor on the record for the person who obtained leave to serve the subpoena in New Zealand or, if there is no solicitor on the record, the person who obtained leave.

- (4) An objection under the Commonwealth Act, section 14 (4) to the application being determined without a hearing must be made by filing a notice of objection not later than 7 days after—
- (a) if the objection is by the applicant for the subpoena to be set aside—the day the application is filed; or

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- (b) if the objection is by the person who obtained leave to serve the subpoena in New Zealand—the day the application and its supporting affidavit are 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.

- (5) A request under the Commonwealth Act, section 14 (6) that the Supreme Court exercise its powers to hold a hearing on the application by video link or telephone must be made by filing a notice of request if the request is not made in the application.

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

## **6527 Noncompliance with subpoena served in New Zealand**

(SCR o 83 rr 8-10; NSW r 32.4)

- (1) This rule applies in relation to a subpoena issued by the Supreme Court, Magistrates Court or Coroner's Court (the *issuing court*) if leave to serve the subpoena in New Zealand has been given under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth) (the *Commonwealth Act*), section 9.
- (2) The issuing court may issue a sealed certificate under the Commonwealth Act, section 16 (Noncompliance with subpoenas) on its own initiative or on the application of a party to the proceeding in which the subpoena was issued.

*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 the application.

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- (3) The application must—
- (a) be accompanied by—
    - (i) a draft of the certificate; and
    - (ii) an affidavit of service of the subpoena, the order giving leave to serve the subpoena in New Zealand and any other document required under the Commonwealth Act, section 10 (3); and
  - (b) be supported by an affidavit.
- (4) The supporting affidavit must state the following:
- (a) particulars of the order giving leave to serve the subpoena in New Zealand;
  - (b) whether an application was made for the subpoena to be set aside and, if so, particulars of the application and any consequential orders made;
  - (c) that the subpoena was not complied with.
- (5) Unless the issuing court otherwise orders, the application and documents required under subrule (3) need not be served on the addressee for the subpoena or anyone else.
- Note*     Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering under this rule.
- (6) Unless the issuing court otherwise orders, the application may be heard and decided in the absence of the addressee.
- Note*     The court may give leave for a fax or other copy of a document to be used (see r 6104 (Documents—use of copies)).

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## **Division 6.8.11      Service of foreign legal process in the ACT**

### **6540      Letter of request from foreign tribunal—procedure**

(SCR o 12 r 11; MCR r 97A; Qld r 131)

- (1) This rule applies if, in a civil or commercial matter before a court or tribunal of a foreign country (the *foreign court*)—
  - (a) the foreign court, by letter of request, requests service on a person in the ACT of any process or citation (the *process*) in the matter; and
  - (b) the Attorney-General files the request in the court and indicates that the process should be served.
- (2) The following procedures apply:
  - (a) the letter of request must be accompanied by the following:
    - (i) if the letter is not in English—a translation of the letter in English;
    - (ii) 2 copies of the process to be served;
    - (iii) either—
      - (A) 2 copies of the process in English; or
      - (B) 2 copies of the process each having a notation on it in English stating as precisely as possible the name and address of the person on whom the document is to be served, the nature of the document, and the names of the parties;
  - (b) if paragraph (a) (iii) (B) is complied with, it is not necessary to give the person served a translated copy of the process;

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- (c) an enforcement officer must serve the process personally under these rules;
- (d) after serving the process, the enforcement officer must return to the registrar 1 copy of the process, an affidavit of service of the process, and particulars of charges for the cost of service of the process;
- (e) the registrar must certify the charges, or another amount properly payable for service of the process;
- (f) the registrar must send the following to the Attorney-General:
  - (i) the letter of request for service received from the foreign court;
  - (ii) the affidavit of service of the process, with a sealed certificate on it;
  - (iii) a certificate establishing the fact and the date of service or indicating why it has not been possible to serve the process;
  - (iv) a certificate stating the amount of the charges properly payable for the cost of serving the process.

**6541            Orders for substituted service etc for div 6.8.11**

(SCR o 12 r 12; Qld r 132)

With the Attorney-General's agreement, the court may, in relation to the service of process of a court or tribunal of a foreign country, make an order for substituted service or any other order.

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

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**6542 Noncompliance with div 6.8.11**

(Qld r 133)

The court may order that effect is to be given to a letter of request for the service of process of a court or tribunal of a foreign country, even though rule 6540 (Letter of request from foreign tribunal—procedure) has not been complied with.

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

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## Part 6.9 Subpoenas

### 6600 Definitions—pt 6.9

(SCR o 1AA r 1)

- (1) In this part:

*issuing officer* means the registrar.

*issuing party*, for a subpoena, means the party at whose request the subpoena is issued.

- (2) To the extent that a subpoena requires the addressee to attend to give evidence, it is a *subpoena to attend to give evidence*.
- (3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is a *subpoena to produce*.

### 6601 Issuing subpoena

(SCR o 1AA r 2)

- (1) In any proceeding, the court may by subpoena order the addressee to do either or both of the following:
- (a) to attend to give evidence as directed by the subpoena;
  - (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena.
- (2) An issuing officer must not issue a subpoena—
- (a) without the court's leave if it appears to the issuing officer that the subpoena—
    - (i) is not substantially complete; or

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(ii) does not substantially comply in form with these rules; or

*Note* The registrar may refuse to accept a subpoena for filing under r 6142 (Rejecting documents—abuse of process etc).

(b) if the court has made an order, or there is a provision of these rules, having the effect of requiring that the proposed subpoena—

(i) not be issued; or

(ii) not be issued without the court's leave and the leave has not been given; or

(c) requiring the production of a document or thing in the custody of the court or another court.

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

(3) The issuing officer must seal, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to be issued on its being sealed or otherwise authenticated under subrule (3).

## 6602 Form of subpoena

(SCR o 1AA r 3)

(1) A subpoena must not be addressed to more than 1 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 subpoena must identify the addressee by name or by description of position.

*Note* The Legislation Act, dict, pt 1 defines *position* to include office.

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- (3) A subpoena to attend to give evidence must state the date, time and place for attendance.
- (4) A subpoena to produce must—
  - (a) identify the document or thing to be produced; and
  - (b) state the date, time and place for production.
- (5) The date stated in a subpoena must be the date of trial or any other date allowed by the court.
- (6) The place stated for production may be the court or the address of anyone authorised to take evidence in the proceeding.
- (7) A subpoena must state the last date for service of the subpoena.
- (8) The last date for service must be—
  - (a) 5 days before the date stated in the subpoena for compliance with it; or
  - (b) if the court sets a different date under rule 6603 (Subpoena to produce—leave to serve late)—the date set.
- (9) Subrule (8) is subject to rule 6481 (Subpoena—service on medical expert).

*Note* Rule 6481 (2) provides that a subpoena requiring a medical expert to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.
- (10) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

**6603 Subpoena to produce—leave to serve late**

(NP 03.03.93)

- (1) The court may give leave for a subpoena to produce to be served later than 5 days before the date stated in the subpoena for compliance with it (the *compliance date*).
- (2) An application for leave is made by filing—
  - (a) a draft of the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 5 days before the compliance date; and
  - (b) an affidavit in support of the application.
- (3) The affidavit in support of the application must state—
  - (a) the need for production of the document or thing required to be produced by the subpoena; and
  - (b) the reason the subpoena was not issued in enough time to enable it to be served at least 5 days before the compliance date; and
  - (c) whether the addressee for the subpoena has been told about the subpoena and, if so, whether the addressee is able to produce the document or thing before the compliance date; and
  - (d) the earliest date when the subpoena can be served.
- (4) If the court gives leave, it must set a date for the last date of service for the subpoena.
- (5) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (6) The draft subpoena and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

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- (7) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

**6604 Setting aside subpoena or other relief**

(SCR o 1AA r 4)

- (1) On the application of a party or someone else having a sufficient interest, the court may set aside a subpoena completely or partly, or grant other relief in relation to it.

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

- (2) A copy of the application must be served on the issuing party.
- (3) The court may order that the applicant give notice of the application to any other party or anyone else who has a sufficient interest.

**6605 Service of subpoena**

(SCR o 1AA r 5)

- (1) A subpoena must be served personally on the addressee.
- (2) Subrule (1) is subject to rule 6480 (Subpoena—service on solicitor) and rule 6481 (Subpoena—service of medical expert).

*Note* See also div 6.8.10 (Service of subpoenas in New Zealand).

- (3) The issuing party must serve a copy of a subpoena to produce on each other active party as soon as practicable after the subpoena has been served on the addressee.

**6606 Compliance with subpoena**

(SCR o 1AA r 6)

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date when attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date stated in the subpoena as the last date for service of the subpoena.
- (3) Despite rule 6605 (1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee (or, if the court orders service in another way, it has not been served in that way) if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.
- (4) The addressee must comply with a subpoena to produce—
  - (a) by attending at the date, time and place stated for production and producing the subpoena or a copy of it and the document or thing to the court or to the person authorised to take evidence in the proceeding; or
  - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address stated for the purpose in the subpoena, so that they are received not less than 2 days before the date stated in the subpoena for attendance and production.
- (5) For a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and the document or thing in any of the ways allowed by

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subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

**6607 Production of subpoenaed document etc otherwise than on attendance**

(SCR o 1AA r 7)

- (1) This rule applies if an addressee produces a document or thing under rule 6606 (4) (b).
- (2) The registrar must, if asked by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than 1 document or thing, the addressee must, if asked by the registrar, provide a list of the documents or things produced.
- (4) The addressee may, with the issuing party's agreement, produce a copy, instead of the original, of any document required to be produced.
- (5) The addressee may, in the subpoena or at the time of production, tell the registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

**6608 Removal, return, inspection etc of subpoenaed documents and things**

(SCR o 1AA r 8)

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

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

**6609 Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance**

(SCR o 1AA r 9)

- (1) This rule applies if an addressee produces a document or thing under rule 6606 (4) (b).
  - (2) On the request of a party, the registrar must tell the party whether production in response to a subpoena has happened and, if so, include a description, in general terms, of the documents and things produced.
  - (3) The request mentioned in subrule (2) must be made orally on the return date for the subpoena or in writing after the return date.
  - (4) A person may inspect a document or thing produced in response to a subpoena only—
    - (a) in accordance with this rule; or
    - (b) if the court has given leave and the inspection is in accordance with the leave.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.
- (5) Unless the court otherwise orders, the registrar may allow the parties to inspect at the registry any document or thing produced unless the addressee, a party or someone else having sufficient interest objects to the inspection under this rule.
  - (6) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must tell the court about the objection and the grounds of the objection.

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- (7) The objection mentioned in subrule (6) must be made orally to the court on the return date for the subpoena or in writing to the court before or after the return date.
- (8) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may tell the court on the return date for the subpoena or in writing about the objection and the grounds of the objection.
- (9) If the court receives an objection under this rule, the registrar—
- (a) must not allow any, or any further, inspection of the document or thing the subject of the objection; and
  - (b) must refer the objection to the court for hearing and decision.
- Note* The registrar may hear and decide the objection in some circumstances (see r 6252 (Registrar’s powers—subpoenas)).
- (10) The registrar must tell the issuing party in writing about—
- (a) the objection; and
  - (b) the date, time and place the objection will be heard.
- (11) The issuing party must, a reasonable time before the date the objection will be heard, tell the addressee, the objector and each other active party in writing about—
- (a) the objection; and
  - (b) the date, time and place the objection will be heard.

*Note* See r 6767 (Power to allow removal of exhibits etc) for the procedure for the removal of documents and things from the registry.

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**6610 Disposal of subpoenaed documents and things produced**  
(SCR o 1AA r 10)

- (1) This rule applies in relation to a proceeding before the end of the hearing of the proceeding.

*Note* See r 6764 (Return of subpoenaed document or thing) for the return of documents or things produced on subpoena at the end of the hearing of a proceeding.

- (2) Unless the court otherwise orders, the registrar may return to the addressee any document or thing produced in the proceeding in response to the subpoena.

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

- (3) The registrar must not return any document or thing under subrule (2) unless the registrar has given the issuing party at least 14 days notice of the registrar's intention to do so and that period has ended.
- (4) If the addressee has told the court that a document or copy of a document produced need not be returned and may be destroyed, the registrar may, unless the court otherwise orders, destroy the document or copy instead of returning it.
- (5) The registrar must not destroy a document or copy of a document unless the registrar has first given the issuing party and the addressee at least 14 days notice of the registrar's intention to destroy the document or copy.

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**6611 Costs and expenses of compliance with subpoena**

(SCR o 1AA r 11)

- (1) This rule applies if the addressee for a subpoena in a proceeding is not a party to the proceeding.
- (2) The court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

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

- (3) If an order is made under subrule (2), the court must fix the amount or direct that it be fixed according to the court's usual procedure in relation to costs.
- (4) An amount fixed under this rule is separate from and additional to—
  - (a) any conduct money paid to the addressee; and
  - (b) any witness expenses payable to the addressee; and
  - (c) any amount that the addressee is entitled to under rule 1722 (Costs—solicitors' costs generally).

**6612 Failure to comply with subpoena—contempt of court**

(SCR o 1AA r 12)

- (1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

*Note* The Magistrates Court may refer a person to the Supreme Court to be dealt with for contempt of court (see r 2508 (Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt)).

- (2) Despite rule 6605 (1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been personally served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (3) This rule does not affect any power of the court to enforce compliance with a subpoena, including power to issue a warrant for the arrest of an addressee who does not comply with a subpoena.

*Note 1* Failure to comply with a subpoena may also be a criminal offence (see Criminal Code, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

*Note 2* See also r 2444 (Enforcement—failure of individual to comply with subpoena etc) and r 2445 (Enforcement—failure of corporation to comply with subpoena etc).

### **6613 Documents and things in custody of court**

(SCR o 1AA r 13)

- (1) A party who seeks production of a document or thing in the custody of the court or another court may tell the registrar in writing accordingly, identifying the document or thing.
- (2) If the document or thing is in the custody of the court, the registrar must produce the document or thing—
- (a) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or
- (b) as the court directs.

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

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- (3) If the document or thing is in the custody of another court, the registrar must, unless the court has otherwise ordered—
  - (a) ask the other court to send the document or thing to the registrar; and
  - (b) after receiving it, produce the document or thing—
    - (i) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or
    - (ii) as the court directs.
- (4) Subrules (2) and (3) do not apply if rule 6142 (Rejecting documents—abuse of process etc) applies.

**6614 Application of pt 6.9—subpoena under Commercial Arbitration Act**

(SCR o 1AA r 15)

- (1) This part applies, with necessary changes, in relation to a subpoena issued under the Commercial Arbitration Act for an arbitration as if—
  - (a) a reference to a subpoena were a reference to a subpoena issued under the Commercial Arbitration Act; and
  - (b) a reference to a proceeding were a reference to the arbitration; and
  - (c) a reference to the registrar in rule 6606 (4) (b), rule 6607, rule 6609 and rule 6610 were a reference to the arbitrator or umpire for the arbitration; and
  - (d) a reference to the court in rule 6608, rule 6609, rule 6610 and rule 6611 were a reference to the arbitrator or umpire for the arbitration.

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(2) In this rule:

***arbitrator***, for a subpoena, means the arbitrator for the arbitration in relation to which the subpoena was issued.

***Commercial Arbitration Act*** means the *Commercial Arbitration Act 1986*.

***umpire***, for a subpoena, means the umpire for the arbitration in relation to which the subpoena was issued.

*Note* The court has wide powers to issue subpoenas under the Arbitration Act (see s 17).

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## **Part 6.10                    Evidence**

*Note*     Pt 2.12 contains provisions about expert evidence in civil proceedings.

### **Division 6.10.1        General—pt 6.10**

#### **6700        Way evidence given—civil proceedings**

(SCR o 39 r 1; MC(CJ)R s 195 and s 196; NSW r 31.1; Qld r 390)

- (1) Evidence at the trial of a proceeding started by originating claim must be given orally in open court.

*Note*     A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39 (Proceeding incorrectly started by originating application)).

- (2) Evidence in a proceeding started by originating application must be given by affidavit.

*Note 1*    A proceeding incorrectly started by originating claim is taken to be a proceeding started by originating application if the court orders that the proceeding continue as if started by originating application (see r 38 (Proceeding incorrectly started by originating claim)).

*Note 2*    See also r 36 (When originating application taken to be used).

- (3) This rule applies—
- (a) unless the court otherwise orders; or
  - (b) subject to the Commonwealth Evidence Act, these rules or any other territory law.

*Note 1*    Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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*Note 2* The following provisions set out other ways in which evidence may be given in particular circumstances or proceedings:

- div 2.8.4 (Interrogatories)
- div 2.12.4 (Expert reports)
- r 1547 (Assessment of damages—use of affidavit evidence)
- r 6701 (Evidence on affidavit by agreement—civil proceedings)
- r 6702 (Evidence in another civil proceeding etc)
- r 6703 (Evidence by telephone etc)
- div 6.10.3 (Exchange of correspondence before making application in proceeding)
- div 6.10.6 (Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link)
- div 6.10.7 (Taking evidence from New Zealand by video link or telephone)
- div 6.10.8 (Taking evidence otherwise than at trial).

### **6701 Evidence on affidavit by agreement—civil proceedings**

(SCR o 40 r 24; MC(CJ)R s 196 (2))

- (1) Unless the court otherwise orders, the parties to a proceeding started by originating claim may agree that evidence at the trial of the proceeding be given by affidavit.

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

*Note 2* A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39 (Proceeding incorrectly started by originating application)).

- (2) The agreement must be made before the proceeding is set down for trial.
- (3) The parties must tell the court about the agreement before the proceeding is set down for trial.

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**6702         Evidence in another civil proceeding etc**

(SCR o 39 r 2; NSW r 31.8 and r 31.9; Qld r 395)

- (1) A party to a civil proceeding may rely on evidence given or an affidavit filed in another proceeding or in an earlier stage of the same proceeding.
- (2) The party must give all other active parties to the proceeding 2 days notice of the party's intention to rely on the evidence.
- (3) However, if the notice is not given to any other active party, the party may only rely on the evidence or the affidavit with the court's leave.

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

**6703         Evidence by telephone etc**

(SCR o 39 r 2A and o 80 r 3; NSW r 31.3; Qld r 392)

- (1) The court may receive evidence or submissions by telephone, video link or another form of communication in a proceeding.
- (2) The court may, by order, impose conditions for subrule (1).

*Note 1*         The following provisions also apply to receipt of evidence or submissions by the court by audiovisual or audio link:

- from within the ACT—the *Evidence (Miscellaneous Provisions) Act 1991*, div 3.4
- from elsewhere in Australia—the *Evidence (Miscellaneous Provisions) Act 1991*, div 3.2 and these rules, div 6.10.6 (Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link)
- from New Zealand—the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), pt 4 and these rules, div 6.10.7 (Taking evidence from New Zealand by video link or telephone).

*Note 2* The provisions of the *Evidence (Miscellaneous Provisions) Act 1991* mentioned in note 1 do not exclude or limit the operation of any territory law (including these rules) that makes provision for the taking of evidence or the making of a submission outside the ACT for a proceeding in the ACT (see that Act, s 18).

*Note 3* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

## **6704 Plans, photographs, video or audio recordings and models**

(Qld r 393)

- (1) This rule applies if a party intends to tender a plan, photograph, video or audio recording, or model at a trial.
- (2) Unless the court otherwise orders, at least 7 days before the day the trial starts, the party must give all other parties an opportunity to—
  - (a) inspect anything mentioned in subrule (1) the party intends to tender; and
  - (b) agree to its admission without proof.

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

- (3) An application for an order under subrule (2) need not be served on another party and the court may direct that the application and any supporting evidence be placed in a sealed container, for example, an envelope.

*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).

- (4) The container may be opened only if the court orders it to be opened.

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- (5) Noncompliance with subrule (2) does not affect the admissibility of a plan, photograph, video or audio recording, or model.
- (6) Compliance or noncompliance with subrule (2) may be taken into account on the question of costs.
- (7) In this rule:  
*model* includes a model or image generated by a computer.

## **Division 6.10.2         Affidavits**

### **6710         Affidavit—form**

(SCR o 40 r 2 and o 80 r 3; MC(CJ)R s 204; NSW r 35.4; Qld r 431)

- (1) An affidavit must be—
  - (a) made in the first person; and
  - (b) divided into paragraphs numbered consecutively; and
  - (c) limited, as far as possible, to 1 subject matter in each paragraph.

*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*    See also div 6.3.1 (General provisions about documents for filing), esp r 6103 (Documents—layout etc).

- (2) If the person making an affidavit is, or is employed by, a party to the proceeding in which the affidavit is to be used, the affidavit must state that fact.

### **6711         Affidavit—contents**

(SCR o 40 r 3 and o 80 r 3; MC(CJ)R s 208; NSW r 35.3 (3); Qld r 430)

- (1) An affidavit must be confined to facts within the knowledge of the person making the affidavit.

- (2) However, an affidavit to be used in an application in a proceeding may 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 1* **Application** in a proceeding is defined in r 6006.

*Note 2* 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)).

- (3) This rule does not apply to an affidavit made under division 2.11.3 (Default by defendant).

*Note* An affidavit in support of an application for default judgment must comply with r 1119 (Default judgments—relevant affidavits).

## **6712 Affidavit—annexures and exhibits**

(SCR o 40 r 4 and o 80 r 3; MC(CJ)R s 212; NSW r 35.6; Qld r 435)

- (1) A document to be used with an affidavit must, if convenient, be annexed to the affidavit.
- (2) However, an annexure to an affidavit must not be longer than 20 pages and, if there is more than 1 annexure to an affidavit, the annexures must not total more than 20 pages.
- (3) Each annexure must be identified sequentially on its 1st page by a letter, starting at 'A' for the 1st annexure.
- (4) Each annexure must include on its 1st page a statement—
- (a) identifying the annexure as the annexure mentioned in the affidavit of the person making the affidavit, and

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(b) signed by the person before whom the affidavit is taken.

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

- (5) A group of different documents may form a single annexure.
- (6) If it is not practicable to annex a document to be used with an affidavit, a copy of the document may be annexed to the affidavit.
- (7) If it is not convenient to annex a document (or a copy of the document) to an affidavit, the document may be made an exhibit to the affidavit.
- (8) Each exhibit to the affidavit must be identified by a separate certificate.
- (9) The certificate is the title page for the exhibit, and must be securely attached to the front of it.
- (10) The certificate—
- (a) must be signed by the person before whom the affidavit is taken; and
- (b) must include the initials of the person making the affidavit, followed by an identifying number corresponding to the number of the exhibit.

**Examples for r (10) (b)**

- 1     for the 1st exhibit, the identifying number is 1
- 2     for the 4th exhibit, the identifying number is 4

*Note 1*     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).

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

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- (11) An exhibit to an affidavit must be filed at the same time as the affidavit.
- (12) Subrules (13) and (14) apply if—
- (a) an exhibit to an affidavit contains a group of documents; or
  - (b) there is more than 1 documentary exhibit to an affidavit.
- (13) The documents must be presented in a way that will facilitate the court's efficient and quick reference to them.
- (14) As far as practicable—
- (a) the documents must be bound in 1 or more books, with the pages numbered; and
  - (b) a certificate must be bound—
    - (i) if there is 1 book—at the front of the book; or
    - (ii) if there is more than 1 book—at the front of each book dealing with the exhibits in the book; and
  - (c) an index to each book must be bound immediately after the certificate.
- (15) If a document or thing has been filed in a proceeding, whether or not as an annexure or exhibit to an affidavit, in a subsequent affidavit filed in the proceeding—
- (a) the document or thing must not be made an annexure or exhibit to the affidavit; and
  - (b) the document or thing may be referred to in the affidavit in a way sufficient to enable the document or thing to be identified.

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**6713           Affidavit—document included in**

(SCR o 40 r 4 (5) and o 80 r 3)

- (1) A person making an affidavit may include the relevant part of a document in the affidavit instead of making the document an annexure or exhibit to the affidavit.
- (2) The party filing the affidavit must produce the document whenever the affidavit is used.

**6714           Affidavit—when may be taken**

(SCR o 40 r 6 and o 80 r 3; MC(CJ)R s 203 (1))

An affidavit to be used in a proceeding may be taken before or after the proceeding starts.

**6715           Affidavit—taking of**

(SCR o 40 r 5 and r 7 and o 80 r 3; MC(CJ)R s 204 (2) (d); NSW r 35.7B; Qld r 432)

- (1) The person (or each person) making an affidavit and the person taking the affidavit must sign each page of the affidavit.
- (2) For each person making the affidavit, a statement (a *jurat*) must be placed at the end of the body of the affidavit and must—
  - (a) state whether the affidavit was sworn or affirmed; and
  - (b) state the place the person made the affidavit; and
  - (c) be signed by the person making the affidavit in the presence of the person taking the affidavit; and

- (d) then be signed by the person taking the affidavit, above a statement of the person's full name, address and capacity to take the affidavit.

**Example of capacity for r (2) (d)**

solicitor

*Note 1* 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).

*Note 2* See the Commonwealth Evidence Act, s 186 (Swearing of affidavits before justices of the peace, notaries public and lawyers) and the *Oaths and Affirmations Act 1984*, s 11 (Authority to administer oath etc).

- (3) However, a single jurat may be used for 2 or more people making the affidavit if—
- (a) they all swear or affirm the affidavit at the same time before the same person; and
  - (b) the jurat includes their names in addition to the details required for each of them under subrule (2).

**6716 Affidavit—certificate of reading or signature for person making**

(SCR o 40 r 8 and r 9 and o 80 r 3; MC(CJ)R s 210 and s 211; NSW r 35.7; Qld r 433)

- (1) If the person taking an affidavit considers that the person making it is incapable of reading the affidavit, the person taking the affidavit must certify in or below the jurat that—
- (a) the affidavit was read or otherwise communicated in the person's presence to the person making it; and
  - (b) the person making it seemed to understand the affidavit; and

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- (c) either—
- (i) the person making the affidavit made his or her mark or signature in the presence of the person taking the affidavit; or
  - (ii) if the person taking the affidavit considers that the person making it is not capable of marking or signing the affidavit—the person making it signified in another way that the person made the affidavit.
- (2) If the person taking an affidavit considers that the person making it cannot understand the affidavit when the affidavit is read or otherwise communicated to the person in English, the person taking the affidavit must certify in or below the jurat that an interpreter, whose name and address is stated in the certificate, swore before the person taking the affidavit that—
- (a) the interpreter had, in the presence of the person taking the affidavit, interpreted the contents of the affidavit to the person making the affidavit; and
  - (b) the person making the affidavit seemed to understand it; and
  - (c) the interpreter had interpreted the oath to the person; and
  - (d) the person swore that the contents of the affidavit interpreted to the person were true.
- (3) If the person taking an affidavit considers that the person making it is physically incapable of signing the affidavit, but is capable of reading it, the person taking the affidavit must certify in or below the jurat that the person signified that the person made the affidavit.

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- (4) If an affidavit is made by a person who is incapable of reading the affidavit, and a certificate under subrule (1) or (2) does not appear on the affidavit, the affidavit may be used in a proceeding only if the court is satisfied that—
- (a) the affidavit was read or otherwise communicated to the person making it; and
  - (b) the person seemed to understand it; and
  - (c) the person signified that the person made the affidavit.
- (5) If an affidavit is made by a person who is physically incapable of signing the affidavit, but is capable of reading it, and a certificate under subrule (3) does not appear on the affidavit, the affidavit may be used in a proceeding only if the court is satisfied that the person signified that the person made the affidavit.
- (6) In this rule:  
*jurat*—see rule 6715 (2) (Affidavit—taking of).

**6717 Affidavit—alterations in**

(SCR o 40 r 10 and o 80 r 3; MC(CJ)R s 213; NSW r 35.5; Qld r 434)

- (1) This rule applies to an affidavit if—
- (a) the body or jurat of the affidavit has been altered; or
  - (b) the affidavit verifies an account or other document that has been altered.
- (2) Unless the court otherwise orders, the affidavit may be filed and served.

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

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- (3) However, the affidavit may only be used in a proceeding—
  - (a) with the court’s leave; or
  - (b) if the alteration was made in accordance with rule 6107 (Documents—alterations); or
  - (c) if the affidavit is taken before the registrar or another officer of the court and the registrar or other officer signs, initials or seals the alteration.
- (4) This rule applies to an account or document verified by affidavit as if the account or document were part of the affidavit.
- (5) In this rule:

*alter* includes alter by omission, substitution or addition.

*jurat*—see rule 6715 (2) (Affidavit—taking of).

**6718      Affidavit—filing and service**

(SCR o 40 r 11 and r 12 and o 80 r 3; MC(CJ)R s 206; NSW r 35.9; Qld r 437 and r 438)

- (1) An affidavit to be used in a proceeding must be filed.
- (2) A copy of an affidavit intended to be used by a party in a proceeding must be served on each other active party—
  - (a) if these rules or the court sets a time for service—not later than that time; or
  - (b) if these rules or the court does not set a time for service—within a reasonable time before the hearing of the proceeding.

- (3) If an affidavit—
- (a) has not been filed; or
  - (b) has not been served in accordance with this rule;
- the affidavit may only be used in a proceeding with the court's leave.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.
- (4) Subrule (2) and subrule (3) (b) do not apply to an application made without being served on another party.

**6719 Affidavit—irregular in form**

(SCR o 40 r 13 and o 80 r 3; MC(CJ)R s 205; NSW r 35.1; Qld r 436)

- (1) An affidavit that is irregular in form (including an affidavit that does not comply with any approved form for the affidavit)—
- (a) may be filed and served; and
  - (b) may be used in a proceeding only with the court's leave.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.
- (2) If the court gives leave, the court must note on the affidavit that it was used by leave.
- (3) An affidavit used under subrule (2) is afterwards taken to be a regular affidavit.

**6720 Affidavit—scandalous matter etc**

(SCR o 40 r 14 and o 80 r 3; MC(CJ)R s 214; Qld r 440)

- (1) If an affidavit contains irrelevant, offensive, oppressive, scandalous, or vexatious matter, the court may order that—

- (a) the matter be struck out; or
  - (b) the affidavit be removed from the file; or
  - (c) the affidavit be removed from the file and destroyed.
- (2) The court may make an order under this rule on the application of an interested party or on its own initiative.

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

**6721      Affidavit—cross-examination of maker**

(SCR o 40 r 15 and o 80 r 3; MC(CJ)R s 207; NSW r 35.2; Qld r 439)

- (1) If an affidavit is to be relied on at a hearing, the court may, by order—
- (a) direct the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose; or
  - (b) dispense with the attendance for cross-examination of the person making it, and direct that the affidavit be used without the person making it being cross-examined in relation to it.

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

- (2) If an affidavit to be relied on at a hearing is served on a party more than 1 day before the day set for the hearing, and the party wishes the person who made the affidavit to attend the court for cross-examination, the party may, by notice served on the party filing or proposing to use an affidavit in the proceeding, require the attendance for cross-examination of the person who made the affidavit.

- (3) The notice must be served—
  - (a) if the court, by order, sets a time for service—within that time;  
or
  - (b) if the court does not set a time for service—not later than a reasonable time before the attendance is required.
- (4) If an affidavit to be relied on at a hearing is served on a party less than 2 days before the day set for the hearing, the person who made the affidavit must attend the court to be available for cross-examination unless the party otherwise agrees or the court dispenses with the attendance of the person under subrule (1).
- (5) If the person who made the affidavit does not attend for cross-examination as required by a notice under subrule (2), the affidavit must not be used without the court's leave unless the court has dispensed with the attendance of the person under subrule (1).
- (6) If the person who made the affidavit is cross-examined, the party using the affidavit may re-examine the person.
- (7) Unless the court otherwise orders, a party who serves a notice under subrule (2) for the person who made an affidavit to attend the court is not liable to pay the expenses of the attendance.

**6722 Affidavit—taken before party**

(Qld r 441)

The court may not receive, and a party may not file, an affidavit taken before a party personally.

### **Division 6.10.3           Exchange of correspondence before making application in proceeding**

#### **6740           Definitions—div 6.10.3**

(Qld r 442)

In this division:

*applicant* means a party seeking, or proposing to seek, an order in relation to an application to which this division applies.

*nominated time*—see rule 6742 (2) (e) (Applicant’s letter to respondent).

*respondent* means a party against whom an order in relation to an application to which this division applies is, or is proposed to be, sought.

#### **6741           Application—div 6.10.3**

(Qld r 443)

This division applies to the following applications:

- (a) an application under rule 434 (Pleadings—application for better particulars);
- (b) an application under division 2.14.1 (Directions);
- (c) an application under division 2.14.2 (Failure to comply with rules or order);
- (d) any other application relating to a failure to comply with an order of the court.

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**6742 Applicant's letter to respondent**

(SCR o 23 r 8; MC(CJ)R s 122 (1) and (2); Qld r 444)

- (1) For an application under rule 434 (Pleadings—application for better particulars), this rule applies only if a certificate of readiness for hearing—
  - (a) has not been filed; or
  - (b) has been withdrawn or struck out.
- (2) Before making an application mentioned in rule 6741 (Application—div 6.10.3), the applicant must write to the respondent stating—
  - (a) the applicant's complaint; and
  - (b) a brief statement of the relevant facts; and
  - (c) the relief sought by the applicant; and
  - (d) why the applicant should have the relief; and
  - (e) a time (at least 3 days after the day the letter is sent to the respondent) within which the respondent must reply to the letter (the *nominated time*); and
  - (f) that the letter is written under this rule.
- (3) The applicant—
  - (a) need not serve the letter on the respondent under part 6.8 (Service); and
  - (b) may send the letter to the respondent by fax or email.
- (4) The applicant must send a copy of the letter to everyone the applicant would be required to serve if the applicant was making an application to the court for the relief sought.

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- (5) The letter must list the people to whom a copy of the letter is sent.
- (6) The applicant need not comply with subrule (4) if complying would—
  - (a) cause the applicant unnecessary delay, expense or inconvenience; or
  - (b) unfairly prejudice the applicant if a person mentioned in that subrule saw the contents of the letter.

**6743 Respondent's reply to applicant's letter**

(Qld r 445)

- (1) If the respondent receives a letter from the applicant under rule 6742 (Applicant's letter to respondent), the respondent must write to the applicant, stating—
  - (a) that the letter is a reply to the applicant's letter under this rule; and
  - (b) what, if anything, the respondent proposes to do in response to the applicant's letter; and
  - (c) if applicable, why the applicant should not have the relief sought.
- (2) The respondent's letter of reply must be sent to the applicant within the nominated time.
- (3) The respondent must send a copy of the letter of reply to everyone the respondent would be required to serve if the applicant was making an application to the court for the relief sought.
- (4) The letter of reply must list the people to whom a copy of the letter is sent.

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- (5) The respondent need not comply with subrule (3) if complying would—
- (a) cause the respondent unnecessary delay, expense or inconvenience; or
  - (b) unfairly prejudice the respondent if a person mentioned in that subrule saw the contents of the letter in reply.

**6744 Applicant and respondent—additional correspondence**

(Qld r 446)

Rule 6742 (Applicant's letter to respondent) and rule 6743 (Respondent's reply to applicant's letter) do not prevent the applicant and respondent from writing to each other in addition to the correspondence required under this division.

**6745 Div 6.10.3 application—making application**

(Qld r 447)

- (1) The applicant may apply to the court only after—
- (a) the applicant receives a letter of reply from the respondent under rule 6743 (Respondent's reply to applicant's letter); or
  - (b) the nominated time for replying has passed.
- (2) The following documents must be filed with the application:
- (a) the applicant's letter to the respondent mentioned in rule 6742 (Applicant's letter to respondent);
  - (b) the letter of reply (if any);
  - (c) other relevant correspondence between the applicant and the respondent exchanged after—
    - (i) the applicant receives the respondent's letter of reply; or

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- (ii) the nominated time for replying has passed;
- (d) relevant responses from anyone mentioned in rule 6742 (4) or rule 6743 (3);
- (e) a list of the affidavits (if any) on which the applicant wishes to rely.

**6746      Div 6.10.3 application—hearing**

(Qld r 448)

- (1) The court may hear an application to which this division applies that does not comply with this division if the court directs.

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

- (2) The court may decide an application to which this division applies on the basis of, or partly on the basis of, the contents of the letters between the applicant and the respondent.
- (3) The court may receive affidavit evidence in relation to the application only if the court directs.
- (4) Subrule (3) applies despite rule 6700 (Way evidence given—civil proceedings).

**Division 6.10.4        Notices under Commonwealth Evidence Act**

**6750      Evidence of previous representation notice**

(SCR o 1AB r 1; NSW r 31.5)

- (1) A notice of intention to adduce evidence of a previous representation under the Commonwealth Evidence Act, section 67 (1) must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 67.

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- (2) The notice may be accompanied by an affidavit setting out the evidence of the previous representation.

*Note 1* The Commonwealth Evidence Act, s 67 (4) provides that the court may, on the application of a party, direct that 1 or more of s 63 (2), s 64 (2) or s 65 (2), (3) or (8) is to apply despite the party's failure to give notice.

*Note 2* Noncompliance with this rule does not make any proceeding void (see r 1450 (Effect of failure to comply with rules)).

**6751 Objection to hearsay evidence notice—civil proceedings**

(SCR o 1AB r 2)

A notice of objection to the tender of hearsay evidence under the Commonwealth Evidence Act, section 68 (2) must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for that subsection.

**6752 Tendency evidence notice**

(SCR o 1AB r 3; NSW r 31.5)

A notice of intention to adduce tendency evidence under the Commonwealth Evidence Act, section 97 must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 97.

*Note* The Commonwealth Evidence Act, s 100 (1) provides that the court may, on the application of a party, direct that the tendency rule is not to apply to particular tendency evidence despite the party's failure to give notice under s 97.

**6753            Coincidence evidence notice**

(SCR o 1AB r 4)

A notice of intention to adduce coincidence evidence under the Commonwealth Evidence Act, section 98 must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 98.

*Note*        The Commonwealth Evidence Act, s 100 (2) provides that the court may, on the application of a party, direct that the coincidence rule is not to apply to particular coincidence evidence despite the party's failure to give notice under s 98.

**Division 6.10.5           Exhibits, documents and things**

**6760            Meaning of *subpoenaed document or thing*—div 6.10.5**

(SCR o 39A r 1 and o 80 r 3)

In this division:

*subpoenaed document or thing* means a document or thing, produced in a proceeding because of a subpoena, by someone who is not a party to the proceeding.

**6761            Registrar to keep record of proceeding**

(SCR o 39A r 3 and o 80 r 3)

- (1) The registrar must keep a record of each proceeding.
- (2) The registrar must—
  - (a) take charge of a document or thing that is an exhibit in the proceeding; and

- (b) mark or otherwise label each exhibit so the exhibit has a unique identifier in a sequence of consecutive identifiers allocated to the exhibits of the party that put it into evidence; and
- (c) prepare a list of the exhibits for the proceeding that shows—
  - (i) the party that put the exhibit into evidence; and
  - (ii) if the exhibit was produced because of a subpoena—the name of the addressee for the subpoena.
- (3) The list of exhibits forms part of the record of the proceeding.
- (4) The registrar may treat 2 or more documents as a single exhibit.

#### **6762 Custody of exhibits after proceeding**

(SCR o 39A r 4 and o 80 r 3)

Unless the court otherwise orders, the registrar must keep exhibits in a proceeding in the court for at least—

- (a) 28 days after the day judgment is given in the proceeding; or
- (b) if leave to appeal from the judgment is given within that time—28 days after the day leave is given.

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

*Note 2* Rule 5417 (Appeals to Court of Appeal—keeping exhibits) deals with the keeping of the exhibits if an appeal is started in the Court of Appeal from a judgment given in the proceeding.

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**6763       Duty of parties to claim exhibits**

(SCR o 39A r 5 and o 80 r 3; Qld r 984A (2))

- (1) The party that put an exhibit into evidence in a proceeding must apply to the registrar for the return of the exhibit as soon as practicable after—
  - (a) if an appeal is started in relation to the proceeding within the appeal period—the appeal is disposed of; or
  - (b) if an appeal is not started in relation to the proceeding within the appeal period—the appeal period ends.
- (2) If the registrar has the exhibit, the registrar must give it to—
  - (a) the applicant; or
  - (b) if the exhibit belongs to someone who is not a party, and the application asks for it to be given to the person—the person.
- (3) If the registrar does not have the exhibit, the registrar must get the exhibit and give it to—
  - (a) the applicant; or
  - (b) if the exhibit is a subpoenaed document or thing produced by someone who is not a party, and the application asks for it to be given to the person—the person.
- (4) If a party does not apply for the return of an exhibit (other than a subpoenaed document or thing) put into evidence by the party, the registrar must—
  - (a) give the exhibit to the party; or
  - (b) if it is not practicable for the registrar to give the exhibit to the party—give notice to the party, the party’s solicitor, or anyone else who appears to the registrar to be the owner or person

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entitled to possession of the exhibit, to collect the exhibit from the registry not later than 28 days after the day the notice is given.

- (5) If a party is given a subpoenaed document or thing, the party must return the document or thing to the addressee for the subpoena.
- (6) This rule does not require a party to apply for the return of a subpoenaed document or thing.
- (7) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).
- (8) In this rule:

*appeal period*, in relation to a proceeding, means 28 days after the day judgment is given in the proceeding.

#### **6764 Return of subpoenaed document or thing**

(SCR o 39A r 6 and o 80 r 3; Qld r 984A (2))

- (1) This rule applies to a subpoenaed document or thing produced in a proceeding.

*Note* See r 6610 (Disposal of subpoenaed documents and things produced) for the return or disposal of documents or things produced on subpoena before the end of the hearing of a proceeding.

- (2) The registrar must—
  - (a) return, or arrange for the return of, the document or thing to the addressee for the subpoena; or
  - (b) if it is not practicable for the registrar to return, or arrange for the return of, the document or thing to the addressee for the subpoena—give notice to the addressee, or anyone else who appears to the registrar to be the owner or person entitled to

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possession of the document or thing, to collect the document of thing from the registry not later than 28 days after the day the notice is given.

- (3) If the document or thing was not put into evidence as an exhibit in the proceeding (whether or not it was marked for identification) and subrule (2) (a) applies, it must be returned as soon as practicable after the hearing of the proceeding.
- (4) If the document or thing was put into evidence as an exhibit in the proceeding and subrule (2) (a) applies, it must be returned as soon as practicable after—
  - (a) if an appeal is started in relation to the proceeding within the appeal period—the appeal is disposed of; or
  - (b) if an appeal is not started in relation to the proceeding within the appeal period—the appeal period ends.
- (5) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).

**6765 Requirement to give or send exhibit**

(SCR o 39A r 7 and o 80 r 3)

- (1) If the registrar is required to give an exhibit (including a subpoenaed document or thing) to a person under rule 6763 (Duty of parties to claim exhibits) or rule 6764 (Return of subpoenaed document or thing), the registrar must give or send the exhibit to the person in a way that seems reasonable to the registrar.
- (2) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).

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**6766 Disposal of exhibits**

(Qld r 984A)

- (1) This rule applies if—
  - (a) the registrar has given notice to someone under rule 6763 (4) (b) in relation to an exhibit other than a subpoenaed document or thing or rule 6764 (2) (b) in relation to an exhibit that is a subpoenaed document or thing; and
  - (b) at the end of 3 months after the day the notice is given, the exhibit has not been collected from the registry.

*Note* For the disposal of a document or thing produced on subpoena by a party that is not an exhibit, see r 6608 (Removal, return, inspection etc of subpoenaed documents and things).

- (2) The registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.
- (3) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.
- (4) If the registrar returns, destroys or otherwise disposes of an exhibit under rule 6763 (Duty of parties to claim exhibits), rule 6764 (Return of subpoenaed document or thing) or this rule, the registrar must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.
- (5) This rule applies subject to any direction of the court under rule 6608.

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**6767           Power to allow removal of exhibits etc**

(SCR o 39A r 8 and o 80 r 3)

- (1) This rule applies to a document or thing that the registrar has in relation to a proceeding, whether or not the document or thing—
  - (a) is an exhibit; or
  - (b) was produced on subpoena.
- (2) The registrar must not permit the document or thing to be removed from the registry except on application signed by the solicitor for a party to the proceeding.
- (3) The registrar may—
  - (a) permit the document or thing to be removed from the registry on any conditions the registrar considers appropriate; or
  - (b) refuse to permit the document or thing to be removed.
- (4) If a solicitor removes the document or thing from the registry with the registrar’s permission, the solicitor is taken to undertake to the court that—
  - (a) the document or thing will be kept in the personal custody of the solicitor or counsel briefed by the solicitor in the proceeding; and
  - (b) the document or thing will be returned to the registry in the same condition, order and packaging in which it was removed, when directed by the registrar; and
  - (c) the solicitor will comply with the conditions (if any) to which the permission is subject.

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- (5) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).

## **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**

(SCR o 39 rr 3-5 and o 80 r 3)

- (1) An application for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) may be made in a civil or criminal proceeding.

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

- (2) The application may be made orally.
- (3) The application must be supported by an affidavit stating—
- why the evidence should be taken or submissions made by audiovisual link or audio link; and
  - the nature of any evidence to be taken; and
  - the number of witnesses to be examined; and
  - whether issues of character are likely to be raised; and
  - the expected duration of the evidence or submissions; and
  - a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or submissions to be made; and

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<b>Chapter 6</b>	General rules for all proceedings
<b>Part 6.10</b>	Evidence
<b>Division 6.10.6</b>	Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link

Rule 6801

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- (g) that the requirements of the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (2) can be met.
- (4) In deciding whether to make the direction, the court may have regard to the following matters:
- (a) the matters included in the applicant’s affidavit;
  - (b) the cost and convenience to the witnesses and parties.
- (5) Subrule (4) does not limit the matters to which the court may have regard.

**6801 Directions for Evidence (Miscellaneous Provisions) Act, s 20**

(SCR o 39 r 6 and o 80 r 3)

- (1) If the court gives a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT), it may, on application or its own initiative, direct the registrar to arrange for and coordinate the use of appropriate facilities in the ACT and the other jurisdiction.
- (2) Without limiting subrule (1), the court may direct that—
  - (a) the registrar arrange for the evidence to be given, or the submissions to be made, at a court of the other jurisdiction or at another place approved by that court for the purpose; and
  - (b) an officer of the court of the other jurisdiction, or anyone else approved by that court for the purpose, be asked to be present to assist in the transmission of the evidence or submissions and, in particular, to—
    - (i) introduce witnesses and legal representatives; and

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- (ii) assist with the administration of oaths, if necessary; and
- (iii) assist in carrying out any direction given or request made by the judicial officer hearing the evidence or submissions.

### **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**

(SCR o 83 r 2; NSW r 32.1 (2))

A term used in the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth) has the same meaning in this division.

#### **6806 Application for direction under Evidence and Procedure (New Zealand) Act, s 25**

(SCR o 83 rr 16-18; NSW r 32.6 (1)-(2))

- (1) An application for a direction under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), section 25 (Australian courts may take evidence etc from New Zealand) may be made in a civil or criminal proceeding.

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

- (2) The application may be made orally.
- (3) The application must be supported by an affidavit stating—
  - (a) why the evidence should be taken or submissions made by video link or telephone from New Zealand; and
  - (b) the nature of any evidence to be taken; and

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- (c) the number of witnesses to be examined; and
  - (d) whether issues of character are likely to be raised; and
  - (e) the expected duration of the evidence or submissions; and
  - (f) a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or submissions to be made; and
  - (g) that the requirements of the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), section 25 and section 26 (Taking evidence by video link), or section 27 (Taking evidence by telephone), can be met.
- (4) In deciding whether to make the direction, the court may have regard to the following matters:
- (a) the matters included in the applicant’s affidavit;
  - (b) the cost and convenience to the witnesses and parties.
- (5) Subrule (4) does not limit the matters to which the court may have regard.

**6807                      Directions for Evidence and Procedure (New Zealand) Act, s 25**

(SCR o 83 r 19; NSW r 32.6 (3)-(4))

- (1) If the court gives a direction under the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), section 25 (Australian courts may take evidence etc from New Zealand), it may, on application or its own initiative, direct the registrar to arrange for and coordinate the use of appropriate facilities in the ACT and New Zealand.

- (2) Without limiting subrule (1), the court may direct that—
- (a) the registrar arrange for the evidence to be given, or the submissions to be made, at the High Court of New Zealand or at another place approved by that court for the purpose; and
  - (b) an officer of the High Court of New Zealand, or anyone else approved by that court for the purpose, be asked to be present to assist in the transmission of the evidence or submissions and, in particular, to—
    - (i) introduce witnesses and legal representatives; and
    - (ii) assist with the administration of oaths, if necessary; and
    - (iii) assist in carrying out any direction given or request made by the judicial officer hearing the evidence or submissions.

## **Division 6.10.8      Taking evidence otherwise than at trial**

### **6810      Definitions—div 6.10.8**

(CPA s 57; FEA s 3)

In this division:

***examination***—

- (a) means an examination of a person under an examination order; and
- (b) includes a proceeding for the taking of evidence of a person conducted by a judicial authority of a place outside the ACT (including outside Australia) under a letter of request issued under an examination order.

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*examination order* means an order—

- (a) under rule 6813 (Order for taking evidence otherwise than at trial); or
- (b) under the *Foreign Evidence Act 1994* (Cwlth), section 7 (Orders for taking evidence abroad) or section 10 (Orders for taking evidence abroad—inferior courts).

*examiner*, in relation to an examination, means the person before whom the examination is to be conducted under the examination order for the examination.

**6811        Effect of court directions for examination order**

(SCR o 39 r 24E (2))

The provisions of this division about the examination of a person under an examination order apply subject to—

- (a) for an examination order under rule 6813—any directions of the court under rule 6813 (4); or
- (b) for an examination order under the *Foreign Evidence Act 1994* (Cwlth)—any directions of the Supreme Court under that Act, section 8 (1).

**6812        Application of div 6.10.8 to letter of request**

(SCR o 39 r 24F (2))

The provisions of this division about the examination of a person under an examination order apply, with any necessary changes, to a proceeding for the taking of evidence of a person under a letter of request issued under an examination order—

- (a) as if the court or tribunal taking the evidence were an examiner appointed under this division; but

- (b) subject to—
- (i) the terms of the letter of request; and
  - (ii) if the court or tribunal is a court or tribunal of a foreign country—any convention dealing with the examination of witnesses to which Australia and the foreign country are parties.

**6813 Order for taking evidence otherwise than at trial**

(SCA s 57; CPA s 58; FEA s 7 and s 8; MC(CJ)R s 202 (1); MCR s 7; NSWCA s 6 and s 20; Qld r 396)

- (1) In any civil or criminal proceeding in the court, the court may, on the application of a party to the proceeding, make an order—
- (a) for the examination of a person on oath at a place in or outside the ACT (including outside Australia) before a person appointed by the court; or
  - (b) for the issue of a commission for the examination of a person on oath at a place in or outside the ACT (including outside Australia); or
  - (c) for the issue of a letter of request to a judicial authority of a place outside the ACT (including outside Australia) to take the evidence of a person (or cause it to be taken).

*Note* **Oath** includes affirmation (see Legislation Act, dict, pt 1).

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

- (2) The court may make an order under subrule (1) only if it appears in the interests of justice to make the order.

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- (3) In deciding whether it is in the interests of justice to make the order, the court must have regard to—
- (a) whether the person to be examined is willing or able to come to the ACT to give evidence in the proceeding; and
  - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding; and
  - (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by making or refusing to make the order.
- (4) If the court makes an order under subrule (1) (a) or (b), it may, when it makes the order or subsequently, give any direction it considers just in relation to the examination.
- (5) If the court makes an order under subrule (1) (c), it may include in the order a request about anything relating to the taking of the evidence, including, for example—
- (a) the examination, cross-examination or re-examination of the person, whether the evidence is to be given orally, by affidavit or in another way; and
  - (b) the attendance of the legal representative of each party to the proceeding and the participation of the legal representatives in the examination.

*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).

**6814 When examination order may be made**

(SCA s 57; SCR o 39 r 9)

The court may make an examination order at any stage of the proceeding.

**6815 Application for examination order**

(SCR o 39 r 10)

- (1) Any party to a proceeding may apply for an examination order.

*Note 1* An application for an order under the *Foreign Evidence Act 1994* (Cwlth) can only be made to the Supreme Court (see that Act, s 7 and s 10).

*Note 2* Pt 6.2 (Applications in proceedings) applies to an application for an examination order.

- (2) The application must be supported by an affidavit.

**6816 Appointment of examiner**

(SCR o 39 r 11; NSW r 24.4; Qld r 396)

- (1) The court may appoint any of the following as an examiner:

- (a) a judicial officer or other officer of the court;  
(b) anyone else it considers appropriate.

- (2) A judicial officer or other officer of the Supreme Court may only be appointed with the agreement of the Chief Justice.

- (3) A judicial officer or other officer of the Magistrates Court may only be appointed with the agreement of the Chief Magistrate.

- (4) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

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**6817           Documents for examiner**

(SCR o 39 r 13; NSW r 24.7; Qld r 397)

- (1) A party who obtains an examination order must give the examiner copies of the documents in the proceeding necessary to inform the examiner of the relevant questions for the examination.
- (2) If the documents in the proceeding are not sufficient to inform the examiner of the questions, the court must state the questions in the examination order or a later order.

*Note*     Pt 6.2 (Applications in proceedings) applies to an application for a later order.

- (3) Subrule (1) does not apply if the examiner is a judicial officer or other officer of the court.

**6818           Time and place of examination etc**

(SCA s 57 (c); CPA s 58 (3); SCR o 39 r 14; NSW r 24.8; Qld r 398)

- (1) The examiner must set the time and place for the examination, unless the court otherwise orders.

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

- (2) The time set must be as soon as practicable after the making of the examination order.
- (3) The examiner must tell the party who obtained the examination order of the time and place set for the examination at least 7 days before the day set for the examination.
- (4) The party who obtained the examination order must give notice of the time and place set for the examination to the person to be examined and each other active party at least 3 days before the day set for the examination.

- (5) Also, if the person to be examined is not a party to the proceeding, the party who obtained the examination order must serve the person with a subpoena under part 6.9 (Subpoenas) at least 3 days before the day set for the examination.

**6819 Conduct of examination**

(SCR o 39 r 15; NSW r 24.9; Qld r 399)

- (1) Subject to this division, an examination must be conducted in accordance with the procedure of the court.

*Note* The examination is an examination on oath (see r 6813 (1) (a) and (b) (Order for taking evidence otherwise than at trial)).

- (2) Each party to the proceeding and each party's counsel and solicitor may attend the examination.
- (3) The person examined may be cross-examined and re-examined, unless the court otherwise orders.
- (4) The examination, cross-examination and re-examination of the person examined is to be conducted in the same way as at a trial, unless the court otherwise orders.

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

- (5) The examiner may put any question to the person being examined about—
- (a) the meaning of an answer given by the person; or
  - (b) anything arising during the examination, cross-examination or re-examination.
- (6) The examiner may adjourn the examination from time to time or from place to place.

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**6820           Examination of additional people**

(SCR o 39 r 16; NSW r 24.10; Qld r 400)

- (1) If the examiner is a judicial officer of a court, the examiner may, on the application of a party, examine a person not named or provided for in the examination order.

*Note*     Pt 6.2 (Applications in proceedings) applies to an application under r (1).

- (2) If the examiner is not a judicial officer of a court, the examiner may, with the written agreement of every active party to the proceeding, examine a person not named or provided for in the examination order.
- (3) The examiner must attach the agreements of the parties to the deposition under rule 6822 (Recording evidence of examination) of a person examined under subrule (2).

**6821           Objections by party or person being examined**

(SCR o 39 r 17; NSW r 24.11; Qld r 401)

- (1) This rule applies if—
- (a) the examiner is not a judicial officer of a court; and
  - (b) either—
    - (i) a party to the proceeding objects to a question put to a person being examined; or
    - (ii) a person being examined objects to answering a question or producing a document or thing.
- (2) The examiner must state to the parties the examiner’s opinion, but must not decide, on the validity of the objection.

- (3) The following matters must be set out in the deposition under rule 6822 (Recording evidence of examination) of the person examined, or in a statement attached to the deposition:
- (a) the question;
  - (b) the ground for the objection;
  - (c) the examiner's opinion;
  - (d) except if the objection is based on privilege, the answer.
- (4) On application by a party, the court may decide the validity of the objection.
- Note* Pt 6.2 (Applications in proceedings) applies to an application under r (4).
- (5) If the court disallows the objection, it may—
- (a) remit the examination back to the examiner with any necessary direction about the conduct of the examination; and
  - (b) make an order for the costs caused by the objection, including an order for costs against the person being examined.

**6822 Recording evidence of examination**

(SCR o 39 r 18 and r 19; NSW r 24.12 and r 24.14; Qld r 402)

- (1) The examiner must ensure evidence given at the examination is recorded, in writing or in another way, and authenticated by the examiner.
- (2) The court or the examiner may give directions for making an audiovisual recording of the evidence at the examination.
- (3) If a transcript of the evidence is prepared, the person who prepares the transcript must certify that it is a correct transcript of the evidence recorded.

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- (4) The examiner must authenticate and sign any deposition or other recording.
- (5) If evidence given at an examination is recorded in a deposition, it must—
  - (a) contain, in question and answer form, the evidence of the person examined; and
  - (b) be transcribed and read over by or to the person examined in the examiner's presence and in the presence of the parties wishing to attend; and
  - (c) be signed by the person examined or, if the person refuses to sign the deposition, by the examiner for the person.

**6823           Authentication and filing of deposition of examination etc**  
(SCR o 39 r 19; Qld r 403)

- (1) This rule applies if a deposition under rule 6822 (Recording evidence of examination) is produced.
- (2) The examiner must write on the deposition a statement signed by the examiner of the time spent in taking the examination and the fees (if any) received for the examination.
- (3) The examiner must send the following to the registrar:
  - (a) the original record of the deposition;
  - (b) any transcript of that record;
  - (c) any audiovisual recording;
  - (d) any exhibits obtained during the examination.
- (4) The registrar must file in the court the documents mentioned in subrule (3) (a) and (b).

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**6824 Special report on examination**

(SCR o 39 r 20; NSW r 24.15; Qld r 404)

An examiner may report to the court on—

- (a) the examination; or
- (b) the absence of a person from the examination; or
- (c) the conduct of a person at the examination.

**6825 Default of witness at examination**

(SCR o 39 r 21; NSW r 24.16; Qld r 405)

- (1) This rule applies if—
  - (a) a person is required by subpoena or a notice under rule 6482 (Medical expert—notice instead of subpoena) to attend before an examiner; and
  - (b) the person does not attend or refuses to take an oath for the examination, answer a lawful question or produce a document or thing.
- (2) The examiner must, if asked by a party, give the party a certificate signed by the examiner of the facts mentioned in subrule (1).
- (3) On the filing of the certificate, on application by any party, the court may—
  - (a) order the person to attend before the examiner, be sworn, answer the question or to produce the document or thing; and
  - (b) order the person to pay any costs caused by the person's refusal.

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

**6826            Costs of examination**

(NSW r 24.4 (2)-(7))

The court may make an order about the costs of an examination under an examination order.

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

**6827            Witness expenses for witness at examination**

(SCR o 39 r 22; NSW r 24.20; Qld r 406)

A person appearing before an examiner to be examined, or to produce a document or thing, is entitled to payment of the same amount for expenses and loss of time that the person would have been entitled to on attending to give evidence, or to produce a document or thing, at the trial of the proceeding before the court.

**6828            Admissibility of deposition of examination**

(Qld r 407)

- (1) A deposition under rule 6822 (Recording evidence of examination) is admissible in evidence at the trial of a proceeding only if—
  - (a) the deposition is made under an examination order; or
  - (b) the deposition is admissible under the Commonwealth Evidence Act; or
  - (c) a territory law provides for the deposition to be admissible.

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

- (2) A deposition purporting to be signed by the person before whom it was taken is receivable in evidence without proof of the signature of the person.

**6829 Letter of request**

(SCR o 39 r 24C and r 24D; NSW r 24.5; Qld r 408 and r 409)

- (1) This rule applies if an examination order is made for the issue of a letter of request to the judicial authority of a place outside the ACT.
- (2) The party obtaining the order must give the registrar—
  - (a) a draft of the letter of request; and
  - (b) any interrogatories and cross-interrogatories to accompany the letter of request; and
  - (c) if the place is a foreign country where English is not an official language—a written translation, in an official language of the country, of the documents mentioned in paragraphs (a) and (b); and
  - (d) the further copies of each of the documents mentioned in paragraphs (a) and (b) that the registrar directs; and
  - (e) an undertaking under subrule (5).
- (3) The translation mentioned in subrule (2) (c) must be certified, in writing, by the person making it to be a correct translation of the document.
- (4) The certificate of the person making the translation must also state the person's full name and address and qualifications for making the translation.
- (5) The undertaking given to the registrar under subrule (2) must be an undertaking by the party obtaining the order, or the party's solicitor—
  - (a) to be responsible for all expenses incurred by the court, or by anyone at the court's request, in relation to the letter of request (the *incurred expenses*); and

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- (b) to pay the registrar the amount of the incurred expenses on being given an account of them by the registrar.
- (6) Despite the making of the order and subrules (2) (e), the registrar may—
- (a) require the person giving the undertaking to provide security, in a form satisfactory to the registrar, for the anticipated expenses in relation to the letter of request; and
  - (b) refuse to take action in relation to the letter of request until the security is provided.
- (7) The person giving the undertaking must pay the amount of the incurred expenses to the registrar not later than 7 days after the day the person is given an account of them by the registrar.
- (8) If the amount of the incurred expenses is not paid in accordance with subrule (7), the court may, on its own initiative—
- (a) order the party who obtained the order to pay the unpaid amount of the incurred expenses; and
  - (b) if the party is a plaintiff—stay the proceeding, until the unpaid amount is paid, to the extent that it relates to all or part of a claim for relief by that party; and
  - (c) if the party is a defendant—make any order it considers appropriate, including an order that, until the unpaid amount is paid, the defendant be taken not to have filed a notice of intention to respond or defence or not be allowed to use in evidence any deposition of a witness obtained under the letter of request.

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**6830 Use of evidence taken in examination**

(SCA s 57 (d); CPA s 58 (6)-(8); FEA s 9, s 12, s 15; NSWECA s 8, s 10, s 20 and s 24)

(1) The court may, on the conditions (if any) it considers just, allow a party to a proceeding to tender as evidence in the proceeding—

(a) a person's evidence taken in an examination held under an order made in the proceeding under rule 6813 (Order for taking evidence otherwise than at trial); or

(b) a record of that evidence.

*Note 1* The *Foreign Evidence Act 1996* (Cwlth), s 9, s 12, s 13, s 14 and s 15 deal with the use of evidence taken under that Act.

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

(2) However, evidence of a person tendered under subrule (1) is not admissible if the evidence would not have been admissible if it had been given or produced at the hearing.

(3) Also, the court may exclude from the proceeding evidence taken under an order under rule 6813 even if it is otherwise admissible, if it considers that it is in the interests of justice to exclude the evidence.

(4) Without limiting rule 6016 (Application in proceeding—oral applications), an application under this rule may be made orally, unless the court otherwise orders on its own initiative.

(5) In this rule:

**evidence**, in relation to an examination, includes—

(a) a document produced at the examination (including an exhibit);  
and

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- (b) answers made, whether in writing, or orally and reduced to writing, to any interrogatories presented at the examination.

**6831      Use of evidence taken in an examination—subsequent proceedings**

(CPA s 60; FEA s 13 and s 14; NSWCA s 25 and s 26)

- (1) If the court makes an order under rule 6813 (Order for taking evidence otherwise than at trial) for a committal proceeding (the *primary order*), it may include in the primary order an order that evidence taken outside the ACT under the primary order may, subject to subrules (3), (4) and (5), be tendered in a proceeding (the *subsequent proceeding*) that is—
- (a) a criminal proceeding that results from the committal proceeding; or
- (b) a related civil proceeding.
- (2) If the court makes an order under rule 6813 for a criminal proceeding other than a committal proceeding (the *primary order*), it may include in the primary order an order that evidence taken outside the ACT under the primary order may, subject to subrules (3), (4) and (5), be tendered in a proceeding (also the *subsequent proceeding*) that is a related civil proceeding.
- (3) If the court has included in an order under rule 6813 (the *primary order*) an order under this rule, the court before which the subsequent proceeding is brought may allow a party to the subsequent proceeding to tender as evidence in the subsequent proceeding—
- (a) a person’s evidence taken in an examination held under the primary order; or

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(b) a record of that evidence.

*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.

(4) However, evidence of a person tendered under subrule (3) is not admissible if—

(a) at the hearing of the subsequent proceeding the court is satisfied that the person is in the ACT and is able to attend the hearing; or

(b) the evidence would not have been admissible had it been given or produced at the hearing.

(5) Also, the court before which the subsequent proceeding is brought may exclude from the subsequent proceeding evidence taken in an examination held under an order under rule 6813 even if it is otherwise admissible, if it considers that it is in the interests of justice to exclude the evidence.

(6) In this rule:

***related civil proceeding***, in relation to a criminal proceeding, means any civil proceeding arising from the same subject matter from which the criminal proceeding arose, and, in particular, includes—

(a) a proceeding under the *Confiscation of Criminal Assets Act 2003*; and

(b) a proceeding for the recovery of tax, or any duty, levy or charge payable to the Territory.

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**6832        Amendment and revocation of examination orders**

(CPA s 61; FEA s 16; NSWECA s 13)

- (1) The court may amend or revoke an order made under rule 6813 (Order for taking evidence otherwise than at trial) (a *primary order*).

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

- (2) The power given by subsection (1) includes the power to—
- (a) include in a primary order an order under rule 6831; or
  - (b) amend or revoke an order under rule 6831 that is included in a primary order.
- (3) If a primary order that includes an order under rule 6831 is revoked, the order under rule 6831 is taken to have been revoked at the same time.

**6833        Exclusion of evidence in criminal proceeding**

(CPA s 62)

This division does not affect the power of the court in hearing a criminal proceeding to exclude evidence that has been obtained illegally or that would, if admitted, operate unfairly against the defendant.

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## Division 6.10.9 Taking evidence for Australian and foreign courts and tribunals

### 6840 Definitions—div 6.10.9

(SCA s 64; NSWEC s 31)

In this division:

***applicable convention***, in relation to a request issued by or on behalf of a court or tribunal of a foreign country, means a convention dealing with examination of witnesses to which Australia and the foreign country are parties.

***Australian court*** means an entity authorised to exercise an adjudicative function—

- (a) whether on behalf of a court or otherwise; and
- (b) whether or not the entity is authorised to require the answering of questions or the production of documents.

***proceeding*** means—

- (a) a proceeding in any civil or commercial matter, or
- (b) a proceeding in or before a court in relation to the commission of an offence or an alleged offence, or the confiscation of criminal assets.

***request*** includes any commission, order or other process issued for the making of an application under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal).

***requesting court***, in relation to a request or an order under rule 6843 made on a request, means the court or tribunal outside the ACT (including outside Australia) by or on behalf of which the request is issued.

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**6841        Application—div 6.10.9**

(SCR o 39 r 24G)

- (1) This division applies to—
  - (a) an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal); and
  - (b) an examination under the order.
- (2) This division applies subject to—
  - (a) the terms of the request for the order and any applicable convention; and
  - (b) in relation to the application of a relevant rule of this division—any direction by the court consistent with the request and any applicable convention.
- (3) In this rule:

*relevant rule* means any of the following rules:

  - rule 6842 (Application for div 6.10.9 order)
  - rule 6845 (Appointment of examiner for div 6.10.9)
  - rule 6846 (Attendance by div 6.10.9 order applicant at examination)
  - rule 6847 (Procedure for taking evidence under div 6.10.9 order)
  - rule 6848 (Keeping of exhibits at div 6.10.9 examination)
  - rule 6849 (Certificate of order and depositions—div 6.10.9 examination).

**6842 Application for div 6.10.9 order**

(SCR o 39 r 24H)

- (1) An application for an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) may only be made by—

- (a) a person nominated by the requesting court; or  
(b) if no-one is nominated—the Attorney-General.

*Note 1* Pt 6.2 (Applications in proceedings) 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) An application mentioned in subrule (1) or for any other order under this division must be filed, but need not be served on anyone.

**6843 Order relating to taking evidence for Australian or foreign court or tribunal**

(CPA s 65; MCR s 97B; NSWCA s 33)

- (1) This rule applies if, on application to the court under rule 6842 for evidence to be taken in the ACT, the court is satisfied that—

- (a) the application is made under a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside the ACT (including outside Australia); and  
(b) the evidence to which the application relates is to be taken for a proceeding that has been, or may be brought, before the requesting court.

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- (2) The court may, by order, make any provision for the taking of evidence in the ACT that appears to the court to be appropriate for the purpose of giving effect to the request.
- (3) Without limiting subrule (2), an order under this rule may provide for all or any of the following:
  - (a) the examination of witnesses, orally or in writing;
  - (b) the production of documents;
  - (c) the inspection, photographing, preservation, custody or detention of property;
  - (d) the taking of samples of property and the carrying out of any experiments on or with property;
  - (e) the medical examination of a person;
  - (f) without limiting paragraph (e), the taking and testing of samples of blood from a person.
- (4) An order under this rule may require a stated person to take steps—
  - (a) that the court considers appropriate for the purpose of giving effect to the request; and
  - (b) that could be taken to obtain evidence for the purpose of a proceeding in the court (whether or not the proceeding is of the same kind as the proceeding to which the application for the order relates).
- (5) Subrule (4) does not prevent the court making an order requiring a person to give testimony, orally or in writing, otherwise than on oath if this is asked for by the requesting court.

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- (6) An order under this rule must not require a person to—
- (a) state what documents relevant to the proceeding to which the application for the order relates are or have been in the person's possession; or
  - (b) produce any documents other than stated documents.

**6844 Div 6.10.9 order for criminal proceeding**

(CPA s 65 (2))

An order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) must not be made in relation to a criminal proceeding unless the requesting court is a court of a place in Australia or New Zealand.

**6845 Appointment of examiner for div 6.10.9**

(SCR o 39 r 24K)

- (1) The court may appoint any of the following as an examiner:
  - (a) a judicial officer or other officer of a court;
  - (b) anyone else it considers suitable.
- (2) A judicial officer or other officer of the Supreme Court may only be appointed with the agreement of the Chief Justice.
- (3) A judicial officer or other officer of the Magistrates Court may only be appointed with the agreement of the Chief Magistrate.
- (4) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

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**6846            Attendance by div 6.10.9 order applicant at examination**

(SCR o 39 r 24L)

The applicant for an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) may attend and take part in the examination held under the order.

**6847            Procedure for taking evidence under div 6.10.9 order**

(SCR o 39 r 24M)

- (1) The applied provisions of division 6.10.8 (Taking evidence otherwise than at trial) apply, subject to this division and with any necessary changes, to an examination to which this division applies as if it were an examination to which that division applies.
- (2) For this rule, the *applied provisions* of division 6.10.8 are the following:
  - rule 6810 (Definitions—div 6.10.8)
  - rule 6817 (1) (Documents for examiner)
  - rule 6818 (Time and place of examination etc)
  - rule 6819 (Conduct of examination)
  - rule 6820 (Examination of additional people)
  - rule 6821 (Objections by party or person being examined)
  - rule 6822 (Recording evidence of examination)
  - rule 6823 (Authentication and filing of deposition of examination etc)
  - rule 6824 (Special report on examination)
  - rule 6827 (Witness expenses for witness at examination).

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**6848 Keeping of exhibits at div 6.10.9 examination**

(SCR o 39 r 24N)

If, in an examination to which this division applies, the examiner receives an exhibit from a person, the examiner must keep it and send it to the registrar with the deposition and other documents required by rule 6823 (3) (Authentication and filing of deposition of examination etc).

**6849 Certificate of order and depositions—div 6.10.9 examination**

(SCR o 39 r 24P)

On receiving the original record of the deposition, and any transcript of that record, taken in an examination, the registrar must—

- (a) issue a sealed certificate for the examination; and
- (b) give the certificate, and the documents mentioned in the certificate, to the Attorney-General.

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

**6850 Privilege of witnesses—div 6.10.9 examination**

(CPA s 66; NSWCA s 34)

- (1) A person cannot be compelled under an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) to give any evidence that the person could not be compelled to give in a similar proceeding in—
  - (a) the ACT; or
  - (b) the place where the requesting court exercises jurisdiction.

Rule 6851

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- (2) Subrule (1) (b) does not apply unless the person's claim to be exempt from giving evidence is—
  - (a) supported by a statement contained in the request (whether it is supported unconditionally or subject to conditions that are fulfilled); or
  - (b) conceded by the applicant for the order.
- (3) If the claim is not supported or conceded, the person may be required to give the evidence to which the claim relates, but that evidence must not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.
- (4) In this rule:

*giving evidence* includes—

  - (a) producing a document; and
  - (b) answering a question.

**6851      Privilege of witnesses—unsupported claim etc for div 6.10.9 examination**

(SCR o 39 r 24Q)

- (1) This rule applies to evidence that is the subject of a claim for privilege under rule 6850 (1) (b) if the claim is not supported or conceded in accordance with that rule.
- (2) The deposition, and any transcript, recording the evidence must—
  - (a) be kept separate from any other deposition or transcript in the examination; and

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- (b) when given to the registrar, be accompanied by a statement signed by the examiner setting out the claim for privilege and the ground on which it was made.
- (3) The registrar—
  - (a) must include the statement of the claim for privilege, and a request to decide the claim, with the documents sent to the Attorney-General under rule 6849 (Certificate of order and depositions—div 6.10.9 examination); and
  - (b) must not include with those documents the deposition, or any transcript, recording the evidence that is the subject of the claim.
- (4) After the requesting court decides the claim for privilege, the registrar must—
  - (a) if the requesting court rejects the claim—send it the deposition, and any transcript, recording the evidence to which the claim relates; or
  - (b) if the requesting court upholds the claim—return the deposition and any transcript to the person claiming privilege.
- (5) The registrar must also tell the person claiming privilege, and the applicant for the order for examination, about the decision of the requesting court.

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## Part 6.11                      Miscellaneous—ch 6

### 6900            Power to make orders

If a provision of these rules gives the court a power that can be exercised by making an order, the provision gives a power to make the order.

#### **Example**

Rule 1128 (Default judgment—setting aside etc) provides that the court may amend or set aside a judgment entered under division 2.11.3, and any enforcement of it. A judgment under the division may be set aside by making an order to that effect.

*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).

### 6901            Orders may be made on conditions

Subject to these rules, the court may make an order under these rules on any conditions it considers appropriate.

### 6902            Leave may be given on conditions

If the court gives leave under a provision of these rules, it may give the leave on the conditions it considers appropriate.

### 6903            References to court acting on its own initiative

An express reference in a provision of these rules to the court acting on its own initiative does not, by implication, prevent the court acting on its own initiative under another provision of these rules.

**6904 Mandatory order to registrar etc**

(NSW r 45.15)

- (1) On application by a party to a proceeding or on its own initiative, the court may order the registrar or another officer of the court to do, or not do, any act relating to the registrar's, or other officer's, duties.

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

- (2) If a party applies for an order in subrule (1), the party must give reasonable notice of the application to the registrar or other officer unless the court otherwise orders.

**6905 Notices must be written**

(Qld r 974)

A notice required or allowed to be given under these rules must be given in writing.

**6906 Power to make practice notes**

- (1) The rule-making committee may make practice notes for these rules.
- (2) A practice note is taken to be made by the rule-making committee if it is signed by 3 or more committee members, 1 of whom must be the member mentioned in the *Court Procedures Act 2004*, section 9 (2) (a) and another of whom must be the member mentioned in the Act, section 9 (2) (d) or (e).

*Note* The member mentioned in the *Court Procedures Act 2004*, s 9 (2) (a) is the Chief Justice (or the Chief Justice's delegate), the member mentioned in s 9 (2) (d) is the Chief Magistrate (or the Chief Magistrate's delegate) and the member mentioned in s 9 (2) (e) is another magistrate appointed by the Chief Magistrate.

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- (3) A practice note may approve a document exchange for these rules.
- (4) A practice note is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

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## Chapter 7 Transitional

### 7000 Transitional—existing proceedings

(NSWA sch 6, cl 5; Qld r 996)

- (1) Unless the court otherwise orders, these rules apply to an existing proceeding.
- (2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may make an order it considers appropriate to resolve the difficulty.
- (3) The court may make an order under this rule on application by a party or on its own initiative.

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

- (4) In this rule:

***existing proceeding*** means a proceeding started in the court, but not completed, before the commencement of this rule.

*Note* See sch 4 (Scale of costs), r 4.13 (2) for transitional provisions in relation to costs.

## EXPOSURE DRAFT

## Schedule 1 Expert witness code of conduct

(see r 1200)

### 1.1 Application of code

(PD 2/04; NSW sch 7)

This code of conduct applies to an expert witness.

### 1.2 General duty to court

(PD 2/04; NSW sch 7; Qld r 426)

- (1) An expert witness has an overriding duty to assist the court impartially on matters relevant to the expert's area of expertise.
- (2) An expert witness's paramount duty is to the court and not to the person retaining the expert.
- (3) An expert witness is not an advocate for a party.

### 1.3 Form of expert reports

(PD 2/04; NSW sch 7; Qld r 428 and r 429A)

- (1) A report by an expert witness must, in the body of the report or in an annexure, state the following:
  - (a) the expert's qualifications;
  - (b) all material facts and assumptions on which the report is based (a letter of instructions may be annexed);
  - (c) the reasons for each opinion expressed;
  - (d) if applicable, that a particular question or issue falls outside the expert's area of expertise;

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- (e) references to any literature or other materials relied on by the expert to support the expert's opinions;
  - (f) any examinations, tests or other investigations that the expert has relied on, and details of the qualifications of the person who carried them out.
- (2) If an expert witness who prepares a report believes that the report may be incomplete or inaccurate without some qualification, the expert must state the qualification in the report.
  - (3) If an expert witness considers that the opinion expressed in the expert's report is not a concluded opinion because of insufficient research, or insufficient data, or for any other reason, the expert must state in the report that the opinion is not a concluded opinion.
  - (4) If an expert witness, after giving an opinion to the party who engaged the expert, changes the opinion on a material matter, the expert must, as soon as possible, give the party a supplementary report—
    - (a) expressing the change of opinion; and
    - (b) stating the matters mentioned in subrule (1) that are appropriate.
  - (5) If an expert witness is appointed by the court, subrule (4) applies as if the court were the party who engaged the expert.

#### **1.4 Experts' conference**

(PD 2/04; NSW sch 7; Qld r 429B)

- (1) An expert witness in a proceeding must comply with any direction of the court—
  - (a) to meet with another expert witness in the proceeding—
    - (i) to identify the matters on which they agree; and

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- (ii) to identify the matters on which they disagree and the reasons why; and
    - (iii) to try to resolve any disagreement; or
  - (b) to produce for the court's use a document identifying—
    - (i) the matters on which the experts agree; and
    - (ii) the matters on which the experts disagree; and
    - (iii) the reasons for any failure to reach agreement on any matter.
- (2) An expert witness must exercise independent, professional judgment in relation to any conference held, or document prepared, under subrule (1), and must not act on any instruction or request to withhold or avoid agreement.

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## **Schedule 2      Interest rates**

### **Part 2.1                      Interest up to judgment**

(PD 2/2001; MC(CJ)R sch 1)

(see r 51, r 304, r 1104, r 1120 and r 1616)

**Table 2.1      Interest up to judgment—Supreme Court**

<b>column 1 item</b>	<b>column 2 period</b>	<b>column 3 rate of interest % per year</b>
1	1 January 1974 to 31 December 1980	10.00
2	1 January 1981 to 31 December 1985	14.00
3	1 January 1986 to 31 December 1987	18.00
4	1 January 1988 to 31 December 1989	16.00
5	1 January 1990 to 30 June 1990	21.00
6	1 July 1990 to 31 December 1990	18.00
7	1 January 1991 to 30 June 1991	16.00
8	1 July 1991 to 30 June 1993	15.00
9	1 July 1993 to 30 April 2001	10.00
10	1 May 2001 to 9 January 2005	9.00
11	any period after 9 January 2005	9.00

## **EXPOSURE DRAFT**

**Table 2.2 Interest up to judgment—Magistrates Court**

<b>column 1 item</b>	<b>column 2 period</b>	<b>column 3 rate of interest % per year</b>
1	any period before 1 July 1981	13.375
2	1 July 1981 to 30 June 1982	15.00
3	1 July 1982 to 31 December 1982	17.50
4	1 January 1983 to 31 December 1983	15.50
5	1 January 1984 to 30 June 1984	12.375
6	1 July 1984 to 31 December 1984	14.75
7	1 January 1985 to 30 June 1985	13.75
8	1 July 1985 to 31 December 1985	17.25
9	1 January 1986 to 30 June 1986	20.625
10	1 July 1986 to 31 December 1986	18.125
11	1 January 1987 to 30 June 1987	19.25
12	1 July 1987 to 29 February 1988	18.75
13	1 March 1988 to 28 February 1989	16.125
14	1 March 1989 to 31 August 1989	17.875
15	1 September 1989 to 14 January 1991	20.75
16	15 January 1991 to 14 July 1991	17.50
17	15 July 1991 to 14 January 1992	15.75
18	15 January 1992 to 14 July 1992	13.75
19	15 July 1992 to 14 January 1993	11.50

## **EXPOSURE DRAFT**

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<b>column 1 item</b>	<b>column 2 period</b>	<b>column 3 rate of interest % per year</b>
20	15 January 1993 to 31 January 1994	10.00
21	1 February 1994 to 31 July 1995	9.00
22	1 August 1995 to 31 March 1997	10.75
23	1 April 1997 to 30 April 1998	9.55
24	1 May 1998 to 9 January 2005	8.45
25	any period after 9 January 2005	9.00

## **EXPOSURE DRAFT**

## Part 2.2 Interest after judgment

(SCR o 42A r 2; MC(CJ)R s 234 and sch 1)

(see r 1617)

**Table 2.3 Interest after judgment—Supreme Court**

column 1 item	column 2 period and case (if any)	column 3 rate of interest % per year
1	any period ending before 1 May 1986: (a) if judgment was entered before 1 October 1977 (b) if judgment was entered on or after 1 October 1977	5.00  10.00
2	1 May 1986 to 30 June 1990	15.00
3	1 July 1990 to 31 December 1991	20.00
4	1 January 1992 to 30 June 1993	15.00
5	1 July 1993 to 30 April 2001	12.00
6	1 May 2001 to 9 January 2005	11.00
7	any period after 9 January 2005	11.00

## EXPOSURE DRAFT

**Table 2.4 Interest after judgment—Magistrates Court**

<b>column 1 item</b>	<b>column 2 period and case (if any)</b>	<b>column 3 rate of interest % per year</b>
1	any period ending before 1 May 1986: (a) if judgment was entered before 1 October 1977 (b) if judgment was entered on or after 1 October 1977	5.00  10.00
2	1 May 1986 to 30 June 1990	15.00
3	1 July 1990 to 31 December 1991	20.00
4	1 January 1992 to 30 June 1993	15.00
5	1 July 1993 to 9 April 1995	12.00
6	10 April 1995 to 31 July 1995	9.00
7	1 August 1995 to 31 March 1997	10.75
8	1 April 1997 to 30 April 1998	9.55
9	1 May 1998 to 9 January 2005	8.45
10	any period after 9 January 2005	11.00

## **EXPOSURE DRAFT**

## **Schedule 3**      **Costs amount—debts and liquidated demands**

### **Part 3.1**            **Claim for debt or liquidated demand**

(see r 51, r 304, r 1102 and r 1104)

**Table 3.1**      **Prescribed costs amount—claim for debt or liquidated demand**

<b>column 1 item</b>	<b>column 2 court and amount claimed</b>	<b>column 3 prescribed amount (\$)</b>
1	Magistrates Court—less than \$10 000	165.00
2	Magistrates Court—not less than \$10 000 but less than \$25 000	335.00
3	Magistrates Court—not less than \$25 000 but less than \$40 000	400.00
4	Magistrates Court—not less than \$40 000 but less than \$50 000	450.00
5	Supreme Court—any amount	500.00

## **EXPOSURE DRAFT**

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## **Part 3.2**                      **Default judgment**

(see r 1121)

**Table 3.2**    **Prescribed costs amount—default judgment**

<b>column 1 item</b>	<b>column 2 court and amount claimed</b>	<b>column 3 prescribed amount (\$)</b>
1	Magistrates Court—less than \$10 000	198.00
2	Magistrates Court—not less than \$10 000 but less than \$25 000	402.00
3	Magistrates Court—not less than \$25 000 but less than \$40 000	480.00
4	Magistrates Court—not less than \$40 000 but less than \$50 000	540.00
5	Supreme Court—any amount	600.00

## **EXPOSURE DRAFT**

## Schedule 4            Scale of costs

(see r 1700)

### Part 4.1                Scale of costs—general

*Note*            Div 2.17.2 (Entitlement to costs) includes the following rules which relate to the assessment of costs under this schedule:

- r 1734 (Costs—assessment costs)
- r 1735 (Costs—counsel’s advice and settling documents)
- r 1736 (Costs—evidence)
- r 1737 (Costs—solicitor advocate)
- r 1738 (Costs—retainer for counsel)
- r 1739 (Costs—counsel’s fees for applications).

#### 4.1                    Costs—general care and conduct

(Qld sch 1, s 1)

In addition to an amount that is to be allowed under an item in part 4.2, the amount that is to be allowed for a solicitor’s care and conduct of a proceeding is the amount the registrar considers reasonable having regard to the circumstances of the proceeding, including, for example, the following:

- (a) the complexity of the proceeding;
- (b) the difficulty and novelty of any question raised in the proceeding;
- (c) the importance of the proceeding, including to the party;
- (d) the amount involved;
- (e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor;

- (f) the number and importance of the documents prepared or perused, without regard to the length of the documents;
- (g) the time spent by the solicitor;
- (h) research and consideration of questions of law and fact.

*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).

#### **4.2 Costs—registrar’s discretion**

(SCR o 65 r 24 and r 54; Qld r 690 (5) and (6) and sch 1, s 2)

- (1) For a matter for which a cost is provided for in part 4.2, the registrar may allow an additional amount, reduce the amount to be allowed, or change the method of calculating costs, as the registrar considers appropriate.
- (2) For a matter for which a cost is not provided for in part 4.2, the amount to be allowed is the cost the registrar considers reasonable.
- (3) If the nature and importance, or the difficulty or urgency, of a proceeding and the justice of the case justify it, the registrar may allow an increase of not more than 30% of the solicitor’s costs allowed on the assessment of the costs of the proceeding.

#### **4.3 Costs—letters sent by email**

The amount to be allowed for a letter sent as an email, or as an attachment to an email, is the amount that would be allowed if the letter were sent by post or another way.

**4.4 Costs—allowance on affidavits to include attendances**

(SCR o 65 r 26)

The amount allowed for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the person making the affidavit to swear the affidavit includes all attendances on the person making the affidavit to read over and settle the affidavit.

**4.5 Costs—affidavit made by 2 or more people etc**

(SCR o 65 r 25)

The registrar may make any further allowance the registrar considers reasonable in relation to an affidavit if—

- (a) the affidavit is sworn by 2 or more people; or
- (b) the affidavit must be sent somewhere else, or an agent has to be employed, for the affidavit to be sworn.

**4.6 Costs—documents to be served together**

(SCR o 65 r 28)

- (1) If 2 or more documents can be served at the same time on a party to a proceeding, the documents must be served together.
- (2) The registrar must not allow any further amount for service if more than 1 document is served at the same time.

**4.7 Costs—agency correspondence**

(SCR o 65 r 32)

In a proceeding in which there is an agent solicitor, the registrar may make any further allowance for agency correspondence that the registrar considers reasonable if satisfied the correspondence has been special and extensive.

**4.8 Costs—attendance to instruct counsel**

(SCR o 65 r 35A)

- (1) If a principal solicitor attended in court to instruct counsel in a proceeding, the registrar may allow—
  - (a) the amount set by the prescribed scale of costs for a principal solicitor to attend to instruct counsel, if satisfied that the importance or difficulty of the proceeding, or the responsibility involved in instructing counsel, justified the principal solicitor's attendance; or
  - (b) the amount set by the prescribed scale of costs for an employed solicitor to attend to instruct counsel, if satisfied the attendance of an employed solicitor only was justified; or
  - (c) the amount set by the prescribed scale of costs for a clerk to attend to instruct counsel, if satisfied that the attendance of a clerk only was justified.
- (2) If an employed solicitor attended in court to instruct counsel in a proceeding, the registrar may allow—
  - (a) the amount set by the prescribed scale of costs for an employed solicitor to attend to instruct counsel, if satisfied the attendance of an employed solicitor was justified; or
  - (b) the amount set by the prescribed scale of costs for a clerk to attend to instruct counsel, if satisfied that the attendance of a clerk only was justified.
- (3) If a clerk attended in court to instruct counsel in a proceeding, the registrar may allow the amount for a clerk to attend to instruct counsel, only if satisfied the clerk was competent to instruct counsel in the proceeding.

**EXPOSURE DRAFT**

**4.9 Costs—parties with same solicitor**

(SCR o 65 r 27, r 29 and r 30; Qld r 727)

If the same solicitor represents 2 or more parties and the solicitor does work for 1 or some of them separately that could have been done for some or all of them together, the registrar may disallow costs for the unnecessary work.

**4.10 Costs—counsel drawing and settling documents**

(SCR o 65 r 37 and r 69; Qld r 728)

If the registrar allows costs for counsel to draw and settle a document, the registrar must not allow the costs of a conference with counsel in relation to the document, unless there were special reasons making the conference necessary.

**4.11 Costs—premature brief**

(SCR o 65 r 72; Qld r 731)

The registrar must not allow costs for the preparation and delivery of a brief to counsel on a trial that did not take place if the costs were incurred prematurely.

**4.12 Costs—folios**

(SCR o 65 r 36)

- (1) A folio comprises 72 words.
- (2) Each number, consisting of 1 or more figures, is counted as 1 word.

**4.13 Costs—transitional**

(SCR o 65 r 7)

- (1) A solicitor is entitled to charge and be allowed the costs set out in this schedule for work done or services performed on or after 1 July 2006.
- (2) The *Supreme Court Rules 1937*, order 65, rule 7 (Scales of costs) as in effect immediately before the commencement of these rules continues to apply for work done or services performed by a solicitor before 1 July 2006.

**EXPOSURE DRAFT**

## Part 4.2                      Scale of costs—items

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
<b>Division 4.2.1                      Instructions</b>		
1	to sue or defend, to appeal or oppose an appeal	125.30
2	for statement of claim, petition, special case or counterclaim	125.30
3	for defence	107.20
4	for— (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar’s office (for example, an account or deed); or	44.70

## EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
	(e) adding parties by order; or (f) a bond or other deed; or (g) retaining counsel, including preparing retainer	
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	89.40

## **EXPOSURE DRAFT**

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.1**       Instructions

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<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
6	for—  (a) an application whether in court, before the registrar or in chambers; or  (b) opposition to an application; or  (c) the assessment of a bill of costs	89.40
7	for brief to advise on evidence	80.50
8	for—  (a) a statement of facts in an action; or  (b) a request for particulars; or  (c) particulars	89.40
9	for brief in preparation for trial	the amount the registrar considers appropriate

## **EXPOSURE DRAFT**

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)	
<b>Division 4.2.2          Drawing</b>			
10	for an originating process or counterclaim	66.80	or, if longer than 7 folios, 9.40 per folio
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	44.70	or, if longer than 4 folios, 9.40 per folio
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	40.90	or, if the document is longer than 4 folios, 9.40 per folio
13	a formal affidavit, including an affidavit of service	31.50	
14	any other document	17.70	or, if longer than 1 folio, 10.50 per folio

## EXPOSURE DRAFT

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.3**       Engrossing

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
<b>Division 4.2.3            Engrossing</b>		
15	of a document	2.70            per folio
<b>Division 4.2.4            Copies</b>		
16	of any document, or of multiple documents copied at the same time—  (a) for each of the first 10 copies; or  (b) for each additional copy up to 100 copies; or  (c) for each additional copy over 100 copies	  2.40            per page  1.00            per page  0.30            per page
<b>Division 4.2.5            Perusal</b>		
17	of—  (a) an originating process; or  (b) a pleading; or  (c) an application in a proceeding; or	31.50            or, if the document is longer than 8 folios, 3.60 per folio

## EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
	(d) interrogatories; or (e) a special case; or (f) a notice to admit	
18	of any other document, if it is necessary to peruse	3.60 per folio
19	of a document by scanning it, if it is not necessary to peruse	4.90 or, if the document has more than 10 pages, the additional amount the registrar considers appropriate
<b>Division 4.2.6 Attendances</b>		
20	for personal service, if necessary, of 1 or more documents at the same time	66.80
21	for service of 1 or more documents at the same time—  (a) at the office of a solicitor on the record or the address for service of a party; or	27.00

## **EXPOSURE DRAFT**

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.6**        Attendances

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
	(b) by post; or  (c) made through a document exchange	
22	by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years—  (a) to instruct counsel; or  (b) on assessment of a bill of costs or other matter; or  (c) at conference with counsel; or  (d) on a view; or  (e) on witness or other person; or  (f) to produce a document; or	178.80        per hour

## EXPOSURE DRAFT

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
	(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or  (h) to prepare appeal papers	
23	by a solicitor, necessarily or properly engaged, if the solicitor is a solicitor not mentioned in item 22—  (a) to instruct counsel; or  (b) on assessment of a bill of costs or other matter; or  (c) at conference with counsel; or  (d) on a view; or  (e) on witness or other person; or  (f) to produce a document; or	125.30 per hour

## EXPOSURE DRAFT

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.6**        Attendances

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
	(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or  (h) to prepare appeal papers	
24	by a clerk, necessarily or properly engaged—  (a) to instruct counsel; or  (b) on assessment of a bill of costs or other matter; or  (c) at conference with counsel; or  (d) on a view; or  (e) on witness or other person; or  (f) to produce a document; or	62.50            per hour

## EXPOSURE DRAFT

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
	(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or  (h) to prepare appeal papers	
25	other than an attendance already mentioned, in court or any hearing without counsel—	
	(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or	268.10 per hour
	(b) by any other solicitor	187.70 per hour
26	by a solicitor involving a high degree of skill and responsibility	268.10 per hour

## EXPOSURE DRAFT

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.6**       Attendances

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
27	in court or chambers or before the registrar—  (a) to take a reserved judgment; or  (b) to mention a matter; or  (c) for an adjournment; or  (d) for settling the terms of and entering orders; or  (e) for another reason	71.50            or 178.80 per hour
28	at the registry or other office or place for—  (a) filing, delivering, or collecting a document; or  (b) a purpose not involving the exercise of legal skill or knowledge	22.20
29	formal telephone attendance	22.20
30	telephone attendance leaving message only	11.00

## EXPOSURE DRAFT

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	35.80 or 44.70 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	22.20 or 15.50 per quarter hour
33	<p>if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—</p> <p>(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or</p> <p>(b) a clerk has attended in place of the solicitor</p>	<p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 043.90</p> <p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 268.10</p>

## EXPOSURE DRAFT

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.7**       Letters

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
<b>Division 4.2.7            Letters</b>		
34	ordinary letter	22.20            or 10.80 per folio
35	special letter	36.80            or 10.80 per folio
36	formal letter	15.00
37	circular letters after the first	6.80
38	fax copy or telex, including attendance to send	35.20
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	9.40
40	receiving, printing and filing incoming letter received by email	10.00

## EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
41	printing any attachment to an email, or multiple attachments to an email printed at the same time—  (a) for each of the first 10 pages; or  (b) for each additional page up to 100 copies; or  (c) for each additional page over 100 copies	  2.40      per page  1.00      per page  0.30      per page
<b>Division 4.2.8      Witness expenses</b>		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	877.10      per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	92.50      per day
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court

## **EXPOSURE DRAFT**

**Schedule 4**            Scale of costs  
**Part 4.2**             Scale of costs—items  
**Division 4.2.9**       Disbursements

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)
<b>Division 4.2.9            Disbursements</b>		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

## EXPOSURE DRAFT

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## **Schedule 5      Jurisdiction exercisable by registrar**

(see r 6250)

### **Part 5.1      Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
1	317	Third party—extent bound by judgment between plaintiff and defendant
2	706	Urgent orders before start of proceeding
3	707	Interim distribution
4	708	Interim income
5	709	Payment before finding out everyone interested
6	716	Disposal of property other than land
7	729	Division 2.9.4 order without notice etc
8	730	Division 2.9.4 order without trial

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.1**

Jurisdiction exercisable by registrar  
Jurisdiction under rules in relation to applications in proceedings not  
exercisable by registrar

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
9	sdiv 2.9.4.2 (other than r 745 (Freezing orders—costs))	Freezing orders
10	sdiv 2.9.4.3 (other than r 755 (Search orders—costs))	Search orders
11	766	Receiver—agreement to act as etc
12	767	Receiver—application for order appointing
13	772	Receiver—default
14	782	Sale of land—order
15	783	Sale of land—conduct of sale
16	784	Sale of land—certificate of sale result
17	1015	Payment into court—amount recovered by person with legal disability
18	1016	Person with legal disability—approval of settlement etc
19	1226	Request by appointed expert for directions

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
20	1228	Expert report to be admitted in evidence
21	1240	Application—div 2.12.4
22	1241	Service of expert reports
23	1243	Expert evidence to be covered by expert report
24	1246	Tender of expert report
25	1505	Trial—defendant or plaintiff not appearing
26	1521	Separate decisions on questions—order
27	1522	Separate decisions on questions—directions
28	1523	Separate decisions on questions—decision
29	1530	Assessors
30	1531	Referee—referral of question etc to
31	1532	Referee—appointment
32	1533	Referee—amendment of order referring question etc
33	1536	Referee—report
34	1537	Referee—proceeding on report

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.1**

Jurisdiction exercisable by registrar  
Jurisdiction under rules in relation to applications in proceedings not  
exercisable by registrar

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
35	1548	Partial judgment for damages to be assessed
36	1607	Orders—certified duplicate
37	1855	Costs—review by court
38	2220	Seizure and sale order—sale at best price obtainable
39	2406	Charging order—application to enforce charge
40	2407 (2) (b)	Charging order—procedure against partnership property for partner’s separate order debt
41	2443	Enforcement—undertakings
42	2501	Contempt—applications generally
43	2508	Contempt—Magistrates Court may refer person to Supreme Court to be dealt with for contempt
44	div 2.18.17	Enforcement—arrest warrants for absconding defendants
45	2600	Interpleader—application by stakeholder
46	2606	Interpleader—failure to give notice of claim
47	2608	Interpleader—admission of claim

## **EXPOSURE DRAFT**

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
48	2609	Interpleader—enforcement officer’s interpleader application
49	pt 3.2	Adoption
50	pt 3.5	Cross-vesting
51	pt 3.9	Habeas corpus
52	4721	Supreme Court bail application in relation to accused person
53	4722	Supreme Court bail application by informant
54	4750	Supreme Court criminal proceedings—application to set aside or stay proceeding
55	4751	Supreme Court criminal proceedings—application for separate trials
56	4752	Supreme Court criminal proceedings—other pre-trial applications
57	4781	Supreme Court criminal proceedings—production of person in custody
58	5005	Appeals—requirements for notice of appeal etc
59	5008	Appeals—time for filing notice of appeal

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.1**

Jurisdiction exercisable by registrar  
Jurisdiction under rules in relation to applications in proceedings not  
exercisable by registrar

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
60	5011	Appeals—service of notice of appeal
61	5013	Appeals—stay of decision etc
62	5016	Appeals—amending notice of appeal
63	5017	Appeals—cross-appeals
64	5030	Further evidence on appeal— <i>Magistrates Court Act 1930</i> , s 214
65	5332	Application for leave to appeal to Court of Appeal out of time—final judgment
66	5406	Appeals to Court of Appeal—time for filing and serving notice of appeal
67	5409	Appeals to Court of Appeal—stay
68	5410	Appeals to Court of Appeal—competency of appeal
69	5411	Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent
70	5412	Appeals to Court of Appeal—discontinuance of appeal
71	5415	Appeals to Court of Appeal—cross-appeal etc

## **EXPOSURE DRAFT**

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
72	5417	Appeals to Court of Appeal—keeping exhibits
73	5431	Appeals to Court of Appeal—further evidence on appeal
74	5432	Appeals to Court of Appeal—absence of party
75	5510 (2)	Registrar's decision to give or refuse leave to appeal to Court of Appeal out of time—conviction or sentence
76	5531	Appeals to Court of Appeal against convictions and sentences—grounds of appeal
77	5536	Appeals to Court of Appeal against convictions and sentences—fine paid to be kept pending appeal
78	5654	Appeals to Court of Appeal—want of prosecution of appeal
79	5707	Review orders—application to revoke review order
80	5857	Special case to Supreme Court—insufficient statement of case
81	5872	Special case to Court of Appeal—preparation and settling

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.1**

Jurisdiction exercisable by registrar  
Jurisdiction under rules in relation to applications in proceedings not  
exercisable by registrar

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 provision heading</b>
82	6142 (3) (c)	Rejecting documents—abuse of process etc
83	6201	Order that jurisdiction in proceeding be exercised by judge instead of master
84	6522	Application for leave to serve subpoena in New Zealand
85	6524	Application for leave to serve subpoena in New Zealand need not be served etc
86	6526 (2)	Setting aside subpoena for service in New Zealand
87	6527	Noncompliance with subpoena served in New Zealand
88	6610 (2) or (4)	Disposal of subpoenaed documents and things produced
89	6613	Documents and things in custody of court
90	6762	Custody of exhibits after proceeding
91	6816	Appointment of examiner
92	6817	Documents for examiner
93	6903	Mandatory order to registrar etc

## **EXPOSURE DRAFT**

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## **Part 5.2**                      **Jurisdiction related to Corporations Act exercisable by Supreme Court registrar**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
1		1.8	power to give directions
2		2.13	power to grant leave to creditor, contributory or officer to be heard in proceeding or be added as a defendant, etc
3		2.14	power to direct an inquiry in relation to a corporation's debts, etc
4	section 227		power to declare that conditions prescribed by division 3 of part 2E.1 have been satisfied
5	sections 247A and 247B		power to order inspection of books
6	section 252E		power to order meeting of members of registered scheme

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
7	section 266 (4)		power to extend period for lodgment of notice in relation to charge
8	section 267 (3)		power to give leave to enforce charge
9	section 274		power to rectify register of charges
10	section 283AE (2) (a)		power to appoint body corporate as trustee for debenture holders
11	section 283EC		power to give directions or determine any question on application of trustee for debenture holders
12	section 283HA		power to make an order for meeting of debenture holders to direct trustee
13	section 283HB (1)		power to make an order in relation to borrowing corporations

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
14	section 283HB (1) (c)		power to order security for debentures to be enforceable
15	section 411	3.3 3.4 3.5	power to make order in relation to administration of compromise or arrangement etc
16	section 418A		power to make declaration about validity of controller's appointment and in relation to control of property
17	section 419		power to make order relieving person who incurs liability in belief that properly appointed as a receiver
18	section 419A		power to relieve controller from liability
19	section 420B		power to authorise managing controller to dispose of property despite prior charge
20	section 420C		power to authorise receiver to carry on corporation's business during the winding-up

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court  
registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
21	section 423	4.1	power to inquire into conduct of controller
22	section 424		power to give directions in relation to controller's functions and powers
23	section 425	9.1	power to fix amount of remuneration of a receiver
24	section 429 (3)		power to extend time for report
25	section 434B		power to remove redundant controller
26	section 438D		power to direct administrator to give a report
27	section 440B		power to grant leave to enforce a charge if an administrator has been appointed
28	section 440C		power to grant leave to take possession of property

## **EXPOSURE DRAFT**

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
29	section 440D		power to grant leave to begin or proceed with a proceeding in a court against a company that is in administration, or in relation to any of its property
30	section 440F		power to grant leave to begin or proceed with enforcement process in relation to the property of a company
31	section 440G (7)		power to authorise a court officer to take action or to make a payment that would be prohibited
32	section 440J		power to grant leave to take enforcement action under a guarantee
33	section 441D		power to limit powers of chargee in relation to charged property
34	section 441H		power to limit powers of receiver etc in relation to property used by company

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
35	section 442C		power to grant leave to administrator to dispose of encumbered property
36	section 443B (8)		power to grant relief of administrator from personal liability for rent
37	section 444B (2)		power to extend time for execution of deed of company arrangement
38	section 444C (2)		power to grant leave to act inconsistently with deed of company arrangement
39	section 444E (3)		power to grant leave to person bound by deed of company arrangement to begin or proceed with enforcement process in relation to property of company
40	section 444F		power to order secured creditor or owner or lessor of property not to take certain actions

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
41	section 445B		power to make an order cancelling a variation of a deed of company arrangement
42	section 445D		power to make order terminating a deed of company arrangement
43	section 445G		power to avoid or validate deed of company arrangement
44	section 447A		power to make order to bring administration to an end
45	section 447B		power to make order to protect interests of company's creditors during an administration
46	section 447C		power to declare whether administrator is validly appointed
47	section 447D		power to give directions to administrator

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
48	section 447E		power to make order about supervision of administrator of company or deed of company arrangement
49	section 449B		power to make order about removal and appointment of administrator
50	sections 449C and 449D		power to make order in relation to vacancy in office of administrator of company or in office of administrator of deed of company arrangement
51	section 449E	9.2	power to determine or review the remuneration of administrator
52	sections 459F, 459H, 459J, 459L, 459M and 459N		power to make order in relation to statutory demands

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
53	sections 459A, 459B (except in relation to applications under section 246AA), 459C, 459D, 459P, 459R, 459S, 459T, 461, 462, 464, 465B, 465C, 466, 467, 467A and 467B (except in relation to applications under section 246AA)	pt 6.5	power to make orders in relation to winding-up applications
54	section 468		power in relation to validation of disposition of property
55	section 470 (2) (b)		power to direct service of copy of order on another person
56	section 471B		power to give leave to begin or proceed with proceeding or enforcement process
57	section 472	5.5 6.1	power to appoint official liquidator or provisional liquidator

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court  
registrar

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
58	section 473 (1)	7.1	power to remove liquidator
59	section 473 (2)	9.3	power to determine provisional liquidator's remuneration
60	sections 473 (3) and 473 (5)	9.4	power to determine or review liquidator's remuneration
61	section 473 (7)	7.2	power to fill vacancy in office of official liquidator
62	section 473 (8)		power to declare what may be done by liquidator, if more than 1 liquidator is appointed by the court
63	section 474 (2)		power to order that property vest in liquidator
64	section 475 (8)	7.3	power to grant leave for payment of costs and expenses incurred in preparing report under section 475
65	section 479		power to give directions in matters arising in winding-up
66	section 480	7.5	power to release liquidator and deregister company

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
67	section 481	7.7	power to order preparation of report on accounts of liquidator
68	section 483 (1)		power to require payment of money or transfer of property
69	section 483 (3)	7.8	power to order payment of a call
70	section 484	8.1 8.2 8.3	power to appoint special manager
71	section 486		power to make order for inspection of books by creditors or contributories
72	section 488 (2)	7.9	power to grant leave to distribute a surplus
73	section 490		power to grant leave to company to wind up voluntarily
74	section 495 (4)		power to make order in relation to conduct of meeting in course of members' voluntary winding-up

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court  
registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
75	section 496 (3)		power to order that list of creditors be sent to creditors in members' voluntary winding-up
76	section 497 (3)		power to order that list of creditors be sent to creditors in creditors' voluntary winding-up
77	section 499		power to make order about liquidator if different liquidator chosen
78	section 500		power to make order about execution and civil proceedings
79	section 502	7.2	power to appoint liquidator
80	section 503		power to remove liquidator
81	section 504		power to review liquidator's remuneration in voluntary winding-up

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
82	section 507 (6)		power to sanction resolution to accept shares as consideration for sale of property of company
83	section 507 (9)		power to give directions necessary for arbitration
84	section 507 (10)		power to approve liquidator's exercise of powers in creditors' voluntary winding-up
85	section 509 (6)		power to order ASIC to deregister company on specified day
86	section 510 (3)		power to settle dispute about value of security or lien or amount of debt or set-off
87	section 511 (1) (a)		power to decide question in winding-up of company
88	section 511 (1) (b)		power to make order in relation to an application to the court to exercise powers which might be exercised if a company were being wound up by the court

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court  
registrar

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
89	section 532 (2)		power to grant leave for person to be appointed as liquidator
90	section 536	7.11 11.2 11.8	power to make order in relation to supervision of liquidators
91	section 542 (3) (a)		power to give directions in relation to destruction of books of company
92	section 543 (1)		power to make order about the investment of surplus funds
93	section 544 (2)		power to order account of funds in hands of liquidator, audit or payment of money by liquidator
94	section 545		power to direct liquidator to incur particular expense
95	section 551		power to give leave for member of committee of inspection to accept extra benefit etc

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
96	section 552		power to give direction or permission if no committee of inspection is appointed
97	section 554A	14.1	power to estimate or determine value of debts and claims of uncertain value in liquidation
98	section 554G		power to grant leave to secured creditor to amend valuation of security in proof of debt
99	section 564		power to make order in favour of creditors who give company indemnity for costs of litigation
100	sections 568, 568B, 568E and 568F	10.2	power to make order in relation to disclaimer of onerous property
101	sections 583 and 585	10.3	power in relation to winding up Part 5.7 bodies
102	sections 596A, 596B, 596F, 597, 597A and 597B	11.3 11.6 11.7 11.9	power to make order in relation to examinations

## **EXPOSURE DRAFT**

**Schedule 5**  
**Part 5.2**

Jurisdiction exercisable by registrar  
Jurisdiction related to Corporations Act exercisable by Supreme Court  
registrar

<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
103	sections 600A to 600D		power to make order in relation to creditor's resolutions
104	section 601AH (2)		power to order reinstatement of registration of company
105	section 601BJ (2)		power to approve modification in constituent documents of registered company
106	section 601CC (9)		power to order restoration of name of registered Australian body to the Register
107	section 601CL (10)		power to order restoration of name of registered foreign company to the Register
108	section 1071D (4)	12.2	power to make order in relation to a person summoned
109	section 1071F		power to make an order in relation to a company's refusal to register a share transfer
110	section 1071H (6)		power to make an order to remedy default in issuing certificate etc

## **EXPOSURE DRAFT**

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<b>column 1 item</b>	<b>column 2 provision of Corporations Act</b>	<b>column 3 rule in sch 6</b>	<b>column 4 description (for information only)</b>
111	section 1274		power to make order if failure to give, amend etc document
112	section 1303		power to order that books be available for inspection
113	section 1319		power to give directions in relation to meetings
114	section 1321	14.1	power to make order in appeal from decision of administrator, receiver or liquidator
115	section 1322		power to make order in relation to irregularities
116	section 1325D		power to make order where contravention of a provision of chapter 6 due to inadvertence
117	section 1335		power to make order about costs

## **EXPOSURE DRAFT**

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**Part 5.3**                      **Jurisdiction related to ASIC Act  
exercisable by Supreme Court  
registrar**

<b>column 1 item</b>	<b>column 2 provision of the ASIC Act</b>	<b>column 3 rule</b>	<b>column 4 description (for information only)</b>
1	section 79 (4)		power to extend period to give notice of intention to have statements made at examination admitted

**EXPOSURE DRAFT**

## **Schedule 6      Corporations Rules**

(see r 3270)

### **Part 6.1              Preliminary—sch 6, pt 6.1**

#### **1.1              Name of rules**

The rules in this schedule are the *Corporations Rules*.

#### **1.2**

*Note*      These rules do not include a r 1.2.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

#### **1.3              Application of sch 6 and provisions of these rules**

- (1) Unless the Supreme Court otherwise orders, this schedule applies to a proceeding in the court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003.
- (2) The other provisions of these rules apply, as far as they are relevant and not inconsistent with this schedule, to a proceeding in the Supreme Court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003.
- (3) Unless the Supreme Court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, that were in force immediately before 12 November 2003, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was started before that date.

*Note*      Because of the definition of *this Act* in the Corporations Act, s 9, a reference to the Corporations Act includes a reference to the Corporations Regulations.

## **EXPOSURE DRAFT**

## 1.4 Terms used in Corporations Act

A term used in the Corporations Act has the same meaning in this schedule.

*Note* Terms used in this schedule (including the notes to those rules) that are defined in the Corporations Act include the following:

- ACN (short for ‘Australian Company Number’) (see s 9)
- ARBN (short for ‘Australian Registered Body Number’) (see s 9)
- body (see s 9)
- body corporate (see s 9)
- books (see s 9)
- company (see s 9)
- corporation (see s 57A)
- daily newspaper (see s 9)
- foreign country (see s 9)
- officer, in relation to a body corporate (see s 82A)
- official liquidator (see s 9)
- Part 5.1 body (see s 9)
- Part 5.7 body (see s 9)
- register (see s 9)
- registered liquidator (see s 9)
- registered office (see s 9)
- statutory demand (see s 9).

## 1.5 Definitions—sch 6

In this schedule:

*applicant* means a person claiming interlocutory relief in a proceeding.

*ASIC Act* means the *Australian Securities and Investments Commission Act 2001* (Cwlth).

*commission* means the Australian Securities and Investments Commission.

*Corporations Regulations* means the *Corporations Regulations 2001* (Cwlth).

*defendant* means a person against whom relief (except interlocutory relief) is claimed under the Corporations Act or the ASIC Act, whether in the originating process or not.

*interlocutory process* means an interlocutory process in a proceeding.

*originating process* means an originating process in a proceeding.

*plaintiff* means a person claiming relief (except interlocutory relief) under the Corporations Act or the ASIC Act, whether in the originating process or not.

*respondent* means a person against whom interlocutory relief is claimed in a proceeding.

## **1.6 References to rules**

A reference in this schedule to a rule is a reference to a rule in this schedule.

## **1.7 Substantial compliance with forms**

- (1) It is sufficient compliance with this schedule in relation to a document that is required to be in accordance with an approved form if the document is substantially in accordance with the form or has only such variations as the nature of the case requires.
- (2) Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in this schedule.

# **EXPOSURE DRAFT**

### **1.8 Court's power to give directions**

The court may give directions in relation to the practice and procedure to be followed in a proceeding if satisfied, in the circumstances of the proceeding, that—

- (a) the provisions of the Corporations Act, the ASIC Act, or the rules of the court do not adequately provide for the practice and procedure to be followed in the proceeding; or
- (b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

### **1.9 Calculation of time**

- (1) If, for any purpose, this schedule—
  - (a) prohibits, permits or requires anything to be done within, by, or before the end of; or
  - (b) otherwise prescribes, allows or provides for;  
a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event.
- (2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.
- (3) If the last day of a period prescribed or allowed by these rules for anything to be done falls on a day that is not a business day where it is to be or may be done, it is to be or may be done on the first business day at the place after that day.
- (4) In calculating a period of time for these rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

## **EXPOSURE DRAFT**

**1.10 Extending and shortening of time**

Unless the Corporations Act, the ASIC Act or this schedule otherwise provides, the rules of the court that provide for the extending or shortening of a period of time fixed for doing anything in relation to a proceeding apply to a proceeding to which this schedule applies.

**EXPOSURE DRAFT**

## Part 6.2 Proceedings generally

### 2.1 Title of documents in a proceeding

A document for use in a proceeding, and for which there is an approved form, must be headed in the way set out in the form.

### 2.2 Originating process and interlocutory process

(1) Unless this schedule otherwise provides, a person must make an application required or permitted by the Corporations Act to be made to the court—

(a) if the application is not made in a proceeding already started in the court—by filing an originating process; and

(b) in any other case—by filing an interlocutory process.

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

(2) Unless the court otherwise directs, a person may make an application to the court in relation to a proceeding in relation to which final relief has been granted by filing an interlocutory process in the proceeding.

(3) An originating process must state—

(a) each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought; and

(b) the relief sought.

## EXPOSURE DRAFT

- (4) An interlocutory process must state—
- (a) if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of court under which the interlocutory application is made; and
  - (b) the relief sought.

### **2.3 Setting of hearing**

On receiving an originating process or interlocutory process, the registrar—

- (a) must set a time, date and place for hearing and endorse those details on the originating process or interlocutory process; and
- (b) may seal a sufficient number of copies for service and proof of service.

### **2.4 Supporting affidavits**

- (1) Unless the court otherwise directs, an originating or interlocutory process must be supported by an affidavit stating the facts in support of the process.
- (2) An affidavit in support of an originating process must annex a record of a search of the records maintained by the commission, in relation to the company that is the subject of the application to which the originating process relates, carried out no earlier than 7 days before the originating process is filed.
- (3) This rule does not apply to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.

## **EXPOSURE DRAFT**

**2.4A Application for order setting aside statutory demand  
(Corporations Act, s 459G)**

- (1) This rule applies to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.
- (2) The plaintiff may file a copy of the statutory demand, and a copy of any affidavit that accompanied the statutory demand, with the originating process seeking the order.
- (3) The plaintiff must—
  - (a) carry out a search of the records maintained by the commission in relation to the plaintiff not earlier than 7 days before the originating process is filed, and not later than the day before the hearing of the application; and
  - (b) either—
    - (i) annex the record of the search to the affidavit in support of the originating process; or
    - (ii) file the record of the search before, or tender it on, the hearing of the application.

**2.5 Affidavits made by creditors**

Subject to rule 5.4 (Affidavit in support of application for winding-up), an affidavit that is to be made by a creditor may be made—

- (a) if the creditor is a corporation—by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or

- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed—by that person; or
- (c) in any other case—by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

## **2.6 Form of affidavits**

An affidavit must be in a form that complies with—

- (a) the rules of the court; or
- (b) the rules of the Supreme Court of the State or Territory (if any) where the affidavit was sworn or affirmed.

## **2.7 Service of originating process or interlocutory process and supporting affidavit**

- (1) As soon as practicable after filing an originating process and, in any case, at least 5 days before the date set for hearing, the plaintiff must serve a copy of the originating process and any supporting affidavit on—
  - (a) each defendant (if any) to the proceeding; and
  - (b) if the corporation to which the proceeding relates is not a party to the proceeding—the corporation.
- (2) As soon as practicable after filing an interlocutory process and, in any case, at least 3 days before the date set for hearing, the applicant must serve a copy of the interlocutory process and any supporting affidavit on—
  - (a) each respondent (if any) to the interlocutory application; and
  - (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application—the corporation.

# **EXPOSURE DRAFT**

## 2.8 Notice of certain applications to be given to commission

- (1) This rule has effect in addition to the requirements of the Corporations Act that, in relation to a proceeding, particular documents are to be served on the commission or notice of particular matters is to be given to the commission.
- (2) This rule does not apply to a person making an application if the person is the commission or a person authorised by the commission.
- (3) Unless the court otherwise orders, if a person makes an application under a provision of the Corporations Act mentioned in table 2.8, column 2, the person must serve on the commission, a reasonable time before the hearing of the application, a copy of the originating or interlocutory process and supporting affidavit in relation to the application.

**Table 2.8 Applications of which notice must be given to commission**

column 1 item	column 2 provision	column 3 description of application
1	section 480	for the release of a liquidator of a company and the deregistration of the company
2	section 482 (1)	for the stay of a compulsory winding-up
3	section 509 (6)	for the deregistration of a company
4	section 536 (1)	for an inquiry into the conduct of a liquidator
5	section 601AH (2)	to reinstate the registration of a company
6	section 601CC (8)	to restore the name of an Australian body to the register

# EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of application</b>
7	section 601CL (9)	to restore the name of a foreign company to the register
8	chapter 6, 6A, 6B, 6C, 6D or 7	any application under these chapters
9	section 1317S (2) and (4)	for relief from liability for contravention of a civil penalty provision

## **2.9 Notice of appearance (Corporations Act, s 465C)**

- (1) A person who intends to appear before the court at the hearing of an application must, before appearing—
- (a) file the following:
    - (i) a notice of appearance;
 

*Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
    - (ii) if appropriate, an affidavit stating any facts on which the person intends to rely; and
  - (b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than—
    - (i) if the person is named in an originating process—3 days before the date set for hearing; or
    - (ii) if the person is named in an interlocutory process—1 day before the date set for hearing.

# **EXPOSURE DRAFT**

- (2) If the person intends to appear before the court to oppose an application for winding up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by the Corporations Act, section 465C.
- (3) The period prescribed for filing and serving the notice and affidavit required by the Corporations Act, section 465C is the period mentioned in subrule (1) (b) (i).

*Note* Under the Corporations Act, s 465C, a person may not, without the leave of the court, oppose an application for winding-up unless, within the period prescribed by the rules (see r (3)), the person has filed, and served on the plaintiff, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

## **2.10 Intervention in proceeding by commission (Corporations Act, s 1330)**

- (1) If the commission intends to intervene in a proceeding, the commission must file a notice of intervention.

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

- (2) Not later than 3 days before the date set for the hearing at which the commission intends to appear in the proceeding, the commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

# **EXPOSURE DRAFT**

## **2.11 Publication of notices**

If a rule requires a notice in relation to a body to be published in accordance with this rule, the notice must be published once in a daily newspaper circulating generally in the State or Territory where the body has its principal, or last-known, place of business.

*Note* Under the Corporations Act, certain notices may also be required to be published in the Commonwealth Gazette. Nothing in this rule is intended to affect the operation of any provision of the Corporations Act that requires publication of a notice in the Commonwealth Gazette.

## **2.12 Proof of publication**

- (1) This rule applies in relation to any matter published in relation to a proceeding.
- (2) Unless this schedule otherwise provides, or the court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file—
  - (a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is annexed or exhibited a copy of the published matter; or
  - (b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.
- (3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

# **EXPOSURE DRAFT**

**2.13 Leave to creditor, contributory or officer to be heard**

- (1) The court may grant leave to any person who is, or claims to be—
  - (a) a creditor, contributory or officer of a corporation; or
  - (b) an officer of a creditor, or contributory, of a corporation; or
  - (c) any other interested person;to be heard in a proceeding without becoming a party to the proceeding.
- (2) If the court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, and that the costs should be borne by the person to whom leave was granted, the court may—
  - (a) direct that the person pay the costs; and
  - (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the court's satisfaction.
- (3) The court may order that a person who is, or claims to be, a creditor, contributory or officer of a corporation be added as a defendant to the proceeding.
- (4) The court may grant leave to a person under subrule (1), or order that a person be added as a defendant to a proceeding under subrule (3)—
  - (a) on application by the person or a party to the proceeding; or
  - (b) on the court's own initiative.

**EXPOSURE DRAFT**

- (5) The court may—
- (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the court, at the expense of the corporation; and
  - (b) remove any person so appointed.

**2.14 Inquiry in relation to corporation's debts etc**

The court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

**2.15 Meetings ordered by the court**

Subject to the Corporations Act, this schedule and any direction of the court to the contrary, the Corporations Regulations, regulations 5.6.12 to 5.6.36A apply to meetings ordered by the court.

**EXPOSURE DRAFT**

## **Part 6.3                      Compromises and arrangements    in relation to Part 5.1 bodies**

### **3.1                      Application—pt 1.3**

This part applies if an application is made to the court for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members.

### **3.2                      Nomination of chairperson for meeting**

Before the hearing of an application under the Corporations Act, section 411 (1), (1A) or (1B), the plaintiff must file an affidavit stating—

- (a) the names of the people who have been nominated to be the chairperson and alternate chairperson of the meeting; and
- (b) that each person nominated—
  - (i) is willing to act as chairperson; and
  - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
  - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and

## **EXPOSURE DRAFT**

(d) that the person does not fall within the Corporations Act, section 411 (7) (a) to (f), except as disclosed in the affidavit.

### **3.3 Order for meetings to identify proposed scheme**

- (1) An order under the Corporations Act, section 411 (1) or (1A) ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.
- (2) Unless the court otherwise orders, a meeting of members ordered under the Corporations Act, section 411 must be convened, held and conducted in accordance with—
  - (a) the provisions of the Corporations Act, part 2G.2 that apply to the members of a company; and
  - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with the Corporations Act, part 2G.2.
- (3) Unless the court otherwise orders, a meeting of a class of holders of convertible securities ordered under the Corporations Act, section 411 must be convened, held and conducted as if—
  - (a) the holders were a separate class of members; and
  - (b) the meeting were a meeting of members convened, held and conducted under subrule (2).
- (4) However, subrule (3) only applies to a meeting of a class of holders of convertible securities to the extent that the subrule is not inconsistent with the applicable provisions of the instrument under which the securities were issued.

## **EXPOSURE DRAFT**

**3.4 Notice of hearing (Corporations Act, s 411 (4) and s 413 (1))**

- (1) This rule applies to—
  - (a) an application, under the Corporations Act, section 411 (4), for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and
  - (b) an application, under the Corporations Act, section 413 (1), for an order in relation to the reconstruction of a Part 5.1 body, or Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.
- (2) Unless the court otherwise orders, the plaintiff must publish a notice of the hearing 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.
- (3) The notice must be published in accordance with rule 2.11 (Publication of notices) at least 5 days before the date set for the hearing of the application.

**3.5 Copy of order approving compromise or arrangement to be lodged with commission**

If the court makes an order under the Corporations Act, section 411 (1), (1A) or (4) or section 413 (1), the plaintiff must, as soon as practicable after the order is made—

- (a) have the order sealed; and
- (b) lodge an office copy of the order with the commission; and
- (c) serve an office copy of the order on anyone appointed to administer the compromise or arrangement.

## **Part 6.4**

# **Receivers and other controllers of corporation property (Corporations Act, pt 5.2)**

### **4.1 Inquiry into conduct of controller (Corporations Act, s 423)**

A complaint to the court under the Corporations Act, section 423 (1) (b) about an act or omission of a receiver, or a controller appointed by the court, must be made by an originating process seeking an inquiry in relation to the complaint.

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## **Part 6.5                      Winding-up proceedings (including oppression proceedings where winding-up is sought)**

### **5.1                      Application—pt 6.5**

This part applies to the following applications for the winding-up of a company:

- (a) an application for an order under the Corporations Act, part 2F.1;
- (b) an application under the Corporations Act, part 5.4 or part 5.4A.

### **5.2                      Affidavit accompanying statutory demand (Corporations Act, s 459E (3))**

For the Corporations Act, section 459E (3), the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

- (a) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (b) not state a proceeding number, or refer to a court proceeding, in any heading or title to the affidavit.

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

**5.3 Application for leave to apply for winding-up in insolvency (Corporations Act, s 459P (2))**

An application for leave to apply to the court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

**5.4 Affidavit in support of application for winding-up (Corporations Act, s 459P, s 462, s 464)**

- (1) The affidavit in support of an originating process seeking an order that a company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.
- (2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must—
  - (a) verify service of the demand on the company; and
  - (b) verify the failure of the company to comply with the demand; and
  - (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.
- (3) If the application is made in reliance on the ground mentioned in the Corporations Act, section 461 (1) (a), the affidavit must—
  - (a) state whether the company is able to pay all its debts as and when they become due and payable; and
  - (b) refer to the company's most recent balance sheet and profit and loss statement as an annexure or exhibit to the affidavit, or explain their absence.

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- (4) The affidavit must be made within 7 days before the originating process is filed.

### **5.5 Consent of liquidator (Corporations Act, s 532 (9))**

- (1) For the Corporations Act, section 532 (9), an official liquidator must consent to act as liquidator of a company.

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

- (2) In an application for an order that a company be wound up, the plaintiff must—
- (a) before the hearing of the application, file the consent mentioned in subrule (1) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
  - (b) serve a copy of the consent on the company at least 1 day before the hearing.

- (3) In this rule:

*liquidator* does not include a provisional liquidator.

### **5.6 Notice of application for winding-up**

- (1) Unless the court otherwise orders, the plaintiff must publish a notice of the application for an order that a company be wound up.

*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 in accordance with rule 2.11 (Publication of notices)—
- (a) at least 3 days after the originating process is served on the company; and
  - (b) at least 7 days before the date set for hearing of the application.

**5.7 Applicant to make copies of documents available**

A copy of any document filed in a proceeding to which this part applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

**5.8 Discontinuance of application for winding-up**

An application for an order that a company be wound up may not be discontinued except with the leave of the court.

**5.9 Appearance before registrar**

After filing an originating process seeking an order that a company be wound up, the plaintiff must, if required—

- (a) appear before the registrar on a date to be appointed by the registrar; and
- (b) satisfy the registrar that the plaintiff has complied with the Corporations Act and these rules in relation to applications for a winding-up order.

**5.10 Order substituting plaintiff in application for winding-up (Corporations Act, s 465B)**

- (1) If the court makes an order under the Corporations Act, section 465B, the court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.

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

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- (2) The notice must be published—
  - (a) in accordance with rule 2.11 (Publication of notices) at least 7 days before the date set for the hearing of the application; or
  - (b) as otherwise directed by the court.

**5.11 Notice of winding-up order and appointment of liquidator**

- (1) This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.
- (3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment.

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

- (4) The notice must be published in accordance with rule 2.11 (Publication of notices).
- (5) In this rule:  
*liquidator* does not include a provisional liquidator.

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## **Part 6.6**                      **Provisional liquidators** **(Corporations Act, pt 5.4B)**

### **6.1**            **Appointment of provisional liquidator (Corporations Act, s 472)**

- (1) An application by a company, a creditor or contributory of the company, or the commission, under the Corporations Act, section 472 (2), for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.

*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) an order is made appointing a provisional liquidator; and
  - (b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the company's property;

the order must include a short description of the part of the company's property that the provisional liquidator may take into custody.

- (3) The court may require the plaintiff to give an undertaking as to damages.

## **6.2 Notice of appointment of provisional liquidator**

- (1) This rule applies if the court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must—
  - (a) except if the plaintiff is the commission—lodge an office copy of the order with the commission; and
  - (b) serve an office copy of the order on the company (except if the plaintiff is the company) and on anyone else as directed by the court; and
  - (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).
- (3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment.

*Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (4) The notice must be published in accordance with rule 2.11 (Publication of notices).

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## **Part 6.7                      Liquidators**

### **7.1                      Resignation of liquidator (Corporations Act, s 473 (1))**

- (1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and give to the commission, a memorandum of resignation.
- (2) The resignation takes effect on the filing and giving of the memorandum.

### **7.2                      Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)**

- (1) If, for any reason, there is no liquidator acting in a winding-up, the court may—
  - (a) for a winding-up by the court—appoint another official liquidator whose written consent has been filed; and
  - (b) for a voluntary winding-up—appoint another registered liquidator whose written consent has been filed.
- (2) The court may make the appointment—
  - (a) in any case—on application by the commission, a creditor or a contributory; or
  - (b) for a winding-up by the court—on its own initiative.

### **7.3                      Report to liquidator as to company's affairs (Corporations Act, s 475)**

- (1) If a person is required under the Corporations Act, section 475 to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.

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- (2) Except by order of the court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been—
  - (a) sanctioned by the liquidator before being incurred; or
  - (b) assessed.
- (3) The liquidator must report to the court any default in complying with the requirements of the Corporations Act, section 475.
- (4) In this rule:

*liquidator* includes a provisional liquidator.

**7.4 Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)**

If, in a winding-up by the court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, not later than 14 days after doing so, file the certificate and a copy of the list.

**7.5 Release of liquidator and deregistration of company (Corporations Act, s 480 (c) and (d))**

- (1) This rule applies to an application by the liquidator of a company—
  - (a) for an order that the liquidator be released; or
  - (b) for an order that the liquidator be released and that the commission deregister the company.
- (2) The interlocutory process seeking the order must include—
  - (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection not later than 21 days after the date of service of the interlocutory process; and

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- (b) a statement setting out the terms of the Corporations Act, section 481 (3).

*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* The Corporations Act, s 481 (3) provides that an order of the court releasing a liquidator discharges the liquidator from all liability in relation to any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

- (3) The supporting affidavit must include details of the following matters:
- (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;
  - (b) any calls made on contributories in the course of the winding-up;
  - (c) any dividends paid in the course of the winding-up;
  - (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
  - (e) whether the commission has appointed an auditor to report on an account or statement of the position in the winding-up under the Corporations Act, section 539 (2);
  - (f) whether the court has ordered a report on the accounts of the liquidator to be prepared;

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- (g) whether any objection to the release of the liquidator has been received by the liquidator from—
    - (i) an auditor appointed by the commission or by the court;  
or
    - (ii) any creditor, contributory or other interested person;
  - (h) whether any report has been submitted by the liquidator to the commission under the Corporations Act, section 533;
  - (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
  - (j) any property disclaimed in the course of the winding-up;
  - (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
  - (l) any costs, charges or expenses payable by the liquidator if the court grants the liquidator's release;
  - (m) if the application is made under the Corporations Act, section 480 (c)—the facts and circumstances because of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the following statements, including, if appropriate, the words in brackets:
- (a) 'To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit]';

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- (b) 'I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit]'
- (5) The liquidator must file with, or annex to, the supporting affidavit—
  - (a) a statement of the financial position of the company at the date when the interlocutory process seeking release was filed; and
  - (b) a summary of the liquidator's receipts and payments in winding up the company.
- (6) Unless the court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding-up, and on each contributory, a copy of the interlocutory process accompanied by—
  - (a) a copy of the summary of the liquidator's receipts and payments in winding up the company; and
  - (b) a copy of the statement of the financial position of the company at the date when the interlocutory process seeking release was filed.

## **7.6 Objection to release of liquidator**

- (1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory process seeking release—
  - (a) file—
    - (i) a notice of objection; and
      - Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
    - (ii) if appropriate, an affidavit stating any facts relied on; and

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(b) serve a copy of the notice and the affidavit (if any) on the liquidator.

- (2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, not later than 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

**7.7 Report on accounts of liquidator (Corporations Act, s 481)**

- (1) If the court orders that a report on the accounts of a liquidator be prepared under the Corporations Act, section 481 (1), the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must—
- (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words ‘Auditor’s report under section 481 (1) of the *Corporations Act 2001*’; and
  - (b) serve a copy of the report on the liquidator; and
  - (c) give a copy of the report to the commission.
- (3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or the commission.

**7.8 Application for payment of call (Corporations Act, s 483 (3) (b))**

The affidavit in support of an application by the liquidator of a company, under the Corporations Act, section 483 (3) (b), for an order for the payment of a call must, if a form is approved under the *Court Procedures Act 2004*, section 8 for this rule, be in accordance with the approved form.

**7.9 Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488 (2))**

- (1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.
- (2) At least 14 days before the date set for the hearing of the application, the liquidator must publish a notice 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.

- (3) The notice must be published in accordance with rule 2.11 (Publication of notices).

**7.10 Powers delegated to liquidator by the court (Corporations Act, s 488)**

Subject to the Corporations Act, this schedule and any order of the court, the powers and duties given to the court by the Corporations Act, part 5.4B in relation to the matters mentioned in the Corporations Act, section 488 (1) may be exercised by a liquidator appointed by the court as an officer of the court and subject to the control of the court.

**7.11 Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))**

- (1) A complaint to the court under the Corporations Act, section 536 (1) (b) must be made—
  - (a) for a winding-up by the court—by an interlocutory process seeking an inquiry; and
  - (b) for a voluntary winding-up—by an originating process seeking an inquiry.

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- (2) A report to the court by the commission under the Corporations Act, section 536 (2) must be made—
  - (a) for a winding-up by the court—by filing—
    - (i) an interlocutory process seeking orders under the subsection; and
    - (ii) a written report in a sealed envelope that is marked with the title and number of the proceeding; and
  - (b) for a voluntary winding-up—by filing—
    - (i) an originating process seeking orders under the subsection; and
    - (ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.
- (3) The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.
- (4) Except with the leave of the court, a report made under the Corporations Act, section 536 (2) is not available for inspection by anyone except the liquidator or the commission.
- (5) In this rule:  
*liquidator* includes a provisional liquidator.

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## **Part 6.8                      Special managers (Corporations Act, pt 5.4B)**

### **8.1                      Application for appointment of special manager (Corporations Act, s 484)**

- (1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers that, in the liquidator's opinion, should be entrusted by the court to the special manager.
- (2) The supporting affidavit must state—
  - (a) the circumstances making it proper that a special manager be appointed; and
  - (b) details of the remuneration proposed to be paid to the special manager; and
  - (c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

### **8.2                      Security given by special manager (Corporations Act, s 484)**

- (1) The court may, from time to time, direct that the amount of security given by a special manager be varied.
- (2) Unless the court otherwise directs, the costs of providing the security given by a special manager in relation to a particular winding-up—
  - (a) are the personal expenses of the special manager; and

- (b) must not be charged against the property of the company as an expense incurred in the winding-up.

**8.3 Special manager's receipts and payments (Corporations Act, s 484)**

- (1) A special manager must give to the liquidator—
  - (a) an account of the special manager's receipts and payments; and
  - (b) a statutory declaration verifying the account.
- (2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

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## **Part 6.9                      Remuneration of office-holders**

### **9.1                      Remuneration of receiver (Corporations Act, s 425 (1))**

- (1) This rule applies to an application by a receiver of property of a corporation for an order under the Corporations Act, section 425 (1) fixing the receiver's remuneration.

*Note*        Under the Corporations Act, s 425 (2) (b), the court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

- (2) At least 21 days before filing an originating or interlocutory process seeking the order, the receiver must serve a notice of the receiver's intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following:

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

- (a) the person who appointed the receiver;
- (b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);
- (c) any administrator, liquidator or provisional liquidator of the corporation;
- (d) any administrator of a deed of company arrangement executed by the corporation;
- (e) if there is no-one of the kind mentioned in paragraph (c) or (d)—
  - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and

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- (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or anyone mentioned in subrule (2) (c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—
  - (a) the receiver may file an affidavit, made after the end of that period, in support of the originating or interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
    - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
  - (b) the receiver may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
  - (c) the application may be so dealt with.
- (5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory, or other person, who has given a notice of objection.

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- (6) An affidavit in support of the originating or interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the receiver; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and
  - (d) state particulars of any objection of which the receiver has received notice; and
  - (e) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

**9.2 Remuneration of administrator (Corporations Act, s 449E (1))**

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under the Corporations Act, section 449E (1) fixing the administrator's remuneration.
- (2) The administrator must not apply for the order until after the date of the meeting of creditors mentioned in the Corporations Act, section 449E (1) (a).
- (3) At least 21 days before filing an originating or interlocutory process seeking the order, the administrator must serve a notice of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following:

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

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- (a) each creditor who was present, in person or by proxy at the meeting of creditors;
  - (b) each member of any committee of creditors;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the administrator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating or interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the administrator may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
  - (c) the application may be so dealt with.
- (6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.

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- (7) An affidavit in support of the originating or interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the administrator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
  - (d) state particulars of any objection of which the administrator has received notice; and
  - (e) if the administration is continuing—give details of any matters delaying the completion of the administration.

**9.3 Remuneration of provisional liquidator (Corporations Act, s 473 (2))**

- (1) This rule applies to an application by a provisional liquidator of a company for an order under the Corporations Act, section 473 (2) determining the provisional liquidator's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following:

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

- (a) any liquidator (except the provisional liquidator) of the company;

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- (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
  - (c) each member of the company whose shareholding represents at least 10 % of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (i) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
  - (c) the application may be so dealt with.

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- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the order—
- (a) on each creditor or contributory who has given a notice of objection; and
  - (b) on the liquidator (if any).
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the provisional liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and
  - (d) state particulars of any objection of which the provisional liquidator has received notice; and
  - (e) if the winding-up proceeding has not been completed—give details of—
    - (i) any reasons known to the provisional liquidator why the winding-up proceeding has not been completed; and
    - (ii) any reasons why the provisional liquidator's remuneration should be determined before the completion of the winding-up proceeding.

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**9.4 Remuneration of liquidator (Corporations Act, s 473 (3))**

- (1) This rule applies to an application by a liquidator of a company for an order under the Corporations Act, section 473 (3) determining the liquidator's remuneration.
- (2) The application—
  - (a) must be made by interlocutory process in the winding-up proceeding; and
  - (b) must not be made until after the date of the meeting of creditors mentioned in the Corporations Act, section 473 (4).
- (3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice of the liquidator's intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following:

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

  - (a) each creditor who was present, in person or by proxy, at the meeting of creditors;
  - (b) each member of any committee of creditors;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

**EXPOSURE DRAFT**

- (5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
  - (c) the application may be so dealt with.
- (6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and

## **EXPOSURE DRAFT**

- (d) state particulars of any objection of which the liquidator has received notice; and
- (e) if the winding-up is continuing—give details of any matters delaying the completion of the winding-up.

**9.5 Remuneration of special manager (Corporations Act, s 484 (2))**

- (1) This rule applies to an application by a special manager of the property or business of a company for an order under the Corporations Act, section 484 (2) fixing the special manager's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice of the special manager's intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following:

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

- (a) the liquidator of the company;
- (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

**EXPOSURE DRAFT**

- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the special manager may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and
  - (c) the application may be so dealt with.
- (6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory process seeking the order—
- (a) on each creditor or contributory who has given a notice of objection; and
  - (b) on the liquidator.

## **EXPOSURE DRAFT**

- (7) The affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the special manager; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and
  - (d) state particulars of any objection of which the special manager has received notice; and
  - (e) if the special management is continuing—give details of any matters delaying the completion of the special management.

## **EXPOSURE DRAFT**

## **Part 6.10 Winding-up generally**

### **10.1 Determination of value of debts or claims (Corporations Act, s 554A (2))**

A reference to the court by a liquidator of a company under the Corporations Act, section 554A (2) (b) must be made—

- (a) for a winding-up by the court—by filing an interlocutory process seeking an order estimating, or determining a method for working out, the value of the debt or claim; and
- (b) for a voluntary winding-up—by filing an originating process seeking an order estimating, or determining a method for working out, the value of the debt or claim.

### **10.2 Disclaimer of contract (Corporations Act, s 568 (1A))**

- (1) The affidavit in support of an application by a liquidator, under the Corporations Act, section 568 (1A), for leave to disclaim a contract in relation to a company must—
  - (a) state the people interested, and their interests, under the contract; and
  - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on anyone interested in the contract.

## **EXPOSURE DRAFT**

**10.3 Winding-up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act, s 601ND)**

These rules apply, with any necessary changes, and in the same way as they apply to a company, in relation to the winding-up of a Part 5.7 body or a registered scheme.

**EXPOSURE DRAFT**

## **Part 6.11 Examinations and orders (Corporations Act, pt 5.9, divs 1 and 2)**

### **11.1 Meaning of *examination summons* in pt 6.11**

In this part:

*examination summons* means a summons under the Corporations Act, section 596A or section 596B for the examination of a person about a corporation's examinable affairs.

### **11.2 Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)**

- (1) An application for an order for the examination or investigation of a person under the Corporations Act, section 411 (9) (b), section 423 or section 536 (3) may be made by—
  - (a) the commission; or
  - (b) a person authorised by the commission; or
  - (c) a creditor or contributory; or
  - (d) anyone else aggrieved by the conduct of—
    - (i) a person appointed to administer a compromise or arrangement; or
    - (ii) a controller; or
    - (iii) a liquidator or provisional liquidator.
- (2) The application may be made without notice to anyone.

## **EXPOSURE DRAFT**

- (3) The provisions of this part that apply to an examination under the Corporations Act, part 5.9, division 1 apply, with any necessary changes, to an examination or an investigation under the Corporations Act, section 411 (9) (b), section 423 or section 536 (3).

**11.3 Application for examination summons (Corporations Act, s 596A, s 596B)**

- (1) An application for the issue of an examination summons must be made by filing an interlocutory or originating process.
- (2) The application may be made without notice to anyone.
- (3) The originating or interlocutory process seeking the issue of the examination summons must be—
- (a) supported by an affidavit stating the facts in support of the process; and
  - (b) accompanied by a draft examination summons.

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

- (4) The originating or interlocutory process and supporting affidavit must be filed in a sealed envelope marked, as appropriate—
- (a) ‘Application and supporting affidavit for issue of summons for examination under section 596A of the *Corporations Act 2001*’; or
  - (b) ‘Application and supporting affidavit for issue of summons for examination under section 596B of the *Corporations Act 2001*’.
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating or interlocutory process and the supporting affidavit.

## EXPOSURE DRAFT

- (6) If the application is not made by the commission, the commission must be given notice of the application and, if required by the commission, served with a copy of the originating or interlocutory process and the supporting affidavit.
- (7) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by anyone.

#### **11.4 Service of examination summons**

An examination summons issued by the court must be personally served, or served in any way that as the court may direct, on the person who is to be examined at least 8 days before the date set for the examination.

#### **11.5 Discharge of examination summons**

- (1) This rule applies if a person is served with an examination summons.
- (2) Not later than 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—
  - (a) an interlocutory process seeking an order discharging the summons; and
  - (b) an affidavit stating the facts in support of the interlocutory process.

## **EXPOSURE DRAFT**

- (3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on—
- (a) the person who applied for the examination; and
  - (b) unless that person is the commission or a person authorised by the commission, the commission.

**11.6 Filing of record of examination (Corporations Act, s 597 (13))**

If the court makes an order in relation to an examination under the Corporations Act, section 597 (13), the court may give directions for the filing of the written record of the examination.

**11.7 Authentication of transcript of examination (Corporations Act, s 597 (14))**

For the Corporations Act, section 597 (14), a transcript of an examination may be authenticated—

- (a) by the person, or people, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or people, that the record is a true transcript of the record of examination; or
- (b) by anyone present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

## **EXPOSURE DRAFT**

**11.8 Inspection of record or transcript of examination or investigation under Corporations Act, s 411, s 423 or s 536**

- (1) A written record or transcript of an examination or investigation under the Corporations Act, section 411, section 423 or section 536 is not available for inspection by anyone except—
  - (a) with the consent of the liquidator (if any) or the commission;  
or
  - (b) by leave of the court.
- (2) This rule does not apply to the liquidator, the commission or anyone authorised by the commission.

**11.9 Entitlement to record or transcript of examination held in public**

- (1) This rule applies if—
  - (a) an examination under the Corporations Act, section 597 is held completely or partly in public; and
  - (b) a written record or transcript of the examination is filed in the court.
- (2) The person examined may apply to the registrar, not later than 3 years after the completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.
- (3) On receiving an application from a person under subrule (2), and any applicable fee, the registrar must give a copy of the record or transcript to the person.

**EXPOSURE DRAFT**

**11.10 Default in relation to examination**

- (1) This rule applies if a person is summoned or ordered by the court to attend for examination, and—
  - (a) without reasonable cause, the person—
    - (i) fails to attend at the time and place appointed; or
    - (ii) fails to attend from day-to-day until the completion of the examination; or
    - (iii) fails to take an oath or make an affirmation; or
    - (iv) fails to answer a question that the court directs the person to answer; or
    - (v) fails to produce books that the summons requires the person to produce; or
    - (vi) fails to comply with a requirement by the court to sign a written record of the examination; or
  - (b) before the day set for the examination, the person who applied for the summons or order satisfies the court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- (2) The court may—
  - (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
  - (b) make any other orders that the court considers just or necessary.

**EXPOSURE DRAFT**

**11.11 Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act, s 598)**

- (1) This rule applies to a person applying for an order under the Corporations Act, section 598.
- (2) In addition to complying with rule 2.7 (Service of originating process or interlocutory process and supporting affidavit) and rule 2.8 (Notice of certain applications to be given to commission), the person must serve a copy of the originating or interlocutory process and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

*Note* Under r 2.7, a plaintiff must serve a copy of the originating process, and any supporting affidavit, on a defendant to the proceeding and, if necessary, on the corporation to which the proceeding relates; and an applicant must serve a copy of an interlocutory process, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on the commission (see r 2.8).

**EXPOSURE DRAFT**

## **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)**

### **12.1                      Service on commission in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7**

If the commission is not a party to an application made under the Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7, the plaintiff must serve a copy of the originating process and the supporting affidavit on the commission as soon as practicable after filing the originating process.

### **12.1A                      Reference to court of question of law arising in proceeding before Takeovers Panel (Corporations Act, s 659A)**

The procedures in the *Federal Court Rules*, order 50 (Case stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the court under the Corporations Act, section 659A.

### **12.2                      Application for summons for appearance of person (Corporations Act, s 1071D (4))**

- (1) An application for the issue of a summons under the Corporations Act, section 1071D (4) must be made by filing an originating or interlocutory process.

- (2) The applicant may be the only party to the application.
- (3) The originating or interlocutory process seeking the issue of the summons must be—
  - (a) supported by an affidavit stating the facts in support of the process; and
  - (b) accompanied by a draft summons.

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

**12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)**

As soon as practicable after filing an originating process under the Corporations Act, section 1071F, the plaintiff must serve a copy of the originating process and the supporting affidavit on—

- (a) the company; and
- (b) anyone against whom an order is sought.

**EXPOSURE DRAFT**

## Part 6.13

*Note* These rules do not include a pt 6.13.  
The division number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

## EXPOSURE DRAFT

## **Part 6.14 Powers of courts (Corporations Act, pt 9.5)**

### **14.1 Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act, s 554A, s 1321)**

- (1) All appeals to the court authorised by the Corporations Act must be started by an originating or interlocutory process that states—
  - (a) the act, omission or decision complained of; and
  - (b) for an appeal against a decision—whether all or part only of the decision is complained of and, if part only, which part of the decision is complained of; and
  - (c) the grounds on which the complaint is based.
- (2) Unless the Corporations Act otherwise provides, the originating or interlocutory process must be filed within—
  - (a) 21 days after the date of the act, omission or decision appealed against; or
  - (b) any further time allowed by the court.
- (3) The court may extend the time for filing the originating or interlocutory process either before or after the time for filing ends and whether or not the application for extension is made before the time ends.
- (4) As soon as practicable after filing the originating or interlocutory process and, in any case, at least 5 days before the date set for hearing, the appellant must serve a copy of the process, and any supporting affidavit, on each person directly affected by the appeal.

## **EXPOSURE DRAFT**

- (5) As soon as practicable after being served with a copy of the originating or interlocutory process and any supporting affidavit, a person whose act, omission or decision is being appealed against must file an affidavit—
- (a) stating the basis on which the act, omission or decision was done or made; and
  - (b) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the appellant.

## **EXPOSURE DRAFT**

## **Part 6.15 Proceedings under ASIC Act**

### **15.1 Reference to court of question of law arising at hearing of commission (ASIC Act, s 61)**

The procedures in the *Federal Court Rules*, order 50 (Case stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising at a hearing by the commission to the court under the ASIC Act, section 61.

### **15.2**

*Note* These rules do not include a r 15.2.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

### **15.3 Application for inquiry (ASIC Act, s 70, s 201, s 219)**

An application for an inquiry under the ASIC Act, section 70 (3), section 201 (3) or section 219 (7) must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

## **EXPOSURE DRAFT**

## Part 6.16

*Note* This part of the uniform corporations rules has not been included.  
These rules deal with the powers of the court that may be exercised by the master or registrar of the court (see pt 6.4 (Master) and pt 6.5 (Registrar)).

## EXPOSURE DRAFT

## Dictionary

(see r 7)

*Note 1* The Legislation Act contains definitions and other provisions relevant to these rules.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- adult
- asset
- business day
- child
- corporation
- Corporations Act
- correctional centre
- entity
- external territory
- fail
- foreign country
- guardianship tribunal
- instrument (see s 14)
- NSW correctional institution
- person
- position
- property
- public servant
- solicitor
- territory law.

*accompanying affidavit*, for division 2.12.3 (Appointment of medical expert for Civil Law (Wrongs) Act)—see rule 1222.

*account*, for a financial institution, for part 2.18 (Enforcement)—see rule 2000.

## EXPOSURE DRAFT

**accounting party**, for division 2.20.2 (Taking accounts)—see rule 2720.

**accused person**—

- (a) for division 4.1.2 (Criminal proceedings—service)—see rule 4005; and
- (b) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and
- (c) for part 4.3 (Supreme Court criminal proceedings)—see rule 4700; and
- (d) for division 4.3.3 (Supreme court criminal proceedings—bail)—see rule 4720.

**active party**, to a proceeding, means a party who has an address for service in the proceeding, other than a party—

- (a) either—
  - (i) against whom judgment has been entered in the proceeding; or
  - (ii) in relation to whom the proceeding has been dismissed, withdrawn, discontinued or permanently stayed; and
- (b) against whom there is no further claim in the proceeding.

**addressee**, for a subpoena, means the person who is the subject of the order expressed in the subpoena.

## EXPOSURE DRAFT

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*address for service*, in relation to a proceeding (including a proceeding on an application in the proceeding), means—

- (a) for a person represented by a solicitor in the proceeding—
  - (i) if the solicitor has a place of business in the ACT—the business address, and any of the following, given by the solicitor to the court for the proceeding:
    - (A) a document exchange box number in the ACT;
    - (B) a postbox number at a post office in the ACT;
    - (C) a fax number;
    - (D) an email address; or
  - (ii) in any other case—the address of a place in the ACT given by the solicitor to the court for the proceeding; or
- (b) for a plaintiff, defendant or anyone else acting in person in a civil proceeding—
  - (i) if the person has a home or place of business in the ACT—the home or business address given by the person to the court for the proceeding; or
  - (ii) in any other case—the address of a place in the ACT given by the person to the court for the proceeding; or
- (c) for an accused person or convicted person acting in person—
  - (i) if the person is in custody—the address of the place of custody, whether in or outside the ACT; or
  - (ii) if the person is granted bail—the address given for bail, whether in or outside the ACT; or

## EXPOSURE DRAFT

- (iii) in any other case—the address for service (if any) in the ACT given by the person to the registrar; or
- (d) for the director of public prosecutions—the director’s business address in the ACT, and any of the following, given by the director to the court for the proceeding:
  - (i) a document exchange box number in the ACT;
  - (ii) a postbox number at a post office in the ACT;
  - (iii) a fax number;
  - (iv) an email address.

***Administration and Probate Act***, for part 3.1 (Administration and probate)—see rule 3000.

***administration bond***, for part 3.1 (Administration and probate)—see rule 3050.

***admission***, for part 3.11 (Legal profession)—see rule 3600.

***Adoption Act***, for part 3.2 (Adoption)—see rule 3150.

***adoption proceeding***, for part 3.2 (Adoption)—see rule 3150.

***affidavit in support***, for division 2.11.3 (Default by defendant)—see rule 1119.

***amendment order***, for part 3.2 (Adoption)—see rule 3150.

***ancillary order***, for division 2.9.4 (Injunctions and similar orders)—see rule 742.

***another court***, for subdivision 2.9.4.2 (Freezing orders)—see rule 740.

## EXPOSURE DRAFT

***appeal***—

- (a) for part 5.1 (Appeals to court other than Court of Appeal)—see rule 5000; and
- (b) for division 5.2.4 (Appeals to Court of Appeal from Supreme Court generally)—see rule 5400; and
- (c) for division 5.2.6 (Written cases)—see rule 5600.

***appearance date***, for part 4.3 (Supreme Court criminal proceedings)—see rule 4731.

***appellant***, for division 5.2.6 (Written cases)—see rule 5600.

***appellate proceeding*** means a proceeding to which chapter 5 applies.

*Note* For the proceedings to which ch 5 applies, see the following rules:

- r 5002 (Application—pt 5.1)
- r 5310 (Application—div 5.2.2)
- r 5331 (Application—div 5.2.3)
- r 5401 (Application—div 5.2.4)
- r 5505 (Application—sdiv 5.2.5.2)
- r 5520 (Application of div 5.2.3 to certain appeals by DPP)
- r 5601 (Application of div 5.2.6 to case stated etc).
- r 5850 (Application—div 5.5.1).

***applicable convention***, in relation to a request issued by or on behalf of a court or tribunal of a foreign country, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

**EXPOSURE DRAFT**

***applicant***—

- (a) for subdivision 2.9.4.2 (Freezing orders)—see rule 740; and
- (b) for subdivision 2.9.4.3 (Search orders)—see rule 750; and
- (c) for division 5.2.6 (Written cases)—see rule 5600; and
- (d) for division 5.4.2 (Reference appeals to Court of Appeal following acquittals on indictment)—see rule 5800; and
- (e) for division 6.10.3 (Exchange of correspondence before making application in proceeding)—see rule 6740; and
- (f) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

***application***—

- (a) for division 5.2.6 (Written cases)—see rule 5600; and
- (b) in a proceeding—see rule 6006 (Application—pt 6.2).

***application for admission***, for part 3.11 (Legal profession)—see rule 3600.

***appointed expert***, for division 2.12.3 (Appointment of medical expert for Civil Law (Wrongs) Act)—see the *Civil Law (Wrongs) Act 2002*, section 84.

***approved form*** means a form approved under the *Court Procedures Act 2004*, section 8 for these rules.

***arbitration***, for part 3.13 (Workers compensation)—see rule 3880.

***ASIC Act***, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

***assessed costs*** means costs and disbursements assessed under part 2.17 (Costs).

***attached*** to a document includes incorporated into the document.

## EXPOSURE DRAFT

*Australia*, for division 6.8.9 (Service outside Australia—general)—see rule 6500.

*Australian court*, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

*authorised DX system* means the document exchange approved by practice note.

*bailiff*—see the *Magistrates Court Act 1930*, dictionary.

*business*—see the *Business Names Act 1963*, dictionary.

*business name*—see the *Business Names Act 1963*, dictionary.

*carrying on business*—see the *Business Names Act 1963*, section 4A.

*case management meeting*, for part 3.13 (Workers compensation)—see rule 3880.

*case statement*, for part 4.3 (Supreme Court criminal proceedings)—see rule 4732.

*category A proceeding*, for part 2.13 (Pre-trial procedures)—see rule 1302.

*category B proceeding*, for part 2.13 (Pre-trial procedures)—see rule 1302.

*category C proceeding*, for part 2.13 (Pre-trial procedures)—see rule 1302.

*category D proceeding*, for part 2.13 (Pre-trial procedures)—see rule 1302.

*caveator*, for division 3.1.8 (Caveats)—see rule 3070.

*certiorari order*, for part 3.10 (Judicial review)—see rule 3550.

*charging order*—see rule 2401.

## EXPOSURE DRAFT

**chief executive**, for part 3.2 (Adoption)—see rule 3150.

**civil proceeding** does not include a criminal proceeding.

**claim**, for part 3.13 (Workers compensation)—see rule 3880.

**claim for relief** includes—

- (a) a claim for possession of land; and
- (b) a claim for delivery of goods; and
- (c) a claim for the recovery of damages or another amount; and
- (d) a claim for a declaration of right; and
- (e) a claim for the decision of the court on any issue; and
- (f) any other claim (whether legal, equitable or otherwise) that is justiciable in the court.

**code of conduct**, for part 2.12 (Expert evidence)—see rule 1200.

**Commercial Arbitration Act**, for part 3.3 (Commercial arbitration)—see rule 3250.

**commission**, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

**Commonwealth Evidence Act** means the *Evidence Act 1995* (Cwlth).

**conciliation**, for part 3.13 (Workers compensation)—see rule 3880.

**condition** includes term.

## EXPOSURE DRAFT

***conduct money***, for a subpoena, means an amount of money or its equivalent sufficient to meet the reasonable expenses of the addressee of attending as required by the subpoena and returning after attending.

**Example of equivalent of money**

prepaid travel

*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).

***contested probate proceeding***, for division 3.1.10 (Contested probate proceedings)—see rule 3090.

***contractor***, for part 3.13 (Workers compensation)—see rule 3880.

***convention***, for division 6.8.9 (Service outside Australia—general)—see rule 6500.

***convention country***, for division 6.8.9 (Service outside Australia—general)—see rule 6500.

***convicted person***, for division 5.2.5 (Appeals to Court of Appeal against convictions and sentences)—see rule 5500.

***convicted person's application***, for division 5.2.6 (Written cases)—see rule 5600.

***conviction***—

- (a) for division 5.2.3 (Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court)—see rule 5330; and
- (b) for division 5.2.4 (Appeals to Court of Appeal from Supreme Court generally)—see rule 5500 (Definitions—div 5.2.5); and

## EXPOSURE DRAFT

(c) for division 5.2.5 (Appeals to Court of Appeal against convictions and sentences)—see rule 5500 (Definitions—div 5.2.5); and

(d) for division 5.2.6 (Written cases)—see rule 5500 (Definitions—div 5.2.5).

**Corporations Regulations**, for schedule 6 (Rules for proceedings under Corporations Act or ASIC Act)—see rule 1.5.

**correctional institution** includes a NSW correctional institution.

**costs of the proceeding**, for part 2.17 (Costs)—see rule 1700.

**court**—

(a) for part 3.12 (Small Claims Court)—see rule 3700; and

(b) for part 5.2 (Appeals to Court of Appeal from Supreme Court)—see rule 5300; and

(c) for the rules generally—see rule 5 (References to *court*, *judicial officer* etc).

**criminal proceeding** means a proceeding against a person for an offence (whether summary or indictable), and includes the following:

(a) a committal proceeding;

(b) a proceeding in relation to bail;

(c) a proceeding in relation to sentence;

but does not include—

(d) an appellate proceeding;

(e) for division 4.3.2 (Supreme Court criminal proceedings—representation)—an application in relation to bail.

**Cross-vesting Act**, for part 3.5 (Cross-vesting)—see rule 3300.

## EXPOSURE DRAFT

**cross-vesting law**, for part 3.5 (Cross-vesting)—see rule 3300.

**custody**, for part 3.9 (Habeas corpus)—see rule 3500.

**date of filing**—see rule 6126 (2).

**debt declaration**, for part 3.12 (Small Claims Court)—see rule 3700.

**debt redirection order**—see rule 2301 (1).

**decision**, for part 5.1 (Appeals to court other than Court of Appeal)—see rule 5000.

**defence**, for chapter 2 (Civil proceedings generally), includes an answer to a counterclaim.

**defendant**—

- (a) for part 3.9 (Habeas corpus)—see rule 3500; and
- (b) for schedule 6 (Rules for proceedings under Corporations Act or ASIC Act)—see rule 1.5; and
- (c) for the rules—see rule 20.

**deputy registrar**—see rule 5 (5) (References to *court*, *judicial officer* etc).

**described**, for subdivision 2.9.4.3 (Search orders)—see rule 750.

**director of public prosecutions** includes the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983* (Cwlth).

*Note* **Director of public prosecutions** is defined in the Legislation Act, dict, pt 1 as the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1990*. This definition extends the definition to include the Cwlth director.

**discharging order**, for part 3.2 (Adoption)—see rule 3150.

## EXPOSURE DRAFT

***discoverable document***, for part 2.8 (Disclosure)—see rule 600.

***dispensing order***, for part 3.2 (Adoption)—see rule 3150.

***division 2.9.4 order***—see rule 725.

***document***, for part 2.8 (Disclosure)—see rule 600.

***document exchange box*** means a document exchange box in an authorised DX system.

***earnings***, of an enforcement debtor, for part 2.18 (Enforcement)—see rule 2000.

***earnings redirection order***—see rule 2350.

***election application***, for part 3.6 (Electoral matters)—see rule 3350.

***Electoral Act***, for part 3.6 (Electoral matters)—see rule 3350.

***electronic communication*** means a communication of information in the form of data, text or images using guided or unguided electromagnetic energy.

**Examples**

- 1 email
- 2 email attachment

*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).

***email address*** means the mailing address to and from which an electronic communication may be sent and received using the internet, an intranet or other similar network.

***employer***, of an enforcement debtor, for part 2.18 (Enforcement)—see rule 2000.

***enforceable money order***, of the court—see rule 2000.

## EXPOSURE DRAFT

***enforceable non-money order***, of the court, for part 2.18 (Enforcement)—see rule 2000.

***enforcement creditor***, for an enforceable money order of the court—see rule 2000.

***enforcement debtor***, for an enforceable money order of the court—see rule 2000.

***enforcement hearing subpoena***, for part 2.18 (Enforcement)—see rule 2000.

***enforcement officer***—see rule 2000.

***enforcement order***, of the court—see rule 2000.

***estate***, for part 3.1 (Administration and probate)—see rule 3000.

***examination***, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

***examination order***, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

***examination summons***, for schedule 6 (Corporations Rules), part 6.11—rule 11.1.

***examiner***, in relation to an examination, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

***exempt property*** for part 2.18 (Enforcement)—see rule 2000.

***expert***—

- (a) in relation to an issue, for division 2.12.3 (Appointment of medical expert for Civil Law (Wrongs) Act)—see the *Civil Law (Wrongs) Act 2002*, section 82; and
- (b) in relation to a proceeding, for the remainder of these rules—see rule 1201 (Meaning of *expert*, *expert witness* and *expert report*).

## EXPOSURE DRAFT

**expert medical evidence**, for division 2.12.3 (Appointment of medical expert for Civil Law (Wrongs) Act)—see the *Civil Law (Wrongs) Act 2002*, section 82.

**expert report**, in relation to a proceeding—see rule 1201.

**expert witness**, in relation to a proceeding—see rule 1201.

**filed**—a document is **filed** in the court if—

- (a) the document is lodged at the registry for filing by the court; or
- (b) filing of the document in the court by electronic communication is allowed under a practice note and the document is filed in accordance with the practice note.

**final judgment**, for division 5.2.3 (Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court)—see rule 5330.

**foreign confiscation order**, for division 3.7.1 (Foreign confiscation orders—registration)—see rule 3450.

**Foreign Judgments Act**, for part 3.8 (Foreign judgments—reciprocal enforcement)—see rule 3470.

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

**freezing order**, for division 2.9.4 (Injunctions and similar orders)—see rule 741.

**government**, for part 2.8 (Disclosure)—see rule 600.

**grant of representation**, for an estate, for division 3.1.8 (Caveats)—see rule 3070.

## EXPOSURE DRAFT

**head of jurisdiction** means—

- (a) in relation to the Supreme Court other than when it is the Court of Appeal—the Chief Justice; or
- (b) in relation to the Court of Appeal—the President of the Court of Appeal; or
- (c) in relation to the Magistrates Court—the Chief Magistrate.

**hearing** includes trial.

**incorporated limited partnership**—see the *Partnership Act 1963*, section 51.

**in default**, for a defendant—

- (a) for division 2.11.3 (Default by defendant)—see rule 1117 (When is a defendant *in default*—generally); and
- (b) for division 2.11.4 (Default by defendant—partial defence)—see rule 1137 (When is a defendant *in default*—partial defence).

**initiating party**, for division 5.5.1 (Questions referred to Supreme Court)—see rule 5851.

**injury notice**, for part 3.13 (Workers compensation)—see rule 3880.

**instalment order**—see rule 2150.

**instalment order agreement**, for part 2.18 (Enforcement)—see rule 2157.

**issued**, for a document filed in the court, means the document has been sealed or stamped by the court.

**issuing officer**, for part 6.9 (Subpoenas)—see rule 6600 (1).

**issuing party**, for a subpoena, for part 6.9 (Subpoenas)—see rule 6600 (1).

## EXPOSURE DRAFT

***interested party***—

- (a) for division 5.2.6 (Written cases)—see rule 5600; and
- (b) for division 5.4.2 (Reference appeals to Court of Appeal following acquittals on indictment)—see rule 5800.

***interest in a managed investment scheme***—see the Corporations Act, section 9.

***interlocutory process***, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

***interstate confiscation order***, for division 3.7.2 (Interstate confiscation orders—registration)—see rule 3460.

***judgment***—

- (a) for part 3.8 (Foreign judgments—reciprocal enforcement)—see rule 3470; and
- (b) for division 5.2.4 (Appeals to Court of Appeal from Supreme Court generally)—see rule 5400; and
- (c) for division 5.2.6 (Written cases)—see rule 5600.

***judicial officer***—see rule 5 (3) (References to *court*, *judicial officer* etc).

***Judicial Review Act***, for part 3.10 (Judicial review)—see rule 3550.

***judicial review application***, for part 3.10 (Judicial review)—see rule 3550.

***land***, for division 2.9.6 (Sales of land by court order)—see rule 780.

***Legal Profession Act***, for part 3.11 (Legal profession)—see rule 3600.

## EXPOSURE DRAFT

**liquidated demand** means a claim for payment of a specific sum of money the amount of which is worked out or capable of being worked out by calculation, and includes a claim for interest up to judgment.

**list of documents**, for part 2.8 (Disclosure)—see rule 600.

**made**, for an order that is a judgment, means given.

**mediation**, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (1).

**mediation session**, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (2).

**money order**—see rule 2000.

**motor vehicle**, for chapter 2 (Civil proceedings generally), means a motor vehicle or trailer within the meaning of the *Road Transport (General) Act 1999*.

**neutral evaluation**, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (3).

**neutral evaluation session**, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (5).

**nominated time**, for division 6.10.3 (Exchange of correspondence before making application in proceeding)—see rule 6742 (2) (e) (Applicant's letter to respondent).

**non-convention country**, for division 6.8.9 (Service outside Australia—general)—see rule 6500.

**non-money order**—see rule 2000.

**notice claiming contribution or indemnity**, for chapter 2 (Civil proceedings generally)—see rule 319 (1).

## EXPOSURE DRAFT

***notice for non-party production***, for chapter 2 (Civil proceedings generally), means a notice under rule 660.

***notice of intention to respond*** includes a conditional notice of intention to respond.

***nuisance application***, for part 3.12 (Small Claims Court)—see rule 3700.

***officer***, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

***opposite party*** means defendant (in relation to a plaintiff) and plaintiff (in relation to a defendant).

***order*** includes a judgment, decree, direction or decision, whether or not final.

***order debt***, for an enforceable money order of the court, for part 2.18 (Enforcement)—see rule 2000.

***order for access to identifying information***, for part 3.2 (Adoption)—see rule 3150.

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

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

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

***originating process***—

(a) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5; and

(b) for the rules generally—means an originating claim or originating application.

## EXPOSURE DRAFT

***out of time***—

- (a) for division 5.2.3 (Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court)—see rule 5330; and
- (b) for division 5.2.5 (Appeals to Court of Appeal against convictions and sentences)—see rule 5500.

***partner***, for part 2.18 (Enforcement)—see rule 2000.

***partnership***—see the *Partnership Act 1963*, section 6.

***partnership proceeding***, for division 2.4.9 (Partnerships)—see rule 285.

***party***—

- (a) for part 2.17 (Costs)—see rule 1700; and
- (b) for a criminal proceeding—includes an accused person and the director of public prosecutions.

***person with a legal disability*** means—

- (a) a child; or
- (b) a person with a mental disability.

***person with a mental disability***, for a proceeding, means a person who is not legally competent to be a party to the proceeding, and includes the person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

**EXPOSURE DRAFT**

***plaintiff***—

- (a) for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551; and
- (b) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5; and
- (c) for the rules generally—see rule 20.

***pleading*** includes the following:

- (a) a statement of claim;
- (b) a defence;
- (c) a reply;
- (d) a counterclaim made in a proceeding started by originating claim or third-party notice;
- (e) an answer to a counterclaim;
- (f) a response to an answer to a counterclaim;
- (g) an affidavit ordered to be treated as pleadings;

but does not include the following:

- (h) an originating claim;
- (i) an originating application;
- (j) a third-party notice;
- (k) an application in a proceeding.

*Note* A pleading must comply with pt 2.6 (Pleadings).

***possession***, in relation to something other than land, includes custody and power.

***practice note*** means a practice note under rule 6903.

## EXPOSURE DRAFT

*premises*, for subdivision 2.9.4.3 (Search orders)—see rule 750.

*prepaid post* includes post that is paid for after it is posted if—

- (a) it is accepted for delivery by post; and
- (b) the postage is not paid (or to be paid) by the person to whom it is delivered (or to be delivered).

**Example**

A person has a contract with Australia Post under which Australia Post periodically bills the person for items given by the person to Australia Post for delivery.

*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).

*prerogative injunction*, for part 3.10 (Judicial review)—see rule 3550.

*prerogative order*, for part 3.10 (Judicial review)—see rule 3550.

*prerogative relief*, for part 3.10 (Judicial review)—see rule 3550.

*prescribed costs amount*, for part 2.11.1 (Uncontested debts and liquidated demands)—see rule 1100.

*prescribed scale of costs*—

- (a) for part 2.17 (Costs)—see rule 1700; and
- (b) for part 3.13 (Workers compensation)—see rule 3880.

*principal*, for part 3.13 (Workers compensation)—see rule 3880.

*principal officer*, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

*privileged from production*, for part 2.8 (Disclosure)—see rule 601.

*proceeding*, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

## EXPOSURE DRAFT

***prohibition order***, for part 3.10 (Judicial review)—see rule 3550.

***qualified person***, for division 2.11.3 (Default by defendant)—see rule 1115.

***question***, for part 2.15 (Trial)—see rule 1500.

***question referred***, for division 5.5.1 (Questions referred to Supreme Court)—see rule 5851.

***reference appeal***—

- (a) for division 5.2.6 (Written cases)—see rule 5600; and
- (b) for division 5.4.2 (Reference appeals to Court of Appeal following acquittals on indictment)—see rule 5800.

***referring court or tribunal***, for division 5.5.1 (Questions referred to Supreme Court)—see rule 5850.

***register***—

- (a) for division 3.7.1 (Foreign confiscation orders—registration)—see rule 3450; and
- (b) for division 3.7.2 (Interstate confiscation orders—registration)—see rule 3460.

***registrar***—

- (a) of a tribunal, for part 5.1 (Appeals to court other than Court of Appeal)—see rule 5001; and
- (b) for the rules—see rule 5 (4) (References to *court, judicial officer* etc).

***registry***—see rule 5 (6) (References to *court, judicial officer* etc).

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

***regular redirection order***—see rule 2332.

## EXPOSURE DRAFT

**relevant law**, in relation to an appeal, for part 5.1 (Appeals to court other than Court of Appeal)—see rule 5000.

**relief** includes remedy.

**reply** includes a response to an answer to a counterclaim.

**representative**, for part 3.13 (Workers compensation)—see rule 3880.

**representative party**, for division 2.4.7 (Representation—numerous concurrent interests)—see rule 266.

**request**, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

**requesting court**, in relation to a request or an order under rule 6843 made on a request, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

**respondent**—

- (a) for part 2.8 (Disclosure) and in relation to a notice for non-party production—see rule 600; and
- (b) for subdivision 2.9.4.2 (Freezing orders)—see rule 740; and
- (c) for subdivision 2.9.4.3 (Search orders)—see rule 750; and
- (d) for division 5.2.6 (Written cases)—see rule 5600; and
- (e) for division 6.10.3 (Exchange of correspondence before making application in proceeding)—see rule 6740; and
- (f) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

**restoration order**, for part 3.12 (Small Claims Court)—see rule 3700.

## EXPOSURE DRAFT

**return date** means—

- (a) for an application—the date set by the court for the application to be next before the court; and
- (b) for a subpoena—the date set by the court for the subpoena to be complied with.

**review order**, for part 5.3 (Orders to review certain decisions of Magistrates Court by Supreme Court)—see rule 5700.

**schedule of correspondence**, for part 6.2 (Applications in proceedings)—see rule 6005.

**script**, for division 3.1.10 (Contested probate proceedings)—see rule 3090.

**sealed**, for a document, means stamped with the court’s seal.

**search order**, for division 2.9.4 (Injunctions and similar orders)—see rule 751.

**seizure and sale order**—see rule 2200.

**senior officer**, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

**security interest**, for part 2.18 (Enforcement)—see rule 2401.

**sentence**—

- (a) for part 4.3 (Supreme Court criminal proceedings)—see rule 4700; and
- (b) for division 5.2.3 (Leave to appeal to Court of Appeal out of time from final judgments of Supreme Court)—see rule 5500 (Definitions—div 5.2.5); and
- (c) for division 5.2.4 (Appeals to Court of Appeal from Supreme Court generally)—see rule 5500 (Definitions—div 5.2.5); and

## EXPOSURE DRAFT

- (d) for division 5.2.5 (Appeals to Court of Appeal against convictions and sentences)—see rule 5500 (Definitions—div 5.2.5); and
- (e) for division 5.2.6 (Written cases)—see rule 5500 (Definitions—div 5.2.5).

**set aside** means—

- (a) for a document—the document cannot be relied on in a proceeding; or
- (b) for anything else—the thing stops having effect.

**sheriff**—see the *Court Procedures Act 2004*, section 40.

**sheriff's officer**—see the *Court Procedures Act 2004*, section 40.

**solicitor**—to remove any doubt, **solicitor** includes a firm of solicitors.

**special federal matter**, for part 3.5 (Cross-vesting)—see rule 3300.

**stamped**, for a document, means stamped under rule 6304.

**statutory order of review**, for part 3.10 (Judicial review)—see rule 3550.

**subpoena** means an order in writing requiring the addressee—

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

**subpoenaed document or thing**, for division 6.10.5 (Exhibits, documents and things)—see rule 6760.

**subpoena to attend to give evidence**, for part 6.9 (Subpoenas)—see rule 6600 (2).

## EXPOSURE DRAFT

**subpoena to produce**, for part 6.9 (Subpoenas)—see rule 6600 (3).

**supporting affidavits**, for an originating application, for chapter 2—see rule 60 (4) (Content of originating application).

**supporting material**, for an application in a proceeding, for part 6.2 (Applications in proceedings)—see rule 6005.

**Supreme Court**—

- (a) for division 5.5.1 (Questions referred to Supreme Court)—see rule 5851; and
- (b) for division 5.5.2 (Cases stated and questions reserved to Court of Appeal)—see rule 5870.

**these rules** include the practice notes and approved forms.

**third party**—see rule 322 (2) (b) (Third-party notice—fourth and subsequent parties).

**third-party notice**—see rule 322 (2) (c) (Third-party notice—fourth and subsequent parties).

**third-party respondent**, for part 3.13 (Workers compensation)—see rule 3880.

**third person**, for division 2.18.6 (which is about debt redirection orders generally)—see rule 2300 (1).

**trespass application**, for part 3.12 (Small Claims Court)—see rule 3700.

**tribunal**—

- (a) for part 5.1 (Appeals to court other than Court of Appeal)—see rule 5000; and
- (b) for division 5.5.1 (Questions referred to Supreme Court)—see rule 5851.

## EXPOSURE DRAFT

*trustee*, for part 2.17 (Costs)—see rule 1700.

*undefended part of the claim*, for division 2.11.4 (Default by defendant—partial defence)—see rule 1137.

*usual undertaking as to damages*, for part 2.9 (Preservation of rights and property)—see rule 700.

*Workers Compensation Act*, for part 3.13 (Workers Compensation)—see rule 3880.

*writ of habeas corpus*, for part 3.9 (Habeas corpus)—see rule 3500.

*Wrongs Act*, for division 2.12.3 (Appointment of medical expert for Civil Law (Wrongs) Act)—see rule 1220.

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## Endnotes

**1 Notification**

Notified under the Legislation Act on 2006.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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# EXPOSURE DRAFT