Australian Capital Territory

Court Procedures Rules 2006

SL2006-29

(in 3 volumes)

Volume 1—ch 1 to ch 2, pt 2.17

Volume 2—ch 2, pt 2.18 to ch 4

Volume 3—ch 5 to 7, schedules, dictionary and endnotes

Each volume has a table of contents for the rules

made under the

Court Procedures Act 2004

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Court Procedures Rules 2006*, made under the *Court Procedures Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2007. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2007.

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Australian Capital Territory

Court Procedures Rules 2006

made under the

Court Procedures Act 2004

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Australian Capital Territory

Court Procedures Rules 2006

made under the

Court Procedures Act 2004

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Part 2.18 Enforcement

Division 2.18.1 Enforcement—general

2000 Definitions—pt 2.18

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

In this part:

account, for a financial institution, includes—

(a) a deposit account or withdrawable share account; and

(b) any record of deposit or subscription for withdrawable shares; and

(c) a loan account that has a credit balance.

charging order—see rule 2401.

Note This definition also applies outside this part.

debt redirection order—see rule 2301 (1).

Note This definition also applies outside this part.

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

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

(a) wages or salary, including, for example, any allowance, bonus, commission, fee, overtime pay or other amount received under a contract of employment;

(b) an amount that, although not payable under a contract of employment, is analogous to or in the nature of wages or salary, including, for example, an amount received under a contract for services;

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(c) any other amount received, or the value of any benefit gained, as compensation for services or profit arising from a contract of employment, contract for services or position;

(d) a pension, benefit or similar payment;

(e) an annuity;

(f) an amount payable instead of leave;

(g) retirement benefit.

Note An example is part of 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).

earnings redirection order—see rule 2350.

Note This definition also applies outside this part.

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

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

enforceable money order, of the court, means—

(a) a money order of the court; or

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

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

Note 2 This definition also applies outside this part.

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

(a) a non-money order of the court; or

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

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

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

(a) the person entitled to enforce the money order; or

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

Note This definition also applies outside this part.

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

Note This definition also applies outside this part.

enforcement hearing subpoena means a subpoena issued under rule 2103.

enforcement hearing warrant—see rule 2110 (2).

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

Note This definition also applies outside this part.

enforcement order, of the court—

(a) means an order of the court made under this part to enforce an enforceable money order or non-money order; and

(b) includes an order mentioned in rule 2001 (3), but, to remove any doubt, does not include an instalment order.

Note This definition also applies outside this part.

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

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

instalment order—see rule 2150 (1).

instalment order agreement—see rule 2157.

Note This definition also applies outside this part.

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

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

Note 2 This definition also applies outside this part.

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

Note This definition also applies outside this part.

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

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

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

Note This definition also applies outside this part.

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

Note This definition also applies outside this part.

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

Note This definition also applies outside this part.

partner includes a former partner.

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

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

(a) the chair, or president, (however described) of the governing body of the corporation; or

(b) the general manager, chief executive officer, or other person, (however described) having general management of the affairs of the corporation; or

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

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

regular redirection order—see rule 2332.

Note This definition also applies outside this part.

security interest—see rule 2401.

seizure and sale order—see rule 2200.

Note This definition also applies outside this part.

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

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

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

2001 Enforcement orders generally

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

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

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

(2) An enforcement order may contain any order directed to enforcing the original order.

(3) Without limiting subrule (2), an enforcement order includes the following orders:

(a) a seizure and sale order (see division 2.18.5);

(b) a debt redirection order (see division 2.18.6);

(c) a regular redirection order (see division 2.18.7);

(d) an earnings redirection order (see division 2.18.8);

(e) a charging order (see division 2.18.9);

(f) an order under division 2.18.10 relating to amounts or securities in court;

(g) an order under division 2.18.11 appointing a receiver;

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(h) an order for delivery of possession of land (see division 2.18.13);

(i) an order for seizure and delivery of goods (see division 2.18.14);

(j) an order for seizure and detention of property (see division 2.18.15);

(k) an order issuing an arrest warrant or an arrest and detention warrant under division 2.18.16 (Contempt).

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

(5) Without limiting rule 6901 (Orders may be made on conditions), an enforcement order may be made on conditions about the payment of, or giving security for, the estimated expenses of an enforcement officer in enforcing the order.

2002 Enforcement—enforcement application is application in original proceeding

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

Example

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

Note An example is part of 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).

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2003 Enforcement—by or against non-party

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

(1) If an order is made in favour of, or obtained by, a person who is not a party to the proceeding in which the order is made, the person may enforce the order as if the person were a party.

(2) However, the person must not start a proceeding to enforce the order unless the person gives the court an address for service.

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

(3) If an order is made against a person who is not a party when the order is made, the order may be enforced against the person as if the person were a party.

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

2004 Enforcement—amount recoverable

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

(1) The costs of enforcement of an order are recoverable as part of the order.

(2) Interest on an order debt is recoverable as part of the money order.

2005 Enforcement—separate enforcement for costs

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

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

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2006 Enforcement—order in partnership name

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

(1) An order against partners in the partnership name may be enforced against 1 or more of the following:

(a) partnership property;

(b) a partner who filed a defence;

(c) a person who has admitted being a partner;

(d) a person who the court has decided is a partner;

(e) a person who has been individually served as a partner with the originating process and who has not filed a defence.

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

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

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

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

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

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

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2007 Enforcement—against property of partnership

(*Partnership Act 1963*, s 28 (1))

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

2008 Enforcement—against property of business

(SCQA s 90 and s 91)

(1) This rule applies if—

(a) a proceeding is brought against a person under a business name; and

(b) rule 291 (Proceeding in business name if unregistered etc) applies to the business name.

(2) An order in the proceeding may be enforced against any property of the person.

(3) The court may amend an order made in the proceeding to make it an order against the person.

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

2009 Enforcement—enforcement of Supreme Court order in Magistrates Court

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

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

(2) To enforce the order, the order must be filed in the Magistrates Court.

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

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

2010 Enforcement—enforcement of Magistrates Court order in Supreme Court

(MC(CJ)R s 238)

(1) On application by the enforcement creditor for an enforceable money order of the Magistrates Court, the Magistrates Court may give the enforcement creditor a certificate of—

(a) the money order; and

(b) the amount owing under the money order (including any amount payable for interest and costs).

(2) An application under subrule (1) is made by filing in the Magistrates Court—

(a) a draft certificate; and

(b) an affidavit in support of the application that contains sufficient information to enable the court to give the certificate.

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

(4) The draft certificate and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(5) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

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(6) The court may give a certificate under subrule (1) only if—

(a) a seizure and sale order previously made for the order has been returned completely or partly unsatisfied; or

(b) the court otherwise considers it appropriate.

(7) If the certificate is given, no further action may be taken in the Magistrates Court to enforce the money order.

(8) However, if the certificate, and an affidavit in support setting out the amount owing under the money order and relevant details about interest and costs, is filed in the Supreme Court, final judgment may be entered in the Supreme Court in favour of the enforcement creditor for—

(a) the amount stated in the certificate as the amount owing under the money order; and

(b) any interest and costs up to the day of entry of final judgment.

(9) Subrule (8) does not authorise the giving of interest on interest.

(10) A judgment entered under subrule (8) may be enforced as if it were a money order made by the Supreme Court.

2011 Enforcement—demand for compliance unnecessary

(SCR o 43 r 1; SCQA s 86)

(1) It is not necessary to demand compliance with an order before starting an enforcement proceeding for the order.

(2) If, under a territory law or a court order, an order must be served on a person before the order may be enforced against the person, the order may be served without a demand for compliance.

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

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2012 Enforcement—when leave required

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

(1) A person entitled to enforce an order requires the court's leave to start an enforcement proceeding in the following circumstances:

(a) if the proceeding would be started more than 6 years after the day the order is made;

(b) if the order is against any of the assets of a deceased person coming to the hands of an executor or administrator after the order was made;

(c) if the order is subject to a condition;

Note See r 2014 (Enforcement—conditional orders).

(d) if enforcement is sought as mentioned in rule 2006 (3) (Enforcement—order in partnership name);

(e) for a money order—if there has been any change in the enforcement creditor or enforcement debtor, whether by assignment, death or otherwise;

(f) if the order is for delivery of possession of land and a person other than the person against whom the original order for possession of land was made is in possession of the land or part of it;

Note See r 2452 (2) (Orders for delivery of possession of land—preconditions).

(g) if the order is against property in the hands of a receiver appointed by the court;

(h) if the order is against property in the hands of a sequestrator;

(i) if the order is against a future asset of the enforcement debtor;

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

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

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

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

(3) An application for leave to start an enforcement proceeding must be accompanied by an affidavit in support of the application.

(4) The affidavit in support must state—

(a) that the order has not been fully complied with; and

(b) the extent (if any) to which the order has been partly complied with; and

(c) that the applicant is entitled to enforce the order; and

(d) that the person against whom enforcement is sought is liable to comply with the order; and

(e) if it is more than 6 years since the day the order was made—the reasons for the delay; and

(f) for a money order—

(i) the amount (including any interest and costs) owing on the day the affidavit is made (the ***affidavit date***); and

(ii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(iii) if there has been a change in an enforcement creditor or enforcement debtor—the change that has happened.

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(5) The affidavit must be sworn not earlier than 2 days before the day the application for leave is filed in the court.

2013 Enforcement—stay

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

(1) On application by the enforcement debtor or other person liable to comply with an enforceable money order or non-money order of the court or by someone else affected by the order, the court may—

(a) by order, stay the enforcement of all or part of the order, including because of facts arising or discovered after the order was made; and

(b) make the orders it considers appropriate, including, for a money order, an instalment order.

Note 1 Rule 2150 (Instalment order—making) provides for the making of instalment orders.

Note 2 See also r 2208 (Seizure and sale order—application for instalment order stays sale of seized property).

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

(2) The application may be made whether or not an enforcement order has already been made for the enforceable money order or non-money order.

(3) The application must be accompanied by an affidavit in support of the application.

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

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2014 Enforcement—conditional orders

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

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

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

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

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

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

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

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

(a) that are justified by the order; or

(b) that might have been taken if the order had not been made.

2015 Enforcement—service of order and related information

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

Note See approved form 2.49 (Notice about Court order and enforcement options) AF2007-63.

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(2) The notice mentioned in subrule (1) must include the following:

(a) details of the order, including whether it was obtained by default;

(b) a summary of the enforcement options available to the enforcement creditor or other person entitled to enforce the order;

(c) a summary of the options available to the enforcement debtor or other person liable to comply with the order, including—

(i) if the order was obtained by default—that application can be made to set the order aside; and

(ii) for a money order—that application can be made for an instalment order;

(d) information about where the enforcement debtor or other person liable to comply with the order may be able to obtain legal or financial advice and assistance in relation to the order.

(3) An enforcement proceeding may not be started before the end of 7 days after the day the copy of the order and the notice are served on the enforcement debtor.

2016 Enforcement—enforcement of payment directed by Essential Services Consumer Council

(MC(CJ)R s 380A)

(1) If a copy of a payment direction, certified by the registrar of the council, is filed in the Magistrates Court, the direction is enforceable under this part as if it were a judgment of the Magistrates Court.

(2) In this rule:

council means the Essential Services Consumer Council.

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payment direction means a direction by the council under the *Utilities Act 2000*, section 209 (Payment for loss or damage) that a utility pay a stated amount to a complainant.

Division 2.18.2 Enforcement orders—general

2050 Enforcement orders—content and issue

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

(1) An enforcement order must state—

(a) for a money order—

(i) the name of the enforcement debtor; and

(ii) the amount recoverable under the order; and

(iii) for an enforcement order to which rule 2052 applies—the date the order ends; and

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

(b) for a non-money order—what is authorised under the order; and

(c) any other details required under these rules.

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

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

(2) For subrule (1) (a) (ii), the amount recoverable must include—

(a) unless the court otherwise orders—

(i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and

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(ii) the unpaid interest on those costs; and

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

(b) the costs relating to the enforcement order; and

(c) the amount of interest on the order debt.

(3) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to an enforcement officer to be enforced:

(a) a seizure and sale order;

(b) an order for delivery of possession of land;

(c) an order for seizure and delivery of goods;

(d) an order for seizure and detention of property;

(e) an order issuing an arrest warrant or arrest and detention warrant under division 2.18.16 (Contempt).

(4) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor to be enforced:

(a) a debt redirection order;

(b) a regular debt redirection order;

(c) an earnings redirection order.

(5) If the court makes either of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor:

(a) a charging order;

(b) an order under division 2.18.10 relating to amounts or securities in court.

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(6) If the court makes an order under division 2.18.11 appointing a receiver, the registrar must give a sealed copy of the order to the receiver.

2051 Enforcement orders—application to set aside

(Qld r 819 and r 907)

(1) This rule applies if an enforcement order is made for an enforceable money order or non-money order (the ***original order***) of the court.

(2) On application by the enforcement debtor or other person liable to comply with the original order or by someone else affected by the enforcement order, the court may—

(a) set the enforcement order aside; and

(b) make the orders it considers appropriate, including, for an enforceable money order, an instalment order.

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

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

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

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

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

(1) This rule applies to the following enforcement orders:

(a) a seizure and sale order;

(b) an order for delivery of possession of land;

(c) an order for seizure and delivery of goods;

(d) an order for seizure and detention of property.

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(2) The enforcement order remains in force for 1 year after the day it is made unless the order states that it ends at an earlier time.

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

Note 2 The ending of a seizure and sale order under this rule does not affect any agreement for sale etc entered into before the order ends (see r 2228 (Seizure and sale order—effect of ending of order on completion of sale etc)).

(3) However, the order may be renewed for further periods of not longer than 1 year at a time.

(4) An application for renewal of an enforcement order—

(a) must be made before the order ends; and

(b) is made by filing in the court—

(i) a request for the order to be renewed for a stated period of not longer than 1 year; and

(ii) an affidavit setting out—

(A) the matters required to be included in the affidavit in support of an application for an enforcement order of that kind; and

(B) the reasons why the order has not been enforced during the period that the order has been in force.

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

(6) The request and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

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

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(8) If the court renews an enforcement order, the registrar must give a sealed copy of the order as renewed to an enforcement officer to be enforced.

(9) A renewed enforcement order must be stamped with the seal of the court to show the period for which the order is renewed.

(10) The priority of a renewed enforcement order is decided according to the date the enforcement order was originally made.

(11) The production of an enforcement order purporting to be stamped with the seal of the court and showing the period for which the order has been renewed is sufficient evidence for all purposes of the order having been renewed for the period.

2053 Enforcement orders—return by enforcement officer

(Qld r 822)

(1) The registrar may require an enforcement officer who is given an enforcement order to enforce—

(a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and

(b) to send a copy of the order with the attached statement to the person who obtained the order; and

(c) to file in the court a copy of the order with the attached statement.

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

(2) A person who obtains a seizure and sale order that is given to an enforcement officer to enforce may require the enforcement officer—

(a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and

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(b) to send a copy of the order with the attached statement to the person; and

(c) to file in the court a copy of the order with the attached statement.

2054 Enforcement orders—priority

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

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

(2) If more than 1 application for an enforcement order against the same person is made to the court, the court must make the orders in order of the times written on the applications.

(3) The precise time an enforcement order is made must be written on the order by the registrar.

(4) If more than 1 enforcement order against the same person is given to an enforcement officer, the enforcement officer must enforce the orders in order of the times written on the orders.

(5) In this rule:

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

2055 Enforcement orders—payment under order

(SCQA s 93)

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

2056 Enforcement orders—orders about enforcement

(NSWA s 135)

(1) The court may make the orders in aid of, or otherwise in relation to, the enforcement of its orders that it considers appropriate.

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(2) Without limiting subrule (1), the court may make the following orders:

(a) an order authorising an enforcement officer to enter premises to take possession of property under a seizure and sale order;

(b) an order prohibiting an enforcement officer from taking any further action on an enforcement order;

(c) an order prohibiting anyone else from taking any further action, either permanently or until a stated day, to enforce an order of the court.

(3) The court's powers under this rule are additional to its powers under any other territory law.

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

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

2057 Enforcement orders—consecutive and concurrent orders

(NSWA s 138)

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

(a) from making consecutive seizure and sale orders against the same enforcement debtor, or making consecutive debt redirection orders, regular redirection orders, earnings redirection orders or charging orders in relation to the same enforcement debtor, in relation to the same order debt; or

(b) from making concurrent debt redirection orders, regular redirection orders or earnings redirection orders against different entities, or consecutive debt redirection orders, regular redirection orders or earnings redirection orders against the same entity, in relation to the same order debt.

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2058 Enforcement orders—deceased enforcement debtor

(Qld r 818)

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

Division 2.18.3 Enforcement of money orders—enforcement hearings

2100 Enforcement hearing—application by enforcement creditor

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

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

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

(a) an instalment order;

(b) a debt redirection order;

(c) a regular redirection order;

(d) an earnings redirection order.

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

(3) An application under this rule for an enforcement hearing is made by filing in the court—

(a) a draft order requiring the enforcement debtor to attend an enforcement hearing; and

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(b) an affidavit in support of the application.

Note See approved form 2.50 (Order to attend enforcement hearing) AF2006-295.

(4) The affidavit in support must state—

(a) the date the money order was made; and

(b) the amount of the order debt; and

(c) the date and amount of each payment (if any) made under the money order; and

(d) the costs incurred in previous enforcement proceedings in relation to the money order; and

(e) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(f) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(g) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and

(h) the last-known address of the enforcement debtor; and

(i) if the enforcement creditor has conducted a company name search or business name search in relation to the enforcement debtor—the results of the search.

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

(6) The affidavit and draft order need not be served on the enforcement debtor unless the court otherwise orders on its own initiative.

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(7) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

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

(Qld r 841)

(1) This rule applies if the enforcement creditor or enforcement debtor for an enforceable money order of the court applies to the court for any order under this part in relation to the money order.

(2) On application by the enforcement debtor by notice given to the court or on its own initiative, the court may order that an enforcement hearing be held to decide whether to make the order applied for.

Note See approved form 2.50 (Order to attend enforcement hearing) AF2006-295.

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

2102 Enforcement hearing—limit on number of applications

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

(1) An enforcement creditor may apply to the court for, and the court may order, 2 or more enforcement hearings for an enforcement debtor, whether in relation to the same order debt or different order debts.

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

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

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

2103 Enforcement hearing—order for hearing etc

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

(1) If the court orders that an enforcement hearing be held, the court must—

(a) set a date for the enforcement hearing; and

(b) by subpoena (an ***enforcement hearing subpoena***), require the addressee for the subpoena—

(i) to complete, swear and file a statement of the enforcement debtor's financial position in accordance with rule 2106; and

(ii) to attend before the court, at the time and place stated in the order—

(A) to answer questions and give information; and

(B) to produce the documents or other things (if any) stated in the order.

Note 1 See approved form 2.51 (Enforcement hearing subpoena) AF2006-296.

Note 2 An enforcement hearing subpoena may direct the addressee for the subpoena and the enforcement creditor to meet to attempt to settle payment of the order debt (see r 2108 (Enforcement hearing—meeting of parties)).

(2) The date set for the enforcement hearing must be at least 21 days after the day the enforcement hearing subpoena is issued.

(3) To remove any doubt—

(a) the court may, by enforcement hearing subpoena, require 2 or more people to attend before the court, at the same time and place, in relation to an order debt; and

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

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

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

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

(a) the enforcement debtor; or

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

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

(c) if the enforcement debtor is an incorporated association—a member or former member of the committee, or a public officer or former public officer, of the association; or

(d) if the enforcement debtor is a cooperative—a member or former member of the board of directors, or a secretary or former secretary, of the cooperative; or

(e) if the enforcement debtor is an owners corporation under the *Unit Titles Act 2001*—an executive member, or former executive member, of the executive committee of the owners corporation; or

(f) if the enforcement debtor is a body corporate under the *Community Title Act 2001*—a member or former member of the committee of management, or a manager or former manager, of the body corporate; or

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(g) if the enforcement debtor is a corporation (including a corporation mentioned in paragraphs (b) to (f))—any senior officer of the corporation.

2105 Enforcement hearing—service of enforcement hearing subpoena

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

(1) An enforcement hearing subpoena must be served on the addressee for the subpoena at least 14 days before the date set for the enforcement hearing.

(2) A copy of the form of the statement to be completed in accordance with rule 2106 must be served with the enforcement hearing subpoena.

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

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

(Qld r 809)

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

Note See approved form 2.52 (Statement of enforcement debtor's financial position) AF2006-297.

(2) If the enforcement debtor receives regular payments (for example, wages or social security benefits), the statement of financial position must include—

(a) the dates the last 4 payments were received; and

(b) if the payments were paid to the enforcement debtor by payment into an account with a financial institution—a

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statement to that effect, and the account number and any other details necessary to identify the account.

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) The registrar must give a copy of the statement to the enforcement creditor at least 5 days before the date set for the enforcement hearing.

(4) If the enforcement creditor is satisfied with the information in the statement, the enforcement creditor may give notice to the addressee for the subpoena and the registrar that the addressee is no longer required to attend the enforcement hearing.

(5) If the enforcement hearing subpoena is issued by the court and the addressee for the subpoena, without reasonable excuse, contravenes the subpoena by failing to complete, swear or file a statement of the enforcement debtor's financial position in accordance with this rule, the addressee may be dealt with for contempt of court.

(6) Subrule (5) does not limit any other power of the court in relation to the contravention.

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

2107 Enforcement hearing—subpoena to other person

(Qld r 810)

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

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2108 Enforcement hearing—meeting of parties

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

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

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

(3) A direction under this rule—

(a) may be given in an enforcement hearing subpoena directed to the enforcement debtor and require the enforcement debtor and enforcement creditor to meet at a stated time and place before the enforcement hearing; or

(b) may be given during the enforcement hearing, on application by the enforcement debtor or enforcement creditor or on the court's own initiative.

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

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

(5) If a direction is given during the enforcement hearing, the court may adjourn the hearing to allow the parties to meet.

(6) The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a facilitator under this rule.

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(7) If the court gives a direction to a person under this rule and the person, without reasonable excuse, contravenes the direction by failing to meet in accordance with the direction, the person may be dealt with for contempt of court.

(8) Subrule (7) does not limit any other power of the court in relation to the contravention.

2109 Enforcement hearing—examination

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

(1) This rule applies if a person—

(a) attends before the court at an enforcement hearing on an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person); or

(b) is brought before the court on an enforcement hearing warrant; or

(c) otherwise attends by arrangement before the court.

(2) The person may—

(a) be examined orally on oath about—

(i) the assets, liabilities, expenses and income of the enforcement debtor; and

(ii) any other means the debtor has of satisfying the debt; and

(iii) the debtor's financial circumstances generally; and

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(b) be required, by order, to produce any document substantiating anything relevant to—

(i) the assets, liabilities, expenses and income of the enforcement debtor; and

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(ii) any other means the debtor has of satisfying the debt; and

(iii) the debtor's financial circumstances generally.

(3) Unless the court otherwise orders, the examination may be conducted by the court and the enforcement creditor.

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

(4) The examination may be conducted in open court or in the absence of the public, as the court directs.

(5) The court may adjourn an enforcement hearing from time to time and may, by order, require a person required to attend or attending the enforcement hearing (or an adjourned enforcement hearing) to attend an adjourned enforcement hearing (or a further adjourned enforcement hearing).

(6) If the enforcement creditor has been told the date, time and place for the enforcement hearing (or adjourned enforcement hearing), but does not attend before the court, the court may—

(a) set aside the order for the enforcement hearing; or

(b) conduct the examination in the absence of the enforcement creditor.

(7) To remove any doubt, if subrule (6) applies, the court may make an order that it could make if that subrule did not apply.

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

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2110 Enforcement hearing—enforcement hearing warrant issue

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

(1) This rule applies if—

(a) a person is required—

(i) to attend an enforcement hearing by an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person); or

(ii) to attend an adjourned enforcement hearing (or further adjourned enforcement hearing) by an order under rule 2109 (5) (Enforcement hearing—examination); and

(b) the person fails to attend the hearing as required by the order.

(2) The court may issue a warrant (an ***enforcement hearing warrant***) ordering an enforcement officer to apprehend the person and bring the person before the court to be examined at an enforcement hearing under rule 2109 if the court—

(a) is satisfied that the person was served with the subpoena or was otherwise aware that the person was required by the enforcement hearing subpoena to attend the hearing as required by the subpoena; and

(b) considers that the person does not have a reasonable excuse for not attending the hearing.

Note See approved form 2.53 (Enforcement hearing warrant) AF2006-298.

(3) The court may issue the enforcement hearing warrant on application by the enforcement creditor or on its own initiative.

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

(4) However, the enforcement hearing warrant may only be issued by the judicial officer conducting the enforcement hearing.

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(5) Also, the enforcement hearing warrant must not be issued earlier than 14 days or later than 3 months after the day the court has served notice on the person that failure to attend may result in the person's arrest.

(6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom an enforcement hearing warrant has been issued by the Magistrates Court.

2111 Enforcement hearing—enforcement hearing warrant contents etc

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

(1) An enforcement hearing warrant must—

(a) name, or otherwise describe, the person whose apprehension is required by the warrant; and

(b) state briefly the reason for its issue; and

(c) require an enforcement officer to arrest the person whose apprehension is required and bring the person before the court to be examined at an enforcement hearing under rule 2109; and

(d) be expressed to end not later than 3 months after the day it is issued.

(2) For subrule (1) (c), the enforcement officer may enter and search any premises where the enforcement officer suspects, on reasonable grounds, the person to be using the force and assistance that is reasonable and necessary.

(3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the enforcement hearing warrant.

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(4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

(5) The enforcement officer or a police officer may deliver the apprehended person to the person in charge of any correctional centre and that person must receive and keep the apprehended person in custody until the court or the enforcement officer otherwise directs.

(6) An enforcement hearing warrant continues in force until—

(a) the warrant is executed; or

(b) the warrant is set aside by the court and the enforcement officer is told that the warrant has been set aside; or

(c) the end of 3 months after the day it is issued.

(7) For subrule (6) (a), a warrant is executed when—

(a) the person whose apprehension is required has been examined at an enforcement hearing under rule 2109; or

(b) the examination is adjourned to another day; or

(c) the order for the enforcement hearing is set aside.

2112 Enforcement hearing—orders

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

(1) At the enforcement hearing, the court may—

(a) issue an enforcement hearing warrant; or

Note Rule 2110 (2) deals with the issue of a warrant.

(b) make an instalment order for the order debt; or

Note Div 2.18.4 (Enforcement of money orders—instalment orders) provides for the making of instalment orders.

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(c) make an order amending, suspending or setting aside an instalment order made for the order debt; or

Note See r 2160 (Instalment order—amending, suspending or setting aside).

(d) make an earnings redirection order; or

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

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

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

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

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

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

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

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

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

(3) However, the court must not—

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

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

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

(b) amend an instalment order at the enforcement hearing unless the enforcement debtor—

(i) had applied for the amendment under rule 2160; or

(ii) consents to the amendment.

(4) To remove any doubt, the court may set aside an instalment order at the enforcement hearing whether or not the enforcement debtor consents to the order being set aside.

(5) Also, unless the court otherwise orders, the costs of the enforcement hearing are costs of enforcement of the order.

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

Division 2.18.4 Enforcement of money orders—instalment orders

2150 Instalment order—making

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

(1) The court may make an order (an ***instalment order***) authorising satisfaction of the amount payable under an enforceable money order of the court by instalment payments by the order debtor.

(2) The court may make an instalment order—

(a) on application by the enforcement debtor when making the money order; or

(b) on application by the enforcement debtor or someone else under rule 2013 (Enforcement—stay) or rule 2051 (Enforcement orders—application to set aside); or

(c) on application by the enforcement debtor under rule 2151 or the enforcement creditor under rule 2153; or

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(d) on the filing in the court of an instalment order agreement under rule 2157; or

(e) after hearing an application under rule 2314 (Debt redirection order—amending, suspending or setting aside); or

(f) after hearing an application under rule 2360 (Earnings redirection order—amending, suspending or setting aside).

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

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

2151 Instalment order—application by enforcement debtor

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

(1) An application by an enforcement debtor for an instalment order is made by filing in the court—

(a) a sworn statement of the enforcement debtor's financial position; and

(b) a draft of the order sought.

Note 1 See approved form 2.54 (Instalment order) AF2006-299.

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

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

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

(3) The sworn statement and draft order mentioned in subrule (1) need not be served on anyone unless the court otherwise orders on its own initiative.

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(4) Unless the court otherwise orders on its own initiative, an application for an instalment order by an enforcement debtor must be dealt with without a hearing and in the absence of the parties.

(5) To remove any doubt, this rule does not apply to an application by an enforcement debtor for an instalment order made—

(a) when making the money order; or

(b) under any of the following rules:

(i) rule 2013 (Enforcement—stay);

(ii) rule 2051 (Enforcement orders—application to set aside);

(iii) rule 2314 (Debt redirection order—amending, suspending or setting aside);

(iv) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

2152 Instalment order—when application by enforcement debtor requires leave

(1) The enforcement debtor may not make an application for an instalment order without the court's leave if—

(a) the enforcement debtor has made an application for an instalment order in relation to the same money order in the previous 6 months; or

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

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

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

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(3) In deciding whether to give leave under this rule, the court must have regard to the following matters:

(a) any change in the enforcement debtor's property or financial circumstances since the enforcement debtor last applied to the court for an instalment order for the order debt;

(b) the payments made by the enforcement debtor in discharge of the order debt;

(c) the enforcement action (if any) taken in relation to the order debt;

(d) the interests and attitudes of the parties;

(e) whether giving leave would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(4) Subrule (3) does not limit the matters to which the court may have regard.

2153 Instalment order—application by enforcement creditor

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

(1) An application by an enforcement creditor for an instalment order must be accompanied by—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note 1 See approved form 2.54 (Instalment order) AF2006-299.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

(2) The affidavit in support must state—

(a) the date the money order was made; and

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

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(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit made must be sworn not earlier than 2 days before the day the application is made.

(4) To remove any doubt, this rule does not apply to an application by the enforcement creditor for an instalment order under any of the following rules:

(a) rule 2013 (Enforcement—stay);

(b) rule 2051 (Enforcement orders—application to set aside);

(c) rule 2314 (Debt redirection order—amending, suspending or setting aside);

(d) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

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2154 Instalment order—relevant considerations

(Qld r 869)

(1) In deciding whether to make an instalment order on application by the enforcement creditor or enforcement debtor, the court must have regard to the following matters, as far as they are known to the court:

(a) whether the enforcement debtor is employed;

(b) the enforcement debtor's means of satisfying the order debt;

(c) whether the order debt, including any interest, will be satisfied within a reasonable time;

(d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(e) other liabilities of the enforcement debtor;

(f) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount and timing of the instalments, the court must be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the instalment order.

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2155 Instalment order—stay of enforcement

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

(1) The filing of the first application for an instalment order in relation to an order debt operates to stay the enforcement of the order debt until the application is heard and decided.

(2) However, the filing of a second or later application in relation to the order debt does not operate to stay the enforcement of the order debt unless the court otherwise orders.

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

2156 Instalment order—content and issue

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

(1) An instalment order for a money order must state—

(a) the amount recoverable under the money order; and

(b) the amount of the instalments and when they are payable under the instalment order.

(2) The amount recoverable must include—

(a) unless the court otherwise orders—

(i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and

(ii) the unpaid interest on those costs; and

(b) the costs relating to the instalment order; and

(c) the amount of interest on the order debt.

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

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(3) The instalment order must require payment of the instalments to be made to, or as directed from time to time by, the enforcement creditor unless the court otherwise orders.

(4) If the court makes an instalment order, or an order otherwise ordering under subrule (3), the registrar must give a sealed copy of the order to the enforcement creditor.

(5) A direction under subrule (3) must be made by notice given to the enforcement debtor.

2157 Instalment order—instalment order agreement

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

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

(a) stating—

(i) the amount agreed by them to be owing by the enforcement debtor to the enforcement creditor under the money order; and

(ii) by what instalments payable at what times the amount owing is to be paid; or

(b) revoking or amending an instalment order in force in relation to the money order.

Note See approved form 2.55 (Instalment order agreement) AF2006-300.

(2) An agreement has no effect unless it is signed by the enforcement creditor and enforcement debtor and each signature is witnessed.

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(3) If an agreement in accordance with this rule is filed in the court, the court must make an instalment order—

(a) for an agreement under subrule (1) (a)—for the payment of the order debt by the instalments payable at the times stated in the agreement; or

(b) for an agreement under subrule (1) (b)—revoking or amending the instalment order as stated in the agreement.

Note See approved form 2.56 (Instalment order by agreement) AF2006-301.

2158 Instalment order—service

(1) If the court makes an instalment order on the application of the enforcement creditor, the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.

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

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

2159 Instalment order—no other enforcement while in force

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

Unless the court otherwise orders—

(a) on the making of an instalment order for a money order, any other enforcement order in force in relation to the money order is automatically stayed; and

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(b) while the instalment order is in force, no other enforcement order may be made in relation to the money order.

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

2160 Instalment order—amending, suspending or setting aside

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

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

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

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

(3) The enforcement creditor may make an application for an order amending an instalment order only if—

(a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the enforcement debtor—

(i) since the order was made; or

(ii) if the order has been amended—since the order was last amended; or

(b) when the order was made, amended or last amended, material facts had been withheld from the court or material evidence before the court was false.

(4) If—

(a) the court makes an order under subrule (1) on the application of the enforcement creditor; and

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(b) the enforcement debtor was not before the court when the order was made;

the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.

(5) If—

(a) the court makes an order under subrule (1) on the application of the enforcement debtor; and

(b) the enforcement creditor was not before the court when the order was made;

the registrar must serve a sealed copy of the order on the enforcement debtor.

(6) Unless the court otherwise orders, an order amending or suspending an instalment order does not come into force until the end of 7 days after—

(a) the day the order is made; or

(b) if a sealed copy of the order is required to be served under subrule (4) or (5)—the day the order is served.

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

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

(1) An instalment order ceases to have effect if—

(a) the order debt is satisfied; or

(b) the instalment order is set aside or ends in accordance with its terms; or

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(c) unless the court otherwise orders, another enforcement order is made in relation to the order debt.

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

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

Note See approved form 2.57 (Instalment order-notice of cessation other than for nonpayment) AF2006-302.

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

2162 Instalment order—ceasing to have effect for nonpayment

(1) An instalment order ceases to have effect if—

(a) the enforcement debtor fails to make 2 consecutive payments under the order at the times required by the order; and

(b) the enforcement creditor files in the court an affidavit stating that fact.

(2) If an instalment order ceases to have effect under subrule (1), the enforcement creditor must serve on the enforcement debtor—

(a) a stamped copy of the affidavit; and

(b) a notice telling the enforcement debtor that the instalment order has ceased to have effect.

Note See approved form 2.58 (Instalment order-notice of cessation for nonpayment) AF2006-303.

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

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2163 Instalment order—record of payments

(1) If an instalment order is made for an order debt, the enforcement creditor must make a record of the amount and date of each instalment paid by the enforcement debtor under the instalment order to, or as directed by, the enforcement creditor.

(2) The enforcement creditor must keep the record for at least 6 years after the day the last instalment is paid by the enforcement debtor under the instalment order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.

(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

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

Note 2 An example is part of 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).

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Division 2.18.5 Enforcement of money orders—seizure and sale orders

2200 Seizure and sale order—making

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

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

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

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

2201 Seizure and sale order—application

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

(1) An application for a seizure and sale order is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.59 (Seizure and sale order) AF2006-304.

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(2) The affidavit in support must state—

(a) the date the money order was made; and

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

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any addresses where property belonging to the enforcement debtor may be located; and

(k) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

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

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(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

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

2202 Seizure and sale order—additional exempt property

(MC(CJ)R s 354)

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

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

(2) The court must not make an order under subrule (1) unless satisfied that the enforcement debtor or any of the enforcement debtor's dependants would be likely to suffer exceptional hardship if the order were not made.

(3) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may amend or set aside an order under subrule (1).

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

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

(1) This rule applies if, in executing a seizure and sale order—

(a) an enforcement officer is refused entry to the enforcement debtor's premises, after having told or made reasonable attempts to tell the occupier (orally or in writing)—

(i) about the procedure for execution of the order; and

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(ii) that the enforcement officer intends to apply for an order for entry under this rule if entry is refused; or

(b) an enforcement officer—

(i) has made reasonable attempts to contact the enforcement debtor and any other occupier of the enforcement debtor's premises to obtain consent to enter the premises; and

(ii) has been unable to make contact with the enforcement debtor or any other occupier of the premises.

(2) At the request of the enforcement officer, the court may make an order authorising the enforcement officer, for any purpose connected with executing the seizure and sale order, to enter the enforcement debtor's premises—

(a) using the force and assistance that is reasonable and necessary; and

(b) with the assistance of a police officer or police officers if the enforcement officer considers the assistance to be necessary.

(3) Without limiting subrule (2), an order under that subrule is sufficient authority for the enforcement officer—

(a) to search the enforcement debtor's premises for anything that the enforcement officer is entitled to seize in execution of the seizure and sale order; and

(b) to seize and remove anything the enforcement officer is entitled to seize in execution of the seizure and sale order.

(4) The court must not make an order under subrule (2) in relation to premises unless satisfied that—

(a) the enforcement debtor lives at the premises; or

(b) something the enforcement officer is entitled to seize is at the premises; or

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(c) the enforcement officer is entitled to sell the premises.

(5) An enforcement officer is not civilly liable for anything done or omitted to be done honestly and without recklessness in executing an order under subrule (2).

(6) This rule does not limit any other power of an enforcement officer or the court in relation to the execution of an enforcement order.

(7) In this rule:

enforcement debtor's premises means premises occupied by the enforcement debtor.

2204 Seizure and sale order—assistance to enforcement debtor

(1) If it appears to the enforcement officer executing a seizure and sale order that the enforcement debtor does not properly understand the nature of the order (for example, for language or cultural reasons or because of a disability), the enforcement officer must—

(a) give the enforcement debtor written information about where the enforcement debtor may be able to obtain legal or financial advice and assistance in relation to the order; and

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

Note 1 See approved form 2.60 (Notice to enforcement debtor about seizure and sale order) AF2006-305.

Note 2 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).

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(2) Further action may not be taken to execute the seizure and sale order before the end of 7 days after the day the information is given to the enforcement debtor.

(3) The costs of complying with this rule are costs of enforcement of the seizure and sale order.

2205 Seizure and sale order—notice of order

(NSW r 39.18)

(1) This rule applies if—

(a) an enforcement officer enters premises for the first time for the purpose of executing a seizure and sale order; or

(b) an enforcement officer seizes personal property under a seizure and sale order for the first time at a place.

(2) If subrule (1) (a) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—

(a) the enforcement debtor; or

(b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the premises is present—that person.

(3) If subrule (1) (b) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—

(a) the enforcement debtor; or

(b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to be in possession of the seized property is present—that person.

(4) If there is no-one present at the premises or place who can be given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must leave a sealed copy of the order, secured conspicuously, at the premises or place.

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(5) However, subrule (4) does not require the enforcement officer to leave a sealed copy of the order in a public place.

(6) If the enforcement debtor is not given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must serve a sealed copy of the order on the enforcement debtor—

(a) if the enforcement debtor has an address for service—at the enforcement debtor's address for service; or

(b) in any other case—in the same way that an originating process filed in the court to recover the debt may be served on the enforcement debtor under these rules.

(7) However, this rule does not require a sealed copy of the seizure and sale order to be given to or served on the enforcement debtor if the enforcement debtor has already been given or served with a sealed copy of the order.

(8) In this rule:

premises includes the land around premises occupied by the enforcement debtor.

2206 Seizure and sale order—notice of property seized

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

(1) If an enforcement officer seizes personal property at a place under a seizure and sale order, the enforcement officer must—

(a) make an inventory of the seized property that is sufficient to identify it; and

(b) give notice of the seizure and a copy of the inventory to—

(i) the enforcement debtor; or

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(ii) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the place, or to be in possession of the property, is present—that person.

Note See approved form 2.61 (Notice of seizure and inventory of property under seizure and sale order) AF2006-306.

(2) The notice must include the following information:

(a) the amount (including any amount payable for interest and costs) required to satisfy the order debt;

(b) that application may be made under rule 2202 for an order exempting particular property from sale under the seizure and sale order;

(c) a summary of the process that is followed for sale of property under a seizure and sale order.

(3) If there is no-one present at the place who can be given the notice and a copy of the inventory, the enforcement officer must leave the notice and a copy of the inventory, secured conspicuously, at the place.

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

2207 Seizure and sale order—removal etc of seized property

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

(1) If an enforcement officer seizes personal property, the enforcement officer must consider how best to secure and preserve the property.

(2) The enforcement officer may—

(a) remove the property from the premises or place where the property was seized; or

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(b) leave the property where it is but restrict access to it or otherwise mark the property as having been seized.

(3) If the enforcement officer leaves the property where it is, the enforcement officer must tell the enforcement debtor or anyone else who has custody of the property, in writing, that the property has been seized under a seizure and sale order and that the person is responsible for its safekeeping.

(4) The enforcement creditor is liable to pay any storage expenses but may recover them as costs of enforcement.

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

(MC(CJ)R s 355)

(1) This rule applies if—

(a) property is seized under a seizure and sale order in relation to an enforceable money order of the court; and

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

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

(2) The property must not be sold until the court decides the application.

(3) If the court refuses to make an instalment order on the application, the court may order a stay of sale of the property until any appeal on the application is finally decided.

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2209 Seizure and sale order—property seized not abandoned

(MC(CJ)R s 351)

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

(a) the enforcement officer is not taken to have abandoned the property if the enforcement officer leaves the property at the premises; and

(b) the enforcement officer may at all reasonable times re-enter the premises while the property is there.

2210 Seizure and sale order—seizure of real property

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

(1) Actual seizure is not necessary to authorise the sale of real property under a seizure and sale order.

(2) If there is an advertisement of a notice about real property under rule 2221 (Seizure and sale order—advertisement of sale), an enforcement officer is taken to have seized the real property for these rules.

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

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

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

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

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

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

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

(1) An enforcement officer must seize and sell property under a seizure and sale order—

(a) in the order appearing to the enforcement officer to be best for the prompt enforcement of the order without unnecessary expense; and

(b) subject to paragraph (a), in the order appearing to the enforcement officer to be best for minimising hardship to the enforcement debtor or other people; and

(c) subject to paragraphs (a) and (b), by seizing and selling personal property before real property unless—

(i) the enforcement debtor asks for real property to be sold before personal property; or

(ii) the court otherwise orders on application by the enforcement debtor, the enforcement creditor or the enforcement officer.

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

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

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2213 Seizure and sale order—payment before sale

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

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

(a) the amount owing under the order, including interest; and

(b) the costs of enforcement then known to the enforcement officer; and

(c) the amount set by the enforcement officer as security for the enforcement creditor's other costs of enforcement.

2214 Seizure and sale order—suspension etc of enforcement

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

(1) If property has not been seized under a seizure and sale order, the enforcement creditor may, in writing—

(a) require enforcement of the order to be suspended unconditionally; and

(b) if enforcement of the order has been suspended under these rules—require enforcement to be resumed.

(2) An enforcement officer must comply with a requirement made in accordance with this rule.

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

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

(1) This rule applies if property has been seized under a seizure and sale order and the enforcement creditor—

(a) enters into an arrangement with the enforcement debtor that an enforcement officer may withdraw from and re-enter possession of the property; and

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(b) tells the enforcement officer about the arrangement; and

(c) asks the enforcement officer to withdraw from possession of the property.

(2) The enforcement officer must withdraw from possession of the property and suspend enforcement of the seizure and sale order.

(3) However, the enforcement officer may, if asked in writing by the enforcement creditor, re-enter possession of the property and resume enforcement of the seizure and sale order.

(4) If property has been seized under a seizure and sale order and the enforcement creditor, without telling the enforcement officer about the arrangement mentioned in subrule (1), asks an enforcement officer to withdraw from possession or suspend enforcement of the order, other than for the purpose of postponing a sale for a reasonable time—

(a) the enforcement creditor is taken to have abandoned the enforcement of the order; and

(b) the enforcement officer must withdraw from possession of the property and return the order to the enforcement creditor.

(5) Subrule (4) does not apply if the court otherwise orders on application by the enforcement creditor.

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

2216 Seizure and sale order—nature of sale

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

(1) Unless the court otherwise orders, an enforcement officer must put up for sale by public auction all property liable to be sold under a seizure and sale order—

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(a) as early as possible, having regard to the interests of the enforcement creditor and the enforcement debtor (the ***parties***); and

(b) at a place and in a way appearing to the enforcement officer to be suitable for a beneficial sale of the property.

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

(2) The property must not be sold before the end of 7 days after the day the property is seized unless—

(a) the enforcement debtor asks for the property to be sold before the end of the 7-day period; or

(b) the property is perishable.

(3) However, personal property must be sold within 12 weeks after the day it is seized.

(4) Before the property is sold by public auction, a party or the enforcement officer may apply to the court for an order that the property be sold privately.

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

(5) The application must be accompanied by an affidavit in support of the application.

(6) If the applicant is a party, the applicant must also serve a stamped copy of the application on the enforcement officer.

(7) If, on application by the enforcement creditor, the court makes an order that the property be sold privately before a public auction, the court may order that the enforcement creditor pay any costs already incurred by the enforcement officer for the auction.

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(8) Property sold by public auction must be sold under the following conditions of sale:

(a) for personal property, if the person conducting the auction considers the particular lot in which the property is to be auctioned is worth less than $500, or for other property if the enforcement debtor agrees—at the best price obtainable;

(b) otherwise, if the reserve is reached—to the highest bidder;

(c) if the person conducting the auction considers there is a dispute as to who is the highest bidder, the property is to be reauctioned and knocked down to the highest bidder.

(9) If property put up for sale at public auction is not sold by auction, the enforcement officer may sell the property privately—

(a) for an amount not less than the highest bid made at the auction that the enforcement officer considers is a reasonable amount for the property; or

(b) if no bid was made at the auction—for an amount the enforcement officer considers is a reasonable amount for the property; or

(c) in accordance with an order of the court under rule 2220 (Seizure and sale order—sale at best price obtainable).

(10) In this rule:

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

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2217 Seizure and sale order—setting reasonable amount

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

(1) To set an amount as a reasonable value of the property to be sold under a seizure and sale order, the enforcement officer—

(a) may engage a suitably qualified and experienced valuer to give the enforcement officer an opinion about the value of the property; and

(b) may require the enforcement creditor to provide any information about the property that the enforcement creditor knows or can reasonably obtain; and

(c) may seek any other information the enforcement officer considers appropriate.

(2) If the enforcement creditor fails to comply with the enforcement officer's request, the enforcement officer may refuse to proceed with the sale until the information is provided or the court otherwise orders on the application of the enforcement creditor.

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

(3) The enforcement officer's costs under this rule are costs of enforcement of the seizure and sale order.

(4) The enforcement officer may communicate the amount set as a reasonable value of property to be sold to any person before the sale only if the communication is necessary to conduct the sale or there is another sufficient excuse.

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2218 Seizure and sale order—additional provisions relating to land

(1) This rule applies if land is to be sold under a seizure and sale order.

(2) An enforcement officer may—

(a) seek expressions of interest from real estate agents to market the land and conduct the sale; and

(b) appoint a real estate agent after considering any expressions of interest received.

(3) The costs of complying with subrule (2) are costs of enforcement of the seizure and sale order.

(4) The enforcement officer or appointed real estate agent may postpone the sale of the land if the officer or agent considers that an immediate sale would result in a sacrifice of the value of the land.

(5) The enforcement officer must—

(a) search the title of the land for any encumbrances; and

(b) make inquiries about the outstanding value of any encumbrances.

(6) The enforcement officer must take the value of any encumbrances into account in setting the reserve price of the property.

(7) On application by the enforcement officer, the court may make any order it considers appropriate in aid of the sale of the land under the seizure and sale order, including, for example, an order for the disclosure of the amount owing under an encumbrance on the land.

Note An example is part of 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).

(8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (7).

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(9) An application under subrule (7) need not be served on anyone unless the court otherwise orders on its own initiative.

(10) Unless the court otherwise orders on its own initiative, an application under subrule (7) must be dealt with without a hearing and in the absence of the parties.

(11) If the court makes an order under subrule (7), the registrar must give a sealed copy of the order to the enforcement creditor and enforcement debtor.

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

(NSWA s 114)

(1) If land is to be sold by public auction, the court may, on application by an enforcement officer, make an order—

(a) authorising entry onto the land by the enforcement officer (including entry by force if necessary) for the purpose of showing the land to prospective purchasers; and

(b) authorising entry onto the land by prospective purchasers in the presence of the enforcement officer.

(2) The order may also authorise the enforcement officer to do either or both of the following:

(a) secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary);

(b) take the steps necessary to prevent people from entering the land.

(3) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(4) An application under this rule need not be served on anyone unless the court otherwise orders on its own initiative.

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(5) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

(6) This rule does not affect any other power of the court to make orders.

(7) In this rule:

land includes premises on land.

2220 Seizure and sale order—sale at best price obtainable

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

(1) This rule applies if the property seized under a seizure and sale order is not sold under rule 2216 (Seizure and sale order—nature of sale).

(2) The enforcement officer or enforcement creditor may apply to the court for an order to sell the property at the best price obtainable.

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

(3) The application must be accompanied by an affidavit, or a report by the enforcement officer, in support of the application giving details of the required steps for sale that have been taken.

(4) A copy of the application and affidavit must be served on the enforcement debtor and any other interested party.

2221 Seizure and sale order—advertisement of sale

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

(1) Before selling property seized under a seizure and sale order, an enforcement officer must arrange advertisement of a notice giving—

(a) the time and place of sale; and

(b) details of the property to be sold.

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(2) The notice must be published in a daily newspaper circulating generally in the ACT on 2 different days.

(3) Both of the days mentioned in subrule (2) must be not more than 4 weeks before the day of the sale and at least 1 of the days must be not less than 2 weeks before the day of the sale.

(4) However, the enforcement officer may sell the seized property without arranging the advertisements if—

(a) the property is perishable; or

(b) the enforcement debtor asks in writing for the property to be sold without the advertisements and the enforcement creditor consents.

(5) Also, if the seized property is put up for sale at a public auction to be conducted by someone other than an enforcement officer—

(a) it is sufficient for the notice to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and

(b) advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and

(c) an enforcement officer may require any other advertising the enforcement officer considers reasonable.

(6) At least 48 hours before the day of the auction, the enforcement officer must serve on the enforcement debtor a notice stating the date, time and place of the auction and the property to be auctioned.

(7) The advertisement must not contain any statement to the effect, or from which it can be inferred, that the auction is of property seized under a seizure and sale order.

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2222 Seizure and sale order—postponement of sale

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

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

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

(2) For a sale of personal property, the stated date must not be later than 12 weeks after the day the property was seized unless the court otherwise orders.

(3) If the order authorising the sale would otherwise end before the stated date, the postponement automatically extends the order until the end of the stated date.

2223 Seizure and sale order—amounts received

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

(1) An enforcement officer must pay to the registrar all proceeds of sale and other amounts received by the enforcement officer under a seizure and sale order.

(2) From the amounts received from the enforcement officer, the registrar must—

(a) pay the enforcement officer's fees and costs of enforcement (including any costs of valuing and advertising property); and

(b) pay any balance, up to the amount recoverable under the seizure and sale order, to the enforcement creditor; and

(c) pay any remaining balance to the enforcement debtor.

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(3) If the enforcement officer receives seizure and sale orders in relation to more than 1 enforcement creditor, the enforcement creditors must be paid from the proceeds of sale in the order in which the seizure and sale orders were received by the enforcement officer.

(4) The registrar must give the enforcement debtor and enforcement creditor an account showing how the amounts received have been paid.

2224 Seizure and sale order—terms about payment

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

(1) An enforcement officer must sell property seized under a seizure and sale order on terms that the purchaser of an item of the property—

(a) must pay—

(i) 10% of the purchase price as a deposit immediately after the sale; and

(ii) the balance of the purchase price within the period (not longer than 2 days after the day of the sale) that the enforcement officer decides before the sale; or

(b) must pay all the purchase price immediately after the sale.

(2) An enforcement officer must require payment of the purchase price to be in cash or by bank draft, electronic funds transfer, debit card or credit card.

(3) If payment is made by electronic funds transfer, debit card or credit card, any charge made for the payment must be included in the costs of enforcement.

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2225 Seizure and sale order—securities held by enforcement officer

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

(1) This rule applies if an enforcement officer seizes a cheque, bill of exchange, promissory note, bond, specialty, or another security for money, (the ***seized document***) under a seizure and sale order.

(2) The enforcement officer holds the seized document as security for the amount to be recovered under the seizure and sale order for the benefit of the enforcement creditor.

(3) The enforcement officer may sue in the officer's own name for, and recover, an amount payable under the seized document from the person liable under it.

(4) Payment to the enforcement officer of an amount payable under the seized document discharges the person liable under the document to the extent of the payment.

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

(NSWA s 110)

(1) This rule applies if personal property subject to a seizure and sale order is in the enforcement debtor's possession and is also subject to a conditional bill of sale.

(2) An enforcement officer may sell the enforcement debtor's interest in the property without taking possession of it.

(3) On receiving written notice that a person (the ***purchaser***) has purchased the interest, the person having the benefit of the bill of sale (the ***holder of the bill***) may take possession of the property.

(4) If the holder of the bill takes possession of the property, the holder is taken to hold it for the use of the purchaser, subject to the purchaser's payment of any amounts payable under the bill of sale.

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(5) If the property is later sold under the bill of sale and any surplus remains from the proceeds of sale after the debt to the holder of the bill is satisfied, the holder must pay the surplus to the purchaser.

(6) This rule does not affect the right of the enforcement creditor to test the validity of the bill of sale by interpleader.

2227 Seizure and sale order—effect of sale of property

(NSWA s 115)

(1) A sale of property by an enforcement officer under this division is as valid as if the property had been sold to the purchaser by the enforcement debtor personally.

(2) In an instrument executed by an enforcement officer in relation to land, a statement in the instrument to the effect that—

(a) the land has been sold under a seizure and sale order; and

(b) the seizure and sale order was made for the enforcement of a money order made in a proceeding stated in the order;

is admissible in any proceeding as evidence of those facts.

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

(NSWA s 116)

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

(a) the ending of a seizure and sale order under rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers) does not affect any agreement for sale or other transaction entered into under the authority of the order before the order ends; and

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

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

(NSWA s 136)

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

(a) first towards the part of the order debt that is costs; and

(b) second towards the part of the order debt that is interest; and

(c) third toward the balance of the order debt.

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

2230 Seizure and sale order—documents giving effect to sale

(NSW r 39.26)

(1) If land is sold at auction under a seizure and sale order, the enforcement officer and the purchaser must each sign an appropriate contract of sale immediately after the auction.

(2) Unless the court otherwise orders, the settlement date under the contract of sale must not be later than 90 days after the day of the auction.

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

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

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2231 Seizure and sale order—payment to enforcement debtor

(NSW r 39.28)

(1) An enforcement creditor on whose application a seizure and sale order has been made may file in the court—

(a) an agreement with the enforcement debtor about the amount of the enforcement creditor's costs of enforcement (a ***costs agreement***); or

Note Rule 1702 (Costs—agreement about costs) applies to the agreement.

(b) a bill of costs.

(2) A costs agreement or bill of costs must be filed—

(a) not later than 2 months after the day an enforcement officer receives the proceeds of any sale under the seizure and sale order; or

(b) within any longer time the enforcement debtor agrees to in writing.

(3) If the enforcement creditor files a costs agreement in accordance with subrule (2), the registrar must pay the enforcement debtor any amount held by the court over the amount necessary to satisfy the seizure and sale order.

(4) If the enforcement creditor files a bill of costs in accordance with subrule (2), the registrar must pay the enforcement debtor, before assessing the costs, any amount held by the court over the amount that, on the basis of the amount claimed in the bill of costs, is necessary to satisfy the seizure and sale order.

(5) If the enforcement creditor does not file a costs agreement or bill of costs in accordance with subrule (2), the registrar may pay the enforcement debtor any amount held by the court over the total amount necessary to satisfy the seizure and sale order (including interest) and the costs of enforcement then known to the registrar.

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(6) The registrar must pay the enforcement creditor any of the proceeds of sale that the registrar is not required by this rule to pay to the enforcement debtor.

(7) This rule does not affect the right of the enforcement creditor to recover from the enforcement debtor the costs of enforcement of the seizure and sale order.

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

(MC(CJ)R s 369)

(1) This rule applies to—

(a) an enforcement officer; or

(b) a real estate agent or auctioneer appointed or engaged by an enforcement officer in relation to a seizure and sale order; or

(c) an employee of the real estate agent or auctioneer.

(2) A person to whom this rule applies is not entitled—

(a) to bid at an auction at which property seized under the order is offered for sale; or

(b) to purchase, personally or for someone else, any property seized under the order at auction or by private agreement.

2233 Seizure and sale order—account etc

(MC(CJ)R s 370)

(1) This rule applies to a person if the person—

(a) is a real estate agent or auctioneer; and

(b) is appointed or engaged by an enforcement officer in relation to a seizure and sale order.

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(2) The person must tell an enforcement officer the amount of the person's charges in relation to the seizure and sale order as soon as practicable after—

(a) being told by the enforcement officer that the person's services are not required, or will no longer be required, in relation to the order; or

(b) being asked by an enforcement officer for an account of the person's charges in relation to the order.

(3) The person must, as soon as practicable after receiving any amount under a seizure and sale order, pay the amount, less the person's charges, to an enforcement officer.

2234 Seizure and sale order—report by enforcement officer

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

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

(2) The report must include an account of—

(a) the proceeds of the sale and any other amount received by the enforcement officer under the seizure and sale order; and

(b) all the costs and charges incurred in giving effect to the order, including any costs of removing the property from where it was seized and advertising the sale; and

(c) how the proceeds and other amount (if any) have been disposed of.

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

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

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

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

(2) An application under subrule (1) must be made not later than 4 weeks after the day of the auction.

(3) In considering whether to make an order for the disposal of the property, the court must have regard to—

(a) the amount of the enforcement debt and costs and charges remaining unpaid; and

(b) any hardship that would be imposed on the enforcement creditor if the order were not made and on the enforcement debtor if the order were made.

(4) If—

(a) the enforcement creditor does not make an application in accordance with subrule (2) in relation to property remaining unsold; or

(b) the court refuses to make an order under subrule (1) for the disposal of property remaining unsold;

the property must be returned to the enforcement debtor.

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Division 2.18.6 Enforcement of money orders—debt redirection orders generally

2300 Application—div 2.18.6

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

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

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

(2) However, this division does not apply to—

(a) a redirection of earnings; or

(b) an order for the payment of money into court.

Note Div 2.18.8 deals with earnings redirection orders.

2301 Debt redirection order—making

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

(1) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may make an order (a ***debt redirection order***) authorising the redirection to the enforcement creditor of the third person's debt to the enforcement debtor.

(2) To remove any doubt, a single debt redirection order may be made in relation to 2 or more debts.

(3) A debt may be redirected only if the debt is payable or accruing to the enforcement debtor by the third person on the day the order for redirection of the debt is served on the third person.

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

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2302 Debt redirection order—application

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

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.62 (Debt redirection order) AF2006-307.

(2) The affidavit in support must state—

(a) the date the money order was made; and

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

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the money order; and

(f) the costs incurred in previous enforcement proceedings in relation to the money order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the money order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and

(j) the name of the third person; and

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(k) the amount of the debt that appears to be owed by the third person to the enforcement debtor; and

(l) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

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

(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

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

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

2303 Debt redirection order—relevant considerations

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

(1) In deciding whether to make a debt redirection order, the court must have regard to the following matters, as far as they are known to the court:

(a) the enforcement debtor's means of satisfying the order debt;

(b) whether the order debt, including any interest, will be satisfied within a reasonable time;

(c) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(d) other liabilities of the enforcement debtor;

(e) the amount of the order debt;

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(f) the amount of the debt to be redirected and the amount of each instalment (if any);

(g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly;

(h) whether, having regard to the nature of the debt and the kind of redirection, the redirection is appropriate.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount of the debt to be redirected under the order and the amount of each instalment (if any), the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the debt redirection order.

2304 Debt redirection order—joint funds

(SCQA s 93C)

(1) This rule applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a ***joint fund***).

(2) A debt redirection order may authorise redirection to an enforcement creditor of the joint fund to the extent of the enforcement debtor's entitlement.

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(3) Unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner, it is presumed a joint fund is owned by the fund owners in equal shares.

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

2305 Debt redirection order—partnership debts

(SCQA s 93E)

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

2306 Debt redirection order—account with financial institution

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

(1) An amount standing to the credit of an enforcement debtor in an account with a financial institution is, for enforcing a money order, a debt payable by the financial institution to the enforcement debtor.

(2) Subrule (1) applies even if any of the following conditions applying to the account have not been satisfied:

(a) a condition requiring a demand or notice to be made or given before an amount is withdrawn;

(b) a condition about how, or the place where, a demand is to be made;

(c) a condition requiring a personal application to be made before an amount is withdrawn;

(d) a condition requiring the production of a deposit book, receipt or anything else for an amount deposited in the account before the amount is withdrawn;

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(e) a condition requiring an amount not be withdrawn for a stated period;

(f) a condition requiring a minimum amount for a withdrawal;

(g) a condition requiring a minimum balance to be maintained in the account;

(h) a similar condition.

(3) This rule applies, with any necessary changes, to an amount that is placed to the credit of an enforcement debtor in an account in a financial institution between the date of the debt redirection order and any hearing deciding the validity of the order.

2307 Debt redirection order—claim by someone else

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

(1) This rule applies if—

(a) the court is considering making, or has made, a debt redirection order for a debt; and

(b) the court considers that someone other than the enforcement debtor who may be entitled to all or a part of the debt, or to a charge or lien on it, (an ***interested person***) should be given the opportunity to object.

(2) The court may, on its own initiative, give the directions it considers appropriate for deciding the interested person's entitlement.

Examples of directions

1 that a stamped copy of a debt redirection order be served on a person who may be an interested person

2 that a stamped copy of an objection, supporting affidavit, or response to an objection, filed under rule 2311 (Debt redirection order—third person disputes liability) be served on a person who may be an interested person

3 that a person who may be an interested person be given an opportunity to file a notice of objection and supporting affidavit

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4 directions for deciding any question arising out of a notice of objection or supporting affidavit

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).

2308 Debt redirection order—when debt redirected

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

(1) A debt redirection order must be served on the third person to have effect.

(2) On the service of the order, all debts then payable or accruing from the third person to the enforcement debtor are redirected in the hands of the third person to the enforcement creditor to the extent of the amount recoverable under in the order.

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

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

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

(a) the date the debt is, or is likely to be, payable to the enforcement debtor; and

(b) if the amount of the debt is less than the unpaid amount of the amount recoverable under the money order—the amount of the debt.

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2310 Debt redirection order—payments by third person

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

(1) Payments under a debt redirection order must be made in accordance with, and to the enforcement creditor stated in, the order.

(2) Out of each amount redirected under the order, the third person may deduct a reasonable amount to cover the third person's costs and expenses of complying with the order.

2311 Debt redirection order—third person disputes liability

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

(1) This rule applies if—

(a) a debt redirection order is served on the third person; and

(b) the third person disputes liability to pay any debt to the enforcement debtor.

(2) The third person may file a notice of objection in the court.

(3) The notice must be filed not later than 7 days after the day the order is served on the third person.

(4) The notice must be accompanied by an affidavit in support stating the facts relied on by the third person.

(5) The disclosure of any information in the affidavit does not subject the third person to any liability if the disclosure was reasonable in the circumstances.

(6) The filing of the notice stays any obligation of the third person to pay the debt to the enforcement debtor or enforcement creditor but does not stay any accrual of interest on the debt.

(7) The third person must serve a stamped copy of the notice and supporting affidavit on the enforcement creditor and enforcement debtor.

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(8) The enforcement debtor or enforcement creditor may file in the court an affidavit in response to the notice of objection.

(9) The court may—

(a) decide the question of liability without a hearing and in the absence of the parties; or

(b) on its own initiative, give directions for the question to be decided.

(10) To remove any doubt, part 6.2 (Applications in proceedings) does not apply to a notice of objection, or response to a notice of objection, under this rule.

2312 Debt redirection order—discharge of third person

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

(1) A payment to an enforcement creditor made by the third person in accordance with a debt redirection order is a valid discharge of the third person's liability to the enforcement debtor to the extent of the amount paid.

(2) This rule applies even if, after the payment, the debt redirection order is set aside or the money order from which it arose is amended or set aside.

2313 Debt redirection order—payment to enforcement debtor despite redirection

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

(1) This rule applies if, after redirection of a debt in the hands of the third person—

(a) the third person acts with reasonable diligence to give effect to the redirection; and

(b) although the third person acts with reasonable diligence, the third person deals with the redirected debt in a way that

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satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt, including, for example, by payment to the enforcement debtor.

Note An example is part of 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).

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

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

2314 Debt redirection order—amending, suspending or setting aside

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

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

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

(2) The registrar must give notice of the date and time the application is to be heard to the enforcement creditor, enforcement debtor and third person.

(3) After hearing the application, the court may make 1 or more of the following orders:

(a) an instalment order;

(b) an order amending, suspending or setting aside the debt redirection order;

(c) a regular redirection order;

(d) an earnings redirection order.

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(4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—

(a) the order (if any) preferred by the enforcement debtor; and

(b) the likelihood of the enforcement debtor complying with an instalment order; and

(c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor; and

(d) any other information that the court considers is relevant and reliable.

(5) Subrule (4) does not limit—

(a) the other matters to which the court must have regard in deciding whether to make an instalment order or earnings redirection order; or

Note For these matters, see—

- r 2154 (Instalment order—relevant considerations)
- r 2352 (Earnings redirection order—relevant considerations).

(b) the other matters to which the court may have regard.

(6) If the court makes an order amending, suspending or setting aside the debt redirection order under this rule—

(a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and third person; and

(b) the order does not come into force until the end of 7 days after the day it is served on the third person.

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2315 Debt redirection order—procedure if order not complied with

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

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

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

(2) If the court is satisfied that the third person is liable to pay the debt and has not complied with the debt redirection order, the court may make an order against the third person in favour of the enforcement creditor for the lesser of—

(a) the amount that has not been paid to the enforcement creditor as required by the debt redirection order; and

(b) the unpaid amount of the order debt.

(3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b), or for any other reason.

(4) As between the third person and the enforcement debtor, an amount paid to the enforcement creditor by the third person under an order under this rule is taken to have been paid by the third person to the enforcement debtor.

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

2330 Application—div 2.18.7

(Qld r 847 (1))

This division applies if—

(a) the enforcement debtor for an enforceable money order of the court has an account with a financial institution; and

(b) the financial institution or someone else (the ***fourth person***) regularly deposits earnings, interest or rent into the account (the ***regular deposit***).

2331 Regular redirection order—application of div 2.18.6

(Qld r 847 (2))

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

(2) In this rule:

non-applied provisions means the following provisions:

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

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2332 Regular redirection order—making

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

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

Note See approved form 2.63 (Regular redirection order) AF2006-308.

(2) In this rule:

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

2333 Regular redirection order—content

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

A regular redirection order must state the following:

(a) the name of the financial institution that must deduct amounts from a regular deposit;

(b) details of the enforcement debtor's account from which the deduction is to be made;

(c) the name and address of the fourth person;

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

(d) the amount that the financial institution must deduct each time a regular deposit is made;

(e) the name and address of the enforcement creditor to whom the financial institution must give the deducted amount.

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

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2334 Regular redirection order—service and coming into force

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

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

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

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

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

2335 Regular redirection order—financial institution to make payments etc

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

(1) For each regular deposit into the enforcement debtor's account while the regular redirection order is in force, the financial institution—

(a) must, not later than 3 days after the day the deposit is made, deduct from the account the amount stated in the order and pay it to the enforcement creditor stated in the order; and

(b) may deduct from the account a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(c) must, at least once a month, give the enforcement debtor a notice detailing the deductions.

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(2) Any charge deducted under subrule (1) (b) must not be more than—

(a) if the financial institution has an amount it usually charges its customers for making periodic payments—that amount; or

(b) otherwise—an amount that covers the financial institution's costs and expenses of complying with the order.

(3) In applying subrule (1) (a) to the last deduction, the financial institution must deduct the amount (not more than the amount stated in the order for deduction for each regular deposit) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

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

2336 Regular redirection order—enforcement debtor not to defeat order

(Qld r 852)

(1) The enforcement debtor must ensure that sufficient funds remain in the enforcement debtor's account after each regular deposit for the deduction from the account of the amount stated in the order.

(2) The enforcement debtor must tell the enforcement creditor in writing if—

(a) the fourth person discontinues making the regular deposit; or

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

(b) the enforcement debtor closes the account or arranges for the fourth person to pay the enforcement debtor in another way.

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2337 Regular redirection order—no other enforcement while in force

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

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

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

2338 Regular redirection order—ceasing to have effect

(Qld r 848 (2))

(1) A regular redirection order ceases to have effect when—

(a) the order debt is satisfied; or

(b) the regular redirection order is set aside or ends in accordance with its terms.

(2) If a regular redirection order ceases to have effect otherwise than because of an order the enforcement creditor is required under these rules to serve on the financial institution, the enforcement creditor must give notice to the financial institution that the regular redirection order has ceased to have effect.

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

(4) If a regular redirection order ceases to have effect, the financial institution does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the financial institution:

(a) a sealed copy of the order because of which the regular redirection order ceases to have effect;

(b) the notice mentioned in subrule (2).

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2339 Regular redirection order—return of excess

(1) If a regular redirection order is made for an order debt and the enforcement creditor receives from the financial institution more than the amount payable under the order—

(a) the enforcement creditor must return the excess to the financial institution; and

(b) the financial institution must deposit it to the account from which amounts were deducted under the regular redirection order or otherwise deal with it in accordance with the enforcement debtor's written request.

(2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.

(3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

2340 Regular redirection order—record of payments

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

(2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the regular redirection order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy

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to the enforcement debtor on payment of a reasonable charge for preparing the copy.

(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

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

Note 2 An example is part of 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).

Division 2.18.8 Enforcement of money orders—earnings redirection orders

2350 Earnings redirection order—making

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

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

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

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

2351 Earnings redirection order—application

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

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.64 (Earnings redirection order) AF2006-309.

(2) The affidavit in support must state—

(a) the date the money order was made; and

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

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

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(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

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

(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

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

2352 Earnings redirection order—relevant considerations

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

(1) In deciding whether to make an earnings redirection order, the court must have regard to the following matters, as far as they are known to the court:

(a) the enforcement debtor's means of satisfying the order debt;

(b) whether the order debt, including any interest, will be satisfied within a reasonable time;

(c) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(d) other liabilities of the enforcement debtor;

(e) the amount of the order debt;

(f) the amount of the earnings to be redirected each payday;

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(g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount and timing of the earnings to be redirected under the order on each payday, the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the earnings redirection order.

2353 Earnings redirection order—limit

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

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

(a) if the enforcement debtor has dependants—$484.40 a week; or

(b) if the enforcement debtor does not have dependants—$363.30 a week.

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

(Qld r 857)

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

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(a) the earnings owing to the debtor; and

(b) the earnings payable to the debtor from time to time.

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

2355 Earnings redirection order—content

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

An earnings redirection order must state—

(a) the name of the enforcement debtor; and

(b) the name of the enforcement debtor's employer who must deduct from the enforcement debtor's earnings; and

(c) the total amount the employer must deduct from the enforcement debtor's earnings; and

(d) if an amount is required to be deducted from the enforcement debtor's earnings each payday—the amount; and

(e) the name and address of the enforcement creditor to whom the employer must pay the deductions.

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

2356 Earnings redirection order—service and coming into force

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

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

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

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

(3) The enforcement creditor must also serve on the enforcement debtor's employer—

(a) a notice telling the enforcement debtor's employer of the effect of the order and the employer's obligations under this division; and

Note See approved form 2.65 (Notice to employer-earnings redirection order) AF2006-310.

(b) a copy of a notice that the employer may use if the debtor is not employed by the employer.

Note See approved form 2.66 (Notice that debtor not employee) AF2006-311.

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

2357 Earnings redirection order—person served not employer

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

(1) This rule applies if—

(a) an earnings redirection order is served on a person on the basis that the person is the enforcement debtor's employer; and

(b) the person is not the enforcement debtor's employer when the order is served on the person.

(2) The person must immediately tell the registrar, in writing, that the person is not the enforcement debtor's employer.

Note See approved form 2.66 (Notice that debtor not employee) AF2006-311.

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

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2358 Earnings redirection order—employer to make payments etc

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

(1) For each payday while an earnings redirection order is in force, the enforcement debtor's employer—

(a) must deduct from the enforcement debtor's earnings the amount stated in the order and pay it to the person stated in the order; and

(b) may deduct from the enforcement debtor's earnings a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(c) must give the enforcement debtor a notice detailing the deductions.

(2) Any charge deducted by an employer under subrule (1) (b) must not be more than—

(a) if the employer has an amount the employer usually charges employees for making periodic payments—that amount; or

(b) otherwise—an amount that covers the employer's costs and expenses of complying with the order.

(3) In applying subrule (1) (a) to the last deduction, the employer must deduct the amount (not more than the amount stated in the order for deduction each payday) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

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

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2359 Earnings redirection order—no other enforcement while in force

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

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

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

2360 Earnings redirection order—amending, suspending or setting aside

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

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

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

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

(3) After hearing the application, the court may make 1 or more of the following orders:

(a) an instalment order;

(b) an order amending, suspending or setting aside the earnings redirection order;

(c) a debt redirection order;

(d) a regular redirection order.

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(4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—

(a) the order (if any) preferred by the enforcement debtor; and

(b) the likelihood of the enforcement debtor complying with an instalment order; and

(c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor; and

(d) any other information that the court considers is relevant and reliable.

(5) Subrule (4) does not limit—

(a) the other matters to which the court must have regard in deciding whether to make an instalment order or debt redirection order; or

Note For these matters, see—

- r 2154 (Instalment order—relevant considerations)
- r 2303 (Debt redirection order—relevant considerations).

(b) the other matters to which the court may have regard.

(6) If the court makes an order amending, suspending or setting aside the earnings redirection order under this rule—

(a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and employer; and

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

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2361 Earnings redirection order—ceasing to have effect

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

(1) An earnings redirection order for a money order ceases to have effect when—

(a) the order debt is satisfied; or

(b) the earnings redirection order is set aside or ends in accordance with its terms; or

(c) unless the court otherwise orders, another enforcement order is made for the money order.

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

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

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

(4) If an earnings redirection order ceases to have effect, the enforcement debtor's employer does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the employer:

(a) a sealed copy of the order because of which the earnings redirection order ceases to have effect;

(b) the notice mentioned in subrule (2).

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2362 Earnings redirection order—return of excess

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

(1) If an earnings redirection order is made for an order debt and the enforcement creditor receives from the enforcement debtor's employer more than the amount payable under the order—

(a) the enforcement creditor must return the excess to the employer; and

(b) the employer must pay it to the enforcement debtor.

(2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.

(3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

2363 Earnings redirection order—record of payments

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

(2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the earnings redirection order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.

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(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

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

Note 2 An example is part of 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).

2364 Earnings redirection order—2 or more orders in force

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

(1) This rule applies if 2 or more earning redirection orders are in force in relation to the same earnings of an enforcement debtor.

(2) The employer must comply with the orders according to the dates they were served on the employer and disregard an order served later until an order served earlier ceases to have effect.

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

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

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2365 Earnings redirection order—person served ceasing to be employer

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

(1) This rule applies if—

(a) a person who is an enforcement debtor's employer is served with an earnings redirection order; and

(b) the person later ceases to be the enforcement debtor's employer.

(2) The person must immediately tell the court and enforcement creditor, in writing, that the person is no longer the enforcement debtor's employer.

Note See approved form 2.67 (Notice of cessation of employment) AF2006-312.

2366 Earnings redirection order—enforcement debtor changes or ceases employment

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

(1) This rule applies if an enforcement debtor for whom an earnings redirection order is in force changes employer or ceases to be employed.

(2) Not later than 7 days after the day the enforcement debtor changes employer or ceases employment, the enforcement debtor must tell the registrar and the enforcement creditor, in writing, the details of the debtor's new employer or that the debtor has ceased employment.

Note See approved form 2.68 (Notice by enforcement debtor of change in employment) AF2006-313.

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(3) If the registrar is told under subrule (2) that the enforcement debtor has changed employer, the court may, on its own initiative—

(a) set aside the existing earnings redirection order; and

(b) make a new earnings redirection order authorising redirection to the enforcement creditor of earnings of the enforcement debtor from the new employer.

2367 Earnings redirection order—directions

(Qld r 867)

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

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

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

(3) The enforcement creditor and enforcement debtor are parties to the application.

(4) On application under this rule, the court may give the directions it considers appropriate.

(5) Without limiting subrule (4), the court may decide whether payments being made by the employer to the enforcement debtor that are described in the application are earnings.

(6) While the application or any appeal from a decision made on the application is pending, the employer does not incur any liability for failing to comply with the earnings redirection order in relation to payments mentioned in subrule (5) that are described in the application.

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2368 Earnings redirection order—employment protection

(SCQA s 93H)

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

2369 Earnings redirection order—procedure if order not complied with

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

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

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

(2) If the court is satisfied that the employer is liable to pay the earnings, the court may make an order against the employer in favour of the enforcement creditor for the lesser of—

(a) the amount of earnings that has not been paid to the enforcement creditor as required by the earnings redirection order; and

(b) the unpaid amount of the order debt.

(3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b).

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(4) As between the employer and the enforcement debtor, an amount paid to the enforcement creditor by the employer under an order under this rule is taken to have been paid by the employer to the enforcement debtor.

Division 2.18.9 Enforcement of money orders—charging orders

2400 Application—div 2.18.9

(Qld r 874)

This division applies only in relation to the Supreme Court.

2401 Charging order—making

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

(1) On application by the enforcement creditor for an enforceable money order of the court, the court may make an order (a ***charging order***) imposing a charge over all or part of the enforcement debtor's equitable interest in any property or legal or equitable interest in 1 or more of the following (each of which is a ***security interest***):

(a) annuities;

(b) debentures;

(c) stocks;

(d) bonds;

(e) shares;

(f) marketable securities;

(g) interests in a managed investment scheme;

(h) units of—

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(i) shares; or

(ii) marketable securities;

(i) money on deposit in a financial institution that is held—

(i) in the enforcement debtor's name in the enforcement debtor's own right; or

(ii) in someone else's name on trust for the enforcement debtor.

(2) A charging order operates, in relation to each security interest stated in the order—

(a) to charge the security interest in favour of the enforcement creditor to the extent necessary to satisfy the order debt; and

(b) to restrain the chargee from dealing with the security interest otherwise than in accordance with the directions of the enforcement creditor.

2402 Charging order—application

(1) An application for a charging order is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.69 (Charging order) AF2006-314.

(2) The affidavit in support must state—

(a) the date the money order was made; and

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

(c) the amount of the order debt; and

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(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) the security interest or interests to be charged by the order being sought; and

(k) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

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

(5) The draft order and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

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

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2403 Charging order—effect

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

(1) A charging order takes effect when it is made.

(2) However, to have effect on the enforcement debtor, a charging order must be served on the enforcement debtor.

(3) A charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge imposed by the order had been made in the enforcement creditor's favour by the enforcement debtor.

(4) However, unless the court otherwise orders, the enforcement creditor must not start a proceeding to obtain a remedy in relation to property charged by the charging order until—

(a) a sealed copy of the charging order is served on the enforcement debtor and the person who issued or administers the property; and

(b) 1 month has passed since the day the order was served, or the later of the days the order was served, as required by paragraph (a).

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

2404 Charging order—enforcement debtor dealing with charged property

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

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

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(2) Any sale, transfer or other dealing by the enforcement debtor in contravention of subrule (1) is of no effect against the enforcement creditor.

(3) The court may set aside or restrain the sale, transfer or other dealing unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

2405 Charging order—issuer etc dealing with charged property

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

(1) This rule applies to—

(a) a person who issued or administers charged property and has been served with a charging order in relation to the property; and

(b) anyone else who has notice of a charging order in relation to property.

(2) The person must not sell, transfer or otherwise deal with the property otherwise than in accordance with the directions of the court or the enforcement creditor.

(3) If the person deals with the property in contravention of subrule (2), the person is liable to the enforcement creditor for whichever is the smaller of—

(a) the value or amount of the charged property sold, transferred or otherwise dealt with; and

(b) the order debt.

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2406 Charging order—application to enforce charge

(Qld r 879)

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

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

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

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

(1) This rule applies if the enforcement debtor in relation to an enforceable money order of the court is a partner in a partnership.

(2) On application by the enforcement creditor, the court may—

(a) make an order charging the interest of the partner in the partnership property and profits of the partnership with payment of the amount of the order debt (including interest); and

(b) by that order or another order—

(i) appoint a receiver of the partner's share of the profits (whether already declared or accruing) of the partnership and of any other amount that may be coming to the partner in relation to the partnership; and

(ii) make any order or give any direction that might have been made or given if the charge had been made in favour of the enforcement creditor by the partner or that the circumstances require.

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

(3) The application must be served on the enforcement debtor and the partners of the partnership.

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(4) For this rule, service on each partner who lives in the ACT is sufficient service on any partner who lives outside the ACT.

(5) If the interest of a partner in partnership property and profits of the partnership is charged under subrule (2), the other partners in the partnership may—

(a) at any time, redeem the interest charged; or

(b) if a sale of the interest is directed—buy the interest.

(6) This rule does not apply in relation to an incorporated limited partnership.

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

2420 Enforcement orders—amounts in court

(NSW r 41.16; Qld r 881)

(1) This rule applies if the enforcement debtor for a money order is entitled, in the enforcement debtor's own right, to an amount, security or bond in court standing to the enforcement debtor's credit in another proceeding in the court.

(2) On application by the enforcement creditor, the court may order that the amount, security or bond be applied towards satisfying the order debt.

(3) The application must be made in the proceeding in which the money order is being enforced.

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

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2421 Enforcement orders—stop orders

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

(1) This rule applies if a person claims an interest (including an interest under a charge) in any amount, security or bond in court that has been mortgaged, charged or assigned.

(2) On application by the person, the court may make an order (a ***stop order***) preventing payment, delivery or transfer of the amount, security or bond without notice to the applicant.

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

(3) The application must be made in the proceeding in which the amount, security or bond stands in court.

(4) The application must be accompanied by an affidavit in support of the application.

(5) The affidavit must include information sufficient to identify the proceeding mentioned in subrule (3).

(6) A copy of the application must be served on anyone who appears to have an interest in the amount, security or bond.

(7) An amount, security or bond in court must not be paid, delivered or transferred if an application in relation to the amount, security or bond has been made under this rule and not heard.

Division 2.18.11 Enforcement of money orders—receivers

2430 Application—div 2.18.11

(Qld r 883)

This division applies only in relation to the Supreme Court.

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2431 Receiver—appointment

(Qld r 274 and r 885)

(1) On application by the enforcement creditor for an enforceable money order of the court, the court may appoint a receiver to receive an amount payable under the order if it is impracticable to enforce payment in another way.

(2) A receiver may be appointed even though no other proceeding has been taken for enforcement of the money order.

2432 Receiver—application for appointment

(1) An application for an order appointing a receiver must be accompanied by—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

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

(2) The affidavit in support must state—

(a) the date the money order was made; and

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

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

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(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

2433 Receiver—relevant considerations for appointment

(Qld r 886 and r 887)

(1) In deciding whether to make an order appointing a receiver, the court must have regard to—

(a) the amount of the order debt; and

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and remunerating a receiver.

(2) In deciding whether to make an order appointing a receiver, the court may direct the holding of an enforcement hearing or other inquiry about a matter mentioned in subrule (1) or anything else the court considers relevant.

2434 Receiver—powers

(Qld r 888)

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

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2435 Receiver—general provisions apply

(Qld r 884)

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

Division 2.18.12 Enforcement of non-money orders—general

2440 Enforcement—orders for possession of land

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

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

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

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

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

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

Note For provisions about contempt, see div 2.18.16.

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

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

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

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2441 Enforcement—orders for return of goods etc

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

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

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

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

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

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

Note For provisions about contempt, see div 2.18.16.

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

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

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

(3) An order for the payment of the value of goods may be enforced as if it were a money order.

2442 Enforcement—orders to do or not do an act

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

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

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

(i) to do an act within a stated time; or

(ii) not to do an act; and

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(b) the person contravenes the order.

(2) The original order may be enforced in 1 or more of the following ways:

(a) punishment for contempt of the person liable under the original order;

Note For provisions about contempt, see div 2.18.16.

(b) an order for seizure and detention of property against the person liable under the original order;

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

(c) if the person liable under the original order is a corporation—without limiting paragraphs (a) and (b), the following:

(i) punishment for contempt of any senior officer of the corporation;

(ii) an order for seizure and detention of property against the corporation.

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

(4) Also, if the original order is an order to do an act, the court may—

(a) appoint someone else to do the act; and

(b) order the person liable under the original order to pay the costs and expenses caused by the failure to do the act.

(5) Subrule (4) does not affect the court's power to—

(a) appoint a person to execute a document by order of the court; or

(b) punish for contempt.

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2443 Enforcement—undertakings

(Qld r 900)

(1) An undertaking to the court, other than for the payment of money, may be enforced in 1 or more of the following ways:

(a) punishment for contempt of the person liable under the undertaking;

Note For provisions about contempt, see div 2.18.16.

(b) an order for seizure and detention of property against the person liable under the undertaking;

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

(c) if the person liable under the undertaking is a corporation—without limiting paragraphs (a) and (b), the following:

(i) punishment for contempt of any senior officer of the corporation;

(ii) an order for seizure and detention of property against the corporation.

(2) Also, if the undertaking is an undertaking to do an act, the court may—

(a) appoint someone else to do the act; or

(b) order the person liable under the undertaking to pay the costs and expenses caused by the failure to do the act.

(3) An undertaking for the payment of money may be enforced as if it were a money order.

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(4) If a party is in breach of an undertaking, another party may apply for compensation to the court in the proceeding in which the undertaking was given.

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

(5) If the court decides that—

(a) a party is in breach of an undertaking; and

(b) another party has sustained a loss because of the breach; and

(c) the party in breach should pay the other party compensation for the loss;

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

2444 Enforcement—failure of individual to comply with subpoena etc

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

(1) This rule applies if an individual fails to comply with—

(a) a subpoena; or

(b) a notice for non-party production; or

(c) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of the individual; and

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(b) the production of the individual as required by the subpoena, notice or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

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

(3) Without limiting rule 6016 (Application in proceeding—oral application), an application for an order under this rule may be made orally, unless the court otherwise orders on its own initiative.

(4) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.

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

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

(6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

2445 Enforcement—failure of corporation to comply with subpoena etc

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

(1) This rule applies if a corporation fails to comply with—

(a) a subpoena; or

(b) a notice for non-party production; or

(c) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

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(ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of a named senior officer of the corporation; and

(b) the production of the senior officer as required by the subpoena, notice or order for the purpose of the proceeding; and

(c) the detention in custody of the senior officer until released by the court.

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

(3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

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

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

(5) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

2446 Enforcement by contempt or seizing and detaining property—preconditions

(NSW r 40.7; Qld r 904)

(1) Unless the court otherwise orders, a non-money order (the ***original order***) may be enforced by a contempt proceeding or an order for seizure and detention of property only if—

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(a) the person against whom the original order is to be enforced is served personally with a sealed copy of the original order; and

(b) if the original order requires a person to do an act within a time stated in the order—the order is served a reasonable time before the end of the time stated in the order.

(2) This rule does not apply to a non-money order requiring a person to do an act within a stated time, or requiring a person not to do an act, if the person has notice of the order because—

(a) the person was present when the order was made; or

(b) the person was told about the terms of the order by telephone or in another way a reasonable time before the end of the time for doing the act or before the time when the prohibited act was done.

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

2450 Application—div 2.18.13

This division applies only in relation to the Supreme Court.

2451 Order for delivery of possession of land—making

(Qld r 915)

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

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

Note 2 See approved form 2.70 (Order for delivery of possession of land) AF2006-315.

(2) The application is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

(3) The affidavit in support must state—

(a) the date a sealed copy of the original order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor or other person liable to comply with the order; and

(b) that the original order has not been complied with; and

(c) whether to the best of the applicant's knowledge a person other than the person liable under the original order is in possession

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of the land or part of it and, if so, how the person is in possession; and

(d) how rule 2452 has been complied with; and

(e) any other information necessary for the order being sought.

(4) The affidavit may contain statements of information and belief if the applicant states the sources of the information and the reasons for the belief.

(5) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

(6) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(7) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(8) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

2452 Orders for delivery of possession of land—preconditions

(Qld r 913 and r 914)

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

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

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

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

2460 Order for seizure and delivery of goods—making

(SCR o 49 r 1; Qld r 916)

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

Note See approved form 2.71 (Order for seizure and delivery of goods) AF2006-316.

(2) If—

(a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and

(b) the person does not exercise the option;

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

(3) An application under this rule is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

(4) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

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(5) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

(7) An order for seizure and delivery of goods may include provision for enforcing the payment of an amount required by the order to be paid.

(8) If—

(a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and

(b) the person exercises the option;

the original order may be enforced in the same way as a money order.

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

2470 Order for seizure and detention of property—making

(Qld r 917)

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

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

2471 Order for seizure and detention of property—preconditions

(Qld r 918)

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

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

(Qld r 919)

(1) This rule applies if, to enforce a non-money order with which a corporation must comply, a person applies for an order for seizure and detention or property against a senior officer of the corporation.

(2) A stamped copy of the application and of each affidavit in support must be served on the officer.

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

(Qld r 920)

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

Division 2.18.16 Enforcement—contempt

2500 Contempt—application of div 2.18.16

(Qld r 925)

This division applies to the following contempts:

(a) contempt for contravention of an order of the court or an undertaking given to the court;

(b) contempt committed in the face or in the hearing of the court;

(c) any other contempt of the court.

2501 Contempt—applications generally

(Qld r 926)

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

(2) The application may be made—

(a) in the proceeding in which the contempt was committed; or

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

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(b) by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc.

(3) The application must set out particulars of the contempt.

(4) The application and any affidavit in support of it must be served on the respondent personally.

(5) An affidavit in support of or opposing the application must not contain evidence that the person making it could not give if giving evidence orally.

2502 Contempt—application by registrar

(Qld r 928)

The court may, by order, direct the registrar to apply to the court for a person to be punished for contempt.

2503 Contempt—arrest warrant if respondent likely to abscond etc

(Qld r 927)

(1) This rule applies if—

(a) an application for punishment of a person for contempt has been filed in the court; and

(b) the court considers that the person is likely to abscond or otherwise withdraw from the court's jurisdiction.

(2) The court may issue a warrant for the person's arrest and detention in custody until the court hears the charge unless the person gives security satisfactory to the court for the person's appearance in court in person to answer the charge and to submit to the court's decision.

Note See approved form 2.72 (Warrant for arrest for contempt of person likely to abscond) AF2007-64.

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2504 Contempt in face or hearing of court—alternative procedure

(Qld rr 922-924)

(1) For a contempt committed in the face of, or in the hearing of, the court, the procedure under this rule is an alternative to the procedure under rule 2501 (Contempt—applications generally).

(2) If it is alleged or it appears to the court that a person is guilty of contempt of court committed in the face of, or in the hearing of, the court, the court may—

(a) by oral order direct the person to be brought before the court; or

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

(3) Pending disposal of the charge of contempt, the court may direct that the person be kept in the custody the court directs or be released.

(4) Without limiting subrule (3), the court may release the person on conditions, including, for example, a condition that security be given to secure the person's attendance to answer the charge and that the security be forfeited if the person fails to attend.

Note An example is part of 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).

(5) If the person is brought before the court, the court must—

(a) tell the person orally of the contempt charged; and

(b) ask the person to show cause why punishment should not be imposed for contempt of court; and

(c) after hearing the person, decide the matter in the way it considers appropriate; and

(d) make an order for the person's punishment or discharge.

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2505 Contempt—arrest warrant

(Qld r 929)

(1) A warrant for the arrest and detention, or the arrest, of a person (the ***respondent***) under this division must be—

(a) addressed to an enforcement officer; and

(b) signed by a judicial officer of the court.

(2) Pending the court's decision, if the respondent is arrested under a warrant, the respondent must be held in a correctional centre or in any other custody that is satisfactory to the enforcement officer.

(3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the warrant.

(4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

(5) The enforcement officer or a police officer may deliver the respondent to the person in charge of any correctional centre and the person must receive and keep the respondent in custody until the court or the enforcement officer otherwise directs.

2506 Contempt—punishment

(Qld r 930 and r 931)

(1) This rule applies if the court decides that a person has committed a contempt.

(2) If the person is an individual, the court may punish the individual by making an order that may be made under the *Crimes (Sentencing) Act 2005*.

(3) If the person is a corporation, the court may punish the corporation by seizing corporation property or a fine or both.

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(4) Without limiting subrule (2), the court may make an order for punishment on conditions, including, for example, a suspension of punishment during good behaviour, with or without the respondent giving security satisfactory to the court for good behaviour.

Note An example is part of 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).

(5) Without limiting subrule (2), if the person is imprisoned for a term, the court may order the person's release from imprisonment before the end of the term.

2507 Contempt—costs

(Qld r 932)

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

Division 2.18.17 Enforcement—arrest warrants for absconding defendants

2550 Application—div 2.18.17

(Qld r 933)

This division applies only in relation to the Supreme Court.

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

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

(a) a reference in this division to the ***plaintiff*** is a reference to the enforcement creditor; and

(b) a reference in this division to the ***defendant*** is a reference to the enforcement debtor.

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2552 Arrest warrant for defendant—application

(Qld r 934)

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

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

2553 Arrest warrant for defendant—issue

(Qld r 935)

(1) The court may issue a warrant for the arrest of a defendant under this division only if satisfied that—

(a) the defendant has absconded or is about to abscond; and

(b) the absence of the defendant would materially prejudice the plaintiff in prosecuting a proceeding or enforcing any order that may be given.

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

Note An example is part of 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) The warrant must state—

(a) the name of the defendant; and

(b) the date the warrant ends.

(4) The date stated under subrule (3) (b) must be not later than 2 months after the day the warrant is issued.

(5) The court may fix an amount to be stated in the warrant entitling the defendant to be released.

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(6) In fixing the amount, the court may have regard to anything it considers relevant, including the following:

(a) the amount (if any) of the plaintiff's claim;

(b) the costs of issuing the warrant;

(c) an estimate of the costs of executing the warrant.

2554 Arrest warrant for defendant—enforcement

(Qld r 936)

(1) The registrar must give a warrant under this division for the arrest of a defendant to an enforcement officer to be enforced.

(2) The warrant may be enforced by the enforcement officer or an appropriately qualified person authorised in writing by the enforcement officer.

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

(4) In this rule:

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

Examples

1 an enforcement officer of another court

2 a police officer

Note An example is part of 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).

2555 Arrest warrant for defendant—costs of enforcement

(Qld r 937)

(1) Unless the court otherwise orders—

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(a) the plaintiff is liable to pay to the enforcement officer the costs the enforcement officer considers appropriate for enforcing a warrant under this division for the arrest of a defendant; and

(b) the enforcement officer may, as a condition of enforcing the warrant, require the plaintiff to give security, for the amount and in the form the enforcement officer considers appropriate, for the costs to be incurred by the enforcement officer in enforcing the warrant.

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

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

2556 Arrest warrant for defendant—service of warrant and claim

(Qld r 938)

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

(a) a copy of the warrant; and

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

2557 Arrest warrant for defendant—record of enforcement

(Qld r 939)

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

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2558 Arrest warrant for defendant—procedure after arrest

(Qld r 940)

(1) A person who enforces a warrant for the arrest of a defendant must, as soon as practicable after enforcing it, take the defendant to the nearest correctional centre.

(2) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.

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

2559 Arrest warrant for defendant—release of defendant

(Qld r 941)

(1) The person in charge of the correctional centre where the defendant is in custody must release the defendant if—

(a) the court orders that the defendant be released; or

(b) the plaintiff gives the enforcement officer a written consent to the defendant's release; or

(c) the warrant states an amount fixed by the court the payment of which entitles the defendant to be released and the defendant pays the amount into court or secures payment of the amount in a way that the plaintiff or enforcement officer considers satisfactory.

(2) An amount paid into court or security given under subrule (1) (c) may be paid out or released only in accordance with an order of the court.

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

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2560 Arrest warrant for defendant—court powers

(Qld r 942)

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

(2) If the court is satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any order that may be made, the court may, on application by the plaintiff or defendant—

(a) order that the defendant be released unconditionally from custody; or

(b) order that the defendant be released from custody subject to 1 or more of the following conditions:

(i) that the defendant undertake not to leave Australia until an amount stated by the court is paid to the plaintiff, or into court, as the court directs;

(ii) that the defendant surrender the defendant's passport to the registrar;

(iii) that the defendant give security, either with or without surety, for the payment of an amount stated by the court;

(iv) that the defendant pay a stated amount to the plaintiff;

(v) that the defendant pay a stated amount into court to await further consideration by the court; or

(c) order that the defendant be detained in custody for the period the court considers appropriate or until the defendant complies with any condition stated by the court.

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

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(3) If the court makes an order under subrule (2), it may, by order, expedite the trial of the proceeding under rule 1311 (Expedited trial) and give any direction it considers appropriate for the conduct of the proceeding.

(4) The court may make an order, or give a direction, under subrule (3) on application by the plaintiff or defendant or on its own initiative.

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

2561 Arrest warrant for defendant—failure to comply with conditions

(Qld r 943)

(1) The enforcement officer or a surety may, without a warrant, arrest a defendant who has been conditionally released from custody by the court under rule 2560 if the enforcement officer or surety, on reasonable grounds, suspects, that the defendant has failed or will fail to comply with a condition of the defendant's release.

(2) The enforcement officer or a surety may ask a police officer to help in the exercise of the enforcement officer's or surety's power under subrule (1).

(3) The police officer must give the enforcement officer or surety the reasonable help the enforcement officer or surety requires, if it is practicable to give the help.

(4) If the defendant is arrested under subrule (1) by the enforcement officer or a police officer, the enforcement officer or police officer must, as soon as practicable after the arrest, take the defendant to the nearest correctional centre.

(5) If the defendant is arrested under subrule (1) by a surety, the surety must, as soon as practicable after the arrest, take the defendant to an

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enforcement officer or a police officer who must take the defendant to the nearest correctional centre as soon as practicable.

(6) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.

(7) If the court is satisfied that the defendant has failed to comply or is about to fail to comply with a condition of the defendant's release, the court may, on application by the plaintiff or defendant—

(a) set aside the order under which the defendant was released; and

(b) make any order that it could make under rule 2560 (Arrest warrant for defendant—court powers).

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

2562 Arrest warrant for defendant—review

(Qld r 944)

(1) A defendant may, at any time and from time to time, apply to the court for an order that—

(a) the warrant be set aside; or

(b) the defendant be released from custody; or

(c) an order made under rule 2560 (Arrest warrant for defendant—court powers) be amended.

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

(2) On an application under subrule (1), the court may make any order that it could make under rule 2560.

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2563 Arrest warrant for defendant—restriction on further applications

(Qld r 945)

(1) This rule applies if—

(a) the court makes an order refusing to issue or set aside a warrant under this division for the arrest of a defendant; or

(b) the court makes an order that the defendant be released from custody under this division.

(2) Within the 6-month period starting on the day the order is made, the plaintiff may apply for another warrant for the defendant's arrest in relation to the same cause of action only if the plaintiff produces evidence that was not and could not reasonably have been given when the order was made.

2564 Arrest warrant for defendant—costs

(Qld r 946)

On any application under this division or at the trial or hearing of a proceeding, the court may make the order the court considers appropriate about costs, including costs payable by the plaintiff under rule 2555 (Arrest warrant for defendant—costs of enforcement).

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

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Part 2.19 Interpleader proceedings

Division 2.19.1 Stakeholder's interpleader

2600 Interpleader—application by stakeholder

(SCR o 59 r 1 (a), r 2 and r 5; MC(CJ)R s 240; NSW r 43.2; Qld r 949)

(1) This rule applies if—

(a) a person other than an enforcement officer (the ***stakeholder***) is under a liability in relation to a debt or personal property (the ***disputed property***); and

(b) the stakeholder is, or expects to be, sued by 2 or more people (each of whom is a ***claimant***) making adverse claims to the disputed property.

(2) If the stakeholder is sued by a claimant in a proceeding in the court in relation to the disputed property, the stakeholder may apply to the court in that proceeding for interpleader relief.

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

(3) If subrule (2) does not apply to the stakeholder, the stakeholder may apply to the court by originating application for interpleader relief and include each claimant as a defendant.

(4) An application under this rule for interpleader relief must be supported by an affidavit.

(5) The affidavit must state that the stakeholder—

(a) claims no interest in the disputed property, other than for charges or costs; and

(b) is not in collusion with any claimant; and

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(c) is willing to—

(i) pay or transfer the disputed property into court; or

(ii) dispose of the property as the court directs; or

(iii) give security to the value of the property to the court's satisfaction.

(6) A sealed or stamped copy of the application and supporting affidavits must be served on each of the claimants.

(7) If a claimant is not a party to the proceeding, the application and supporting affidavits must be served personally.

Division 2.19.2 Enforcement officer's interpleader

2605 Interpleader—notice of claim to enforcement officer

(SCR o 59 r 1 (b) and r 16; MC(CJ)R s 241 (2) (c); NSW r 43.3 (1) and (2); Qld r 950)

(1) This rule applies if—

(a) an enforcement officer seizes or intends to seize personal property (the ***disputed property***) under an enforcement order; and

(b) a person (the ***claimant***) claims to be entitled to, or to have an interest in, the disputed property or the proceeds of sale of the disputed property.

(2) The claimant must give notice of the claim to the enforcement officer.

(3) The notice must—

(a) state the claimant's name and give an address for service; and

(b) identify each item of the disputed property to which the claim relates; and

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(c) state the grounds of the claim.

2606 Interpleader—failure to give notice of claim

(NSW r 43.4; Qld r 951)

(1) This rule applies if the claimant mentioned in rule 2605 does not give notice of the claim under that rule in relation to the disputed property within a reasonable time after becoming aware that the enforcement officer has seized or intends to seize the property.

(2) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in the court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order after the time when the claimant might reasonably have given notice of the claim.

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

(3) The application must be supported by an affidavit.

(4) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the disputed property, the enforcement officer may apply to the court for an order under subrule (2) in that proceeding.

(5) If subrule (4) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (2) in the proceeding in which the enforcement order was made.

(6) An application for an order under subrule (2) and supporting affidavits must be served on the claimant personally.

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2607 Interpleader—notice to enforcement creditor

(SCR o 59 r 16 (1); MC(CJ)R s 242; NSW r 43.3 (3) and (4); Qld r 952)

(1) The enforcement officer must serve a copy of the notice under rule 2605 on the enforcement creditor not later than 4 days after the day the notice is served on the enforcement officer.

(2) The enforcement creditor may serve a notice on the enforcement officer stating that the claim is admitted.

(3) If the enforcement creditor admits the claim, the enforcement creditor is liable for the enforcement officer's costs and expenses of enforcement, including any costs of complying with rule 2608.

2608 Interpleader—admission of claim

(SCR o 59 r 16 (2) and r 17; NSW r 43.5; Qld r 953)

(1) This rule applies if the enforcement creditor admits the claimant's claim under rule 2605 by serving notice on the enforcement officer under rule 2607.

(2) The enforcement creditor is not liable to the enforcement officer for fees or expenses incurred by the enforcement officer under the enforcement order after the notice is given to the enforcement officer.

(3) The enforcement officer must—

(a) withdraw from possession of the property in relation to which the claim is admitted (the ***relevant property***); or

(b) if the relevant property has been sold—pay the proceeds of sale into court and tell the enforcement debtor and the claimant in writing that the proceeds of sale have been paid into court.

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(4) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in a court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order in relation to the relevant property.

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

(5) The application must be supported by an affidavit to which the notices mentioned in rule 2605 (2) and rule 2607 (2) are annexed.

(6) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the relevant property, the enforcement officer may apply to the court for an order under subrule (4) in that proceeding.

(7) If subrule (6) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (4) in—

(a) the proceeding in which the enforcement order was made; or

(b) if a proceeding is pending in which the property's ownership is an issue—the pending proceeding.

(8) An application for an order under subrule (4) and supporting affidavits must be served on the claimant personally.

2609 Interpleader—enforcement officer's interpleader application

(MC(CJ)R s 241 (1); NSW r 43.6; Qld r 954)

(1) This rule applies if—

(a) the enforcement officer has served notice of the claimant's claim on the enforcement creditor under rule 2607; and

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(b) the enforcement creditor does not, before the end of 4 days after the day the notice is served, serve on the enforcement officer a notice under that rule that the enforcement creditor admits the claim; and

(c) the claimant does not afterwards withdraw the claim.

(2) The enforcement officer may apply to the court for interpleader relief.

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

(3) The application must be supported by an affidavit to which the notice mentioned in rule 2605 (2) is annexed.

(4) The application may be made only in the proceeding in which the enforcement order was made.

(5) A stamped copy of the application and supporting affidavits must be served on the enforcement creditor and claimant personally.

2610 Interpleader—enforcement debtor's rights not affected

(Qld r 955)

This part does not affect a right of the enforcement debtor to bring a claim against the enforcement officer or the enforcement creditor.

Division 2.19.3 Interpleader orders

2620 Interpleader—orders

(SCR o 59 r 7, r 9, r 12 and r 13; MC(CJ)R s 243 (4); NSW r 43.7; SCQA s 83 (1))

(1) On application under division 2.19.1 (Stakeholder's interpleader) or division 2.19.2 (Enforcement officer's interpleader) for interpleader relief, the court may make the orders it considers appropriate for hearing and deciding all matters in dispute.

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(2) Without limiting subrule (1), the court may do any of the following:

(a) if a proceeding is pending against the applicant in relation to any of the disputed property—order that a claimant in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the applicant, or order that the proceeding be stayed or dismissed;

(b) order that a question between claimants to the disputed property be stated and tried, direct which of the claimants is to be the plaintiff and which the defendant, and give any necessary directions for the trial;

(c) order that the applicant pay or transfer all or any of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale;

(d) if a claimant claims to be entitled to any of the disputed property by way of security for a debt—make orders for the sale of all or part of the property and for the application of the proceeds of sale;

(e) decide summarily a question of law or fact arising on the application;

(f) order that a special case be stated on a question of law under part 5.7 (Special cases);

(g) make any order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.

2621 Interpleader—summary disposal of proceeding

(SCR o 59 r 8)

The court may, having regard to the value of the disputed property, decide the claimants' claims summarily on any conditions it considers just if—

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(a) the claimants consent; or

(b) a claimant applies to the court for the court to decide the claims summarily.

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

2622 Interpleader—adverse claims

(SCR o 59 r 3; MC(CJ)R s 245)

The applicant is not disentitled to relief only because the titles of the claimants do not have a common origin, but are adverse to and independent of one another.

2623 Interpleader—default by claimant

(SCR o 59 r 10; MC(CJ)R s 243 (5); NSW r 43.8; Qld r 956)

(1) This rule applies if—

(a) a claimant to the disputed property has been given appropriate notice of the hearing of an application for interpleader relief; and

(b) the claimant does not appear at the hearing or does not comply with an order made on an application for interpleader relief.

(2) The court may order that the claimant, and anyone claiming under the claimant, be barred from prosecuting the claim against the applicant and anyone claiming under the applicant.

(3) An order under subrule (2) does not affect the rights of the claimants as between themselves.

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2624 Interpleader—neutrality of applicant

(SCR o 59 r 2; NSW r 43.9; Qld r 957)

(1) If a person (the ***stakeholder***) applies for interpleader relief under rule 2600, the court may dismiss the application or give judgment against the stakeholder unless satisfied that the stakeholder—

(a) claims no interest in the disputed property, other than for charges or costs; or

(b) is not in collusion with a claimant to the disputed property.

(2) If an enforcement officer applies for interpleader relief under rule 2609, the court may dismiss the application unless satisfied that the enforcement officer—

(a) claims no interest in the disputed property other than for charges or costs; or

(b) is not in collusion with a claimant to the disputed property.

(3) This rule does not affect the power of the court in other cases to dismiss an application for interpleader relief or to give judgment against an applicant for interpleader relief.

2625 Interpleader order—2 or more proceedings

(SCR o 59 r 14; NSW r 43.10; SCQA s 83 (2))

(1) This rule applies if—

(a) an application for interpleader relief is made; and

(b) 2 or more proceedings are pending in the court for or about any or all of the disputed property; and

(c) the court makes an order in any 2 or more of the proceedings.

(2) An order is binding on all the parties to all the proceedings to which it applies.

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2626 Interpleader—trial

(SCR o 59 r 13; NSW r 43.11; Qld r 958)

If, in a proceeding for interpleader relief, the court directs the trial of an issue, part 2.13 (Pre-trial procedures), part 2.14 (Court supervision) and part 2.15 (Trial) apply to the trial with all necessary changes and subject to directions the court may give.

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

2627 Interpleader—disposal of amounts in court

(Qld r 959)

If an enforcement officer has paid an amount into court under rule 2608 (Interpleader—admission of claim), the court may order it be paid out to the person who is entitled to it or make an order under rule 2620 (Interpleader—orders).

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Part 2.20 Trusts, estates, accounts and inquiries

Division 2.20.1 Trusts and estates generally

Note to div 2.20.1

This division contains miscellaneous rules applying in relation to trusts and estates of deceased people. For other provisions applying to trusts and estates, see esp div 2.4.6 (Representation—trustees and personal representatives).

2700 Trusts and estates—decision without order for administration

(SCR o 58 r 10)

The court need not make an order for the administration of a trust or deceased person's estate if the questions between the parties can be properly decided without the order.

2701 Trusts and estates—application not to affect powers

(SCR o 58 r 12)

(1) This rule applies if an application is made in relation to a question or matter in relation to a trust or the estate of a deceased person, without administration of the trust or estate if—

(a) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

(b) there is no opposing party to the proceeding or it is not intended to serve anyone with the originating process.

Note The application may be made by originating application (see r 35 (When originating application may be used)).

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(2) Unless the court otherwise orders, the making of the application does not interfere with or control any power or discretion of an executor, administrator or trustee, except as far as the interference or control is necessarily involved in the particular relief sought.

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

2702 Trusts and estates—conduct of sale

(SCR o 52 r 10)

(1) This rule applies if—

(a) there is a proceeding for the administration of a deceased person's estate or enforcement of the trust of a written instrument; and

(b) the court orders the sale of property vested in an executor or administrator of the estate or trustee of the trust.

(2) Unless the court otherwise orders, the conduct of the sale must be given to the executor, administrator or trustee.

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

Division 2.20.2 Taking of accounts

Note to div 2.20.2

For the accounts of executors, administrators and trustees, see div 2.20.4 (Executors, administrators and trustees—accounts and commission).

2720 Meaning of *accounting party*—div 2.20.2

In this division:

accounting party means the party required to account.

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2721 Account—order for account

(SCR o 18 r 1 and o 36 r 3; Qld r 527)

(1) If an account is claimed in the first instance or a claim involves taking an account, the court may at any stage order that an account be taken.

(2) Without limiting subrule (1), the court may order that an account be taken if—

(a) an originating application seeks the taking of an account; and

(b) the defendant fails to satisfy the court that there is a preliminary question to be decided.

(3) An order directing that an account be taken must state—

(a) the transaction or series of transactions of which the account is to be taken; and

(b) the basis of the account; and

(c) the period of the account.

2722 Account—orders

(SCR o 19 r 45 and r 46, o 36 r 4 and o 58 r 20, r 21, r 25, r 29, r 30, r 31, r 34 (1), r 38, r 39, r 41 (3) and (4), r 45 and r 46; Qld r 528)

(1) This rule applies if the court orders the taking of an account.

(2) The court may, by the same or a later order, make the orders it considers appropriate about taking or verifying the account, including, for example, orders about the following:

(a) the advertisements to be published, the evidence to be presented, the procedure to be followed, and the time and place for taking the account;

(b) if the court orders an advertisement to be published—an order excluding from the benefit of the order for the taking of the

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account a claimant who does not send full particulars of the claimant's claim to the person named in the advertisement, within the time stated in the advertisement;

(c) whether in taking the account the books and records of account are evidence of the matters contained in them;

(d) the people (whether or not parties to the proceeding) to be served with the order and who are entitled to be heard on the taking of the account;

(e) the people to be called as witnesses at the taking of the account;

(f) whether an order should be given for a balance found to be owing.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for a later order.

Note 2 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) If the court orders that the books and records of account are evidence of the matters contained in them, the parties have leave to take objections.

2723 Accounts—service of order etc

(SCR o 19 r 45 and o 58 r 23 and r 24; Qld r 529)

(1) An order for the taking of an account that is to be served on a person who was not a party to the proceeding must be served personally.

(2) The account must not be taken until all necessary people have been served with the order for the taking of the account, unless the court otherwise orders.

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

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(3) If the court dispenses with service, the court may also order that the people in relation to whom service is dispensed with are bound by the order for the taking of the account.

(4) An order under subrule (3) does not apply to a person if the order (or the order dispensing with service) was obtained by fraud or nondisclosure of material facts.

(5) If—

(a) the court orders the taking of an account in a proceeding for the administration of a deceased person's estate, the enforcement of the trust of a written instrument or the partition or sale of an hereditament; and

Note A hereditament is land or an interest in land that can be passed to heirs.

(b) the court also orders that the order mentioned in paragraph (a) be served on the people interested in the estate, trust or hereditament;

everyone on whom the order is served is bound by the proceeding.

2724 Accounts—form and verification

(SCR o 36 r 5 and r 6 and o 58 r 38 and r 44; Qld r 530)

(1) All items in an account must be numbered consecutively.

(2) The accounting party must verify the account by an affidavit and the account must be made an annexure or exhibit to the affidavit.

Note See r 6712 (Affidavit—annexures and exhibits) and r 6717 (Affidavit—alterations in).

(3) On the taking of an account, all payments over $250 must be verified by receipts.

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(4) The court may order that the documents relating to an account be produced for inspection by another party at the office of the accounting party's solicitor or another convenient place, and that only the contested items be brought before the court.

2725 Accounts—filing and service

(Qld r 531)

The accounting party must—

(a) file the account and verifying affidavit; and

(b) serve stamped copies on everyone entitled to be heard at the taking of the account.

2726 Accounts—challenging account

(SCR o 36 r 7; Qld r 532)

If a person challenges the accuracy of an account, the person must serve a notice on the accounting party that—

(a) states the errors or omissions claimed; and

(b) gives brief details of them.

2727 Accounts—witness

(Qld r 533)

A witness on the taking of an account or the person who made an affidavit read at the taking of an account may be examined or cross-examined on oath.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

2728 Accounts—allowances

(SCR o 36 r 10 and o 58 r 42; Qld r 534)

In taking an account directed by an order, all just allowances for the expenses and claims of the accounting party may be made without a direction for the purpose.

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2729 Accounts—delay

(SCR o 36 r 12; Qld r 535)

(1) If there is delay in prosecuting the taking of an account, the court may make orders for staying or expediting the proceeding, or for the conduct of the proceeding (including orders about costs).

(2) The court may make an order under this rule on the application of anyone entitled to be heard at the taking of the account or on its own initiative.

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

2730 Accounts—powers exercisable on taking account

(SCR o 58 r 25 and r 31; Qld r 537)

On the taking of an account, the court may order that advertisements be published, witnesses subpoenaed, oaths administered, documents or records be produced and oral examinations conducted on oath.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

2731 Accounts—class interests

(SCR o 58 r 27 and r 28; Qld r 538)

(1) If it appears to the court that the interests of the people who are entitled to attend the taking of the account can be classified, the court may order each class to be represented by 1 solicitor and counsel.

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

(2) Despite an order under subrule (1), a person who objects to being represented as a member of a class—

(a) may be separately represented; and

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(b) if separately represented, is not entitled to an order for costs and may be ordered to pay additional costs incurred by someone else because of the separate representation.

(3) The court may order separate representation for members of a class who are represented by 1 solicitor and counsel.

(4) This rule is additional to rule 259 (Representation—proceeding about administration of deceased person's estate or trust property) and rule 266 (Representation—numerous concurrent interests).

2732 Accounts—reference to judicial officer

(Qld r 539)

(1) If an account is taken by the master or registrar of a court, the master or registrar must if asked by a person interested in the account, or may on his or her own initiative, refer to a judicial officer of the court a question arising, and the account must be taken in accordance with a direction the judicial officer gives on the reference.

(2) A direction given by the judicial officer under subrule (1) may be amended at any time until a certificate is filed of the results of the account.

(3) This rule is additional to the following rules:

- rule 6201 (Order that jurisdiction in proceeding be exercised by judge instead of master)
- rule 6202 (Master referring proceeding or issue to judge)
- rule 6254 (Order that jurisdiction in proceeding be exercised by judicial officer other than registrar)
- rule 6255 (Registrar referring proceeding or issue to judicial officer).

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(4) In this rule:

judicial officer means—

(a) for the master—a judge; or

(b) for the registrar of the Supreme Court—a judge or the master; or

(c) for the registrar of the Magistrates Court—a magistrate.

2733 Accounts—certificate about taking of account

(SCR o 58 r 41 (2), r 55 and r 56; Qld r 540)

(1) The result of the taking of an account must be stated in a certificate that must be filed in the court immediately after it is settled.

(2) Anyone who is interested in the account may apply to the court for the certificate to be set aside or amended not later than 7 days after the day the certificate is filed.

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

(3) The application must state—

(a) the items objected to; and

(b) briefly, but specifically, the grounds of the objection.

(4) The court must decide the application on the same evidence as was presented at the taking of the account, unless the court gives leave for further evidence to be presented.

(5) The certificate becomes final, and is binding on the parties, at the end of 7 days after the day it is filed in the court, unless someone applies under subrule (2) for the certificate to be set aside or amended.

(6) However, in special circumstances the court may set aside or amend the certificate after it has become final and binding.

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(7) The certificate must not set out the order, the documents, evidence or reasons, but it must refer to the order or the documents or evidence so that the basis of the result of the account is stated in the certificate.

(8) The certificate must state the items allowed and disallowed.

(9) The party responsible for the prosecution of the taking of the account must prepare a draft certificate for settling by the court on at least 7 days notice to everyone who appeared at the taking of the account.

(10) The registrar must serve a stamped copy of the certificate on each party to the account.

2734 Accounts—further consideration

(SCR o 58 r 57; Qld r 541)

If a proceeding is adjourned for an account to be taken, it may be set down for further hearing not later than 7 days after the day the certificate for the account becomes final and binding.

Division 2.20.3 Making of inquiries

2740 Inquiries—procedure for inquiries

(SCR o 36 r 3; Qld r 542)

Division 2.20.2 (Taking of accounts) applies, with necessary changes, to the making of an inquiry.

2741 Inquiries—orders

(SCR o 36 r 3 and o 58 rr 31-43; Qld r 543)

(1) This rule applies if the court orders the making of an inquiry.

(2) The court may, by the same or a later order, make the orders about the making of the inquiry it considers appropriate.

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Division 2.20.4 Executors, administrators and trustees—accounts and commission

2745 Definitions—div 2.20.4

In this division:

beneficiary, of an estate or trust property, includes—

(a) a person with a beneficial interest in the estate or trust property; and

(b) for an estate—a person with a right to compel the executor or administrator of the estate to complete the administration.

estate means estate of a deceased person.

2746 Estate and trust accounts—order requiring examination and passing of accounts

(Qld r 644)

(1) A beneficiary of an estate or trust property may apply to the court for an order requiring the examination and passing of accounts of the executor or administrator of the estate or the trustee of the trust property.

(2) An application by a beneficiary of an estate must be made in the proceeding in which the grant of representation for the estate was made.

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

(3) An application by a beneficiary of a trust property must be made by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

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(4) The application must be accompanied by an affidavit stating the reasons for the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the executor or administrator of the estate or the trustee of the trust property.

(6) On application under this rule, the court may make the orders it considers appropriate, including an order requiring the examination and passing of accounts.

2747 Estate and trust accounts—compliance with order for examination and passing of accounts

(Qld r 645)

(1) This rule applies if the court makes an order under rule 2746 requiring the examination and passing of accounts of the executor or administrator of an estate or the trustee of a trust property.

(2) Unless the court otherwise orders, not later than 3 months after the day the order is served on the executor, administrator or trustee, the executor, administrator or trustee must—

(a) file the accounts; and

(b) make an appointment with the registrar to have the accounts examined.

(3) The executor, administrator or trustee must attend the appointment.

(4) The accounts must be—

(a) full and correct; and

(b) verified by affidavit.

Note See approved form 2.79 (Executor's, administrator's or trustee's affidavit and account) AF2006-324.

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(5) If the executor or administrator fails to comply with the order, the court may, on application by the beneficiary who applied for the order, direct that the proceeding the court considers appropriate be taken against the executor or administrator.

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

2748 Estate and trust accounts—application for commission

(Qld r 646)

(1) If an executor or administrator of an estate applies for an order for the allowance of commission out of the estate, the executor or administrator must file a full and correct account of the administration of the estate.

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

Note 2 See approved form 2.79 (Executor's, administrator's or trustee's affidavit and account) AF2006-324.

(2) If a trustee applies for an order for the allowance of commission out of the income or proceeds of trust property, the trustee must file a full and correct account of the trustee's administration of the trust property.

(3) An account mentioned in subrule (1) or (2) must be verified by affidavit.

2749 Estate and trust accounts—notice of filing of accounts etc

(Qld r 647)

(1) This rule applies if accounts of an estate or trust property are to be examined under rule 2747 (Estate and trust accounts—compliance with order for examination and passing of accounts).

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(2) At least 42 days before the date set for examining the accounts, the executor, administrator or trustee must serve on each beneficiary notice of—

(a) the filing of the accounts; and

(b) if the executor, administrator or trustee intends to apply for the allowance of commission—the intention to apply for the commission; and

(c) the date set for examining the accounts.

Note See approved form 2.80 (Notice of filing accounts) AF2006-325.

(3) The notice must state that the beneficiary—

(a) may inspect the accounts at the registry; and

(b) may, not later than 14 days before the date set for examining the accounts, file a notice in the court stating that the beneficiary wants to be heard on the examination and passing of the accounts or allowance of commission.

(4) The notice may be served on a beneficiary by sending a copy of the notice by prepaid post, addressed to the beneficiary, at the beneficiary's address last known to the executor, administrator or trustee.

(5) Not less than 7 days before the date set for examining the accounts, the executor, administrator or trustee must file an affidavit in the court stating—

(a) that the notice required by this rule was served on each beneficiary; and

(b) the date the notice was served on each beneficiary.

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2750 Estate and trust accounts—appearance of beneficiary at examination

(Qld r 648)

(1) This rule applies if accounts of an executor, administrator or trustee are to be examined under rule 2747 (Estate and trust accounts—compliance with order for examination and passing of accounts).

(2) Not later than 14 days before the date set for examining the records, a beneficiary may file a notice in the court stating that the beneficiary wants to be heard on the examination and passing of the accounts or allowance of commission.

Note See approved form 2.81 (Notice of claim to be heard) AF2006-326.

(3) The notice must—

(a) state the beneficiary's address for service; and

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

(b) be supported by an affidavit stating the nature and ground of any objection or exceptions to the accounts or allowance of commission.

(4) The beneficiary must, not later than 7 days after the day the notice is filed, serve a stamped copy of the notice and supporting affidavit on the executor or administrator of the estate or trustee of the trust property.

(5) The executor, administrator or trustee must serve a copy of the accounts on the beneficiary not later than 7 days after the day the notice and supporting affidavit are served on the executor, administrator or trustee.

(6) The registrar may order the beneficiary to serve a stamped copy of the notice and supporting affidavit on anyone else who may have a claim on, or otherwise be interested in, the estate.

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2751 Estate and trust accounts—examination

(Qld r 649)

At the examination of accounts of an executor, administrator or trustee under this division, the registrar must—

(a) examine the accounts; and

(b) hear—

(i) the executor, administrator or trustee; and

(ii) anyone who has filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination) in relation to the examination, is present and wants to be heard; and

(c) inquire into any objection or exception taken to the accounts or allowance of commission to the executor, administrator or trustee.

2752 Estate and trust accounts—conduct of examination

(Qld r 650)

(1) A beneficiary of an estate or trust property—

(a) may attend before the registrar at the examination of accounts of the estate or trust property under this division; but

(b) may not object to the passing of the accounts unless the beneficiary has filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination).

(2) However, if no-one files a notice under rule 2750 in relation to the examination, the registrar may pass the accounts on the oath of the executor, administrator or trustee alone with appropriate verification.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

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(3) On the taking of the accounts, each payment of more than $50 must be verified—

(a) by a proper receipt signed by the person who is claimed to have received the payment; or

(b) in the way the registrar considers satisfactory.

(4) However, the accounts may be passed on the production of a certificate by a properly qualified accountant of the correctness of the accounts if—

(a) the accounts consist entirely of items of receipts and expenditure paid into and drawn out of the trust account of a solicitor for the executor, administrator or trustee; and

(b) the trust account has been properly audited by the accountant in a way that discloses in detail the receipts and disbursements and the true position of the estate or trust property accounts.

Note See approved form 2.82 (Accountant's certificate of correctness of accounts) AF2006-327.

(5) Also, the registrar may require the accounts to be filed in the way otherwise prescribed by these rules and to be further verified.

(6) The result of the registrar's examination of the accounts must be set out in a certificate.

Note See approved form 2.83 (Registrar's certificate of examination of accounts) AF2006-328.

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2753 Estate and trust accounts—application for passing accounts etc

(Qld r 650 (7)-(8))

(1) After the filing in the court of the registrar's certificate under rule 2752 (6) of the results of the examination of accounts of an executor, administrator or trustee, the executor, administrator or trustee—

(a) must apply to the court for an order that the accounts be passed; and

(b) may apply for an allowance of commission.

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

(2) Notice of the application must be served on everyone who—

(a) filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination) in relation to the examination; and

(b) is not stated in the certificate to have withdrawn the person's objection or exception.

2754 Estate and trust accounts—passing of accounts etc

(Qld r 651)

(1) On the hearing of an application under rule 2753, the court may order that the accounts be passed with or without amendment.

(2) The court may also—

(a) allow the costs of examining and passing the accounts to be paid out of the estate or trust property; and

(b) make the order for commission the court considers just; and

(c) extend the time for filing and passing further accounts.

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2755 Estate and trust accounts—amended or further accounts

(Qld r 652)

The court may require—

(a) an executor, administrator or trustee to amend an account; or

(b) an executor, administrator or trustee to have a further account or amended account examined and passed; or

(c) a proceeding to be taken on the account, further account or amended account as the court considers appropriate.

2756 Estate and trust accounts—renewal of objection in subsequent proceeding

(Qld r 653)

(1) This rule applies if—

(a) on the examination under this division of an account of an executor, administrator or trustee, a person made an objection or exception before the registrar that was disallowed or overruled; and

(b) the account was passed under this division; and

(c) the same account is afterwards directed to be taken in a proceeding.

(2) The person must not renew the objection or exception against the executor, administrator or trustee without the court's leave.

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

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2757 Estate and trust accounts—evidence in subsequent proceeding

(Qld r 654)

(1) This rule applies if an account is passed under this division and the same account is afterwards directed to be taken in a proceeding.

(2) The evidence taken before the registrar on the examination of the account may, with all just exceptions, be read on behalf of the executor, administrator or trustee on the taking of the account in the proceeding.

(3) The order passing the account may also be read on behalf of the executor, administrator or trustee on the taking of the account in the proceeding, and is evidence on behalf of the executor, administrator or trustee of the facts stated in the account.

2758 Estate and trust accounts—general practice to apply

(Qld r 655)

Unless this division otherwise provides, division 2.20.2 (Taking of accounts) applies, with any necessary changes, to the examination and passing of accounts under this division.

2759 Estate and trust accounts—combined executors' and trustees' account

(Qld r 656)

(1) This rule applies if the same person is an executor and trustee or an administrator and trustee.

(2) The person may include in the same account a statement of the administration of property in both capacities.

(3) However, the person must distinguish the amounts received and disposed of by the person in each capacity.

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(4) If the person is required to give a notice under this division, the notice must indicate that it is given in relation to the estate of the deceased person and the trust.

(5) A certificate by the registrar of the registrar's examination of the account must set out separately the result of the registrar's examination of the account as far as it relates to the estate and to the trust.

2760 Trustees—allowance of commission in proceeding

(Qld r 657)

(1) A trustee whose account has been taken in a proceeding in the court may apply to the court in that proceeding for the allowance of commission at any time after the account has been taken.

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

(2) Rule 2748 (Estate and trust accounts—application for commission) does not apply to the application.

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Part 2.21 Representation by solicitors

2800 Power to act by solicitor

(MC(CJ)R s 484; NSW r 7.24; Qld r 985)

(1) Every act required or allowed to be done by a party in the conduct of a proceeding in the court may be done by the party's solicitor.

(2) However, this rule does not apply to a document that must be signed by a party.

Examples for r (2)

1 answers to interrogatories

2 an affidavit

Note An example is part of 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).

2801 Appointment of solicitor

(MC(CJ)R s 485 (1))

If a solicitor signs, and files on behalf of a party to a proceeding, an originating process, notice of intention to respond, defence or other document in the proceeding, the solicitor is taken to be the party's solicitor on the record in the proceeding.

2802 Change between acting personally and acting by solicitor

(SCR o 8 r 3 and r 4; MC(CJ)R s 485 (2), s 486 (4) and s 487; NSW r 7.27 and r 7.28; Qld r 986)

(1) If a party acts in person in a proceeding and later appoints a solicitor, the solicitor must—

(a) file a notice of the solicitor's appointment; and

(b) serve a stamped copy of the notice on all other active parties.

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(2) The notice must state the party's address for service.

Note See approved form 2.73 (Notice of appointment of solicitor) AF2006-318.

(3) If a party appoints a solicitor and later decides to act in person, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.

Note See approved form 2.74 (Notice that party acting in person) AF2006-319.

(4) The notice must state the party's address for service.

(5) The party's former solicitor remains the solicitor on the record until the party complies with subrule (3).

2803 Change of solicitor

(SCR o 8 r 2; MC(CJ)R s 486 (1) and (2) and s 487; NSW r 7.26; Qld r 987)

(1) A party may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the party.

(2) If a party appoints another solicitor, the newly appointed solicitor must—

(a) file a notice of the change of solicitor; and

(b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(3) The notice must state the party's address for service.

(4) The party's former solicitor remains the solicitor on the record until the newly appointed solicitor complies with subrule (2).

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2804 Removal of solicitor by court

(SCR o 8 r 5; Qld r 988)

(1) This rule applies if a solicitor for a party on the record in a proceeding loses the capacity to act as a solicitor or cannot be found, but a notice of change of solicitor or notice that the party is acting in person is not filed.

(2) A party may apply to the court for the removal of the solicitor's name from the record.

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

(3) On application under subrule (2), the court may order that the solicitor's name be removed from the record.

(4) On removal of the solicitor's name from the record, the party must—

(a) appoint another solicitor; or

(b) comply with subrule (5).

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(5) To comply with this subrule, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties.

(6) The notice must state the party's address for service.

Note See approved form 2.74 (Notice that party acting in person) AF2006-319.

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2805 Solicitor removed from roll etc

(Qld r 989)

(1) This rule applies if a solicitor's name is removed from the local roll under the *Legal Profession Act 2006* or a solicitor's local practising certificate under that Act is cancelled or suspended.

(2) If a receiver is appointed under the *Legal Profession Act 2006* for the solicitor's practice, a copy of all processes and other documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.

(3) If a receiver is not appointed, rule 2808 (Effect of removal of, or leave to withdraw as, solicitor) applies with necessary changes.

2806 Application for leave to withdraw as solicitor

(SCR o 8 r 6 (1); MC(CJ)R s 486 (5), (6) and (7); NSW r 7.29; Qld r 990)

(1) A solicitor for a client who is a party in a proceeding in the court may apply to the court for leave to withdraw from the record in the proceeding.

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

(2) The solicitor may apply to the court for leave to withdraw from the record only if, at least 7 days before the day the solicitor applies for leave, the solicitor gives notice (a ***notice of intention to apply for leave to withdraw***) to the client—

(a) stating the solicitor's intention to withdraw; and

(b) asking the client, not later than 7 days after the day the notice is given to the client—

(i) to appoint another solicitor; or

(ii) to file, and serve a stamped copy of, a notice that the client acts in person; and

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(c) stating that, if the client does not comply with the notice—

(i) the solicitor may apply to the court for leave to withdraw; and

(ii) the client may be ordered to pay the solicitor's costs of the application.

Note See approved form 2.76 (Notice of intention to apply for leave to withdraw) AF2006-321.

2807 Leave to withdraw as solicitor

(SCR o 8 r 6 (1), (2) and (3); NSW r 7.29; Qld r 991)

(1) A solicitor for a client who is a party in a proceeding in the court may withdraw from the record in the proceeding only with the court's leave on application under rule 2806.

(2) If the solicitor's client does not comply with the notice of intention to apply for leave to withdraw given to the client under rule 2806, the court may give the solicitor leave to withdraw from the record and make an order for costs.

(3) On withdrawing from the record, the solicitor must—

(a) file a notice of withdrawal; and

(b) serve a stamped copy of the notice on—

(i) the party the solicitor represented in the proceeding; and

(ii) all other active parties to the proceeding.

Note See approved form 2.77 (Notice of withdrawal of solicitor) AF2006-322.

(4) The solicitor's withdrawal does not take effect until the solicitor has complied with subrule (3).

(5) On the withdrawal of the solicitor's name from the record, the party must—

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(a) appoint another solicitor; or

(b) comply with subrule (6).

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(6) To comply with this subrule, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties.

Note See approved form 2.74 (Notice that party acting in person) AF2006-319.

(7) The notice must state the party's address for service.

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

2808 Effect of removal of, or leave to withdraw as, solicitor

(SCR o 8 r 5 (3) and r 6 (4); Qld r 992)

(1) This rule applies if a solicitor for a client who is a party to a proceeding is removed from the record under rule 2804 (Removal of solicitor by court) or withdraws from the record under rule 2807 (Leave to withdraw as solicitor).

(2) The client's home or business address becomes the address for service until—

(a) another solicitor is appointed; or

(b) the client notifies another address for service in accordance with these rules.

(3) The removal, or withdrawal, of a solicitor from the record under this part does not affect the rights or liabilities of the solicitor and the party for whom the solicitor acted as between them.

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2809 Withdrawal of solicitor's agent

(MC (CJ)R s 486 (3); NSW r 7.26; Qld r 993)

(1) An agent solicitor of a principal solicitor in a proceeding in the court may withdraw from the record.

(2) However, the agent solicitor must not withdraw from the record unless the agent has—

(a) at least 7 days before the day the agent intends to withdraw as agent, given notice of the agent's intention to the principal solicitor; or

(b) obtained the court's leave to withdraw without giving notice under paragraph (a).

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

(3) The application for leave to withdraw need not be served.

(4) On application for leave to withdraw, the court may give the solicitor leave to withdraw from the record without giving notice under subrule (2) (a).

(5) On withdrawing from the record, the agent solicitor must—

(a) file a notice of withdrawal of agent; and

(b) serve a stamped copy of the notice on all other active parties.

Note See approved form 2.78 (Notice of withdrawal of solicitor's agent) AF2006-323.

(6) The agent solicitor's withdrawal does not take effect until the agent has complied with subrule (5).

(7) If the agent solicitor withdraws from the record, the principal solicitor's business address becomes the address for service until another agent is appointed.

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

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2810 Solicitor not to act for adverse parties

(SCR o 8 r 8)

A solicitor must not act in a proceeding for a plaintiff and a defendant, or for any 2 or more parties having adverse interests in the proceeding.

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Part 2.22 Miscellaneous—ch 2

2900 Declaratory order

(SCR o 29 r 5; NSWSCA s 75; QldSCA s 128)

(1) A proceeding is not open to objection on the ground that the only relief sought is a declaratory order.

(2) The court may make binding declarations of right, whether or not any consequential relief is claimed.

2901 Copies of documents from registrar

(MC(CJ)R s 494; Qld r 980)

(1) A person may, in writing, ask the registrar for—

(a) a copy or certified copy of an order of the court in a proceeding; or

(b) a copy or certified copy of a document filed in a proceeding.

(2) The registrar must give the person the copy or certified copy asked for.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

(3) However, the registrar must not give a copy (or certified copy) of the order or document to a person who is not a party to the proceeding unless the person appears to the registrar to have a sufficient interest in the order or document.

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2902 Searches of registers etc

(SCR o 62 r 8; MC(CJ)R s 495; Qld r 981)

(1) A person may, in writing, ask the registrar to search the registers, indexes or calendars of the court.

(2) The registrar may—

(a) comply with the request; and

(b) issue a certificate of the result of the search.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

2903 Inspection of registry files

(SCR o 66 r 11 and o 83 r 6; MC(CJ)R s 495; Qld 981)

(1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry.

Note Rule 4053 (Criminal proceedings—inspection of registry files) applies to documents filed in criminal proceedings.

(2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person appears to the registrar to have a sufficient interest in the document or the court gives leave:

(a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;

(b) an affidavit that has not been read in court;

(c) a part of an affidavit ruled to be inadmissible in evidence;

(d) an interrogatory, or an answer to an interrogatory, that has not been admitted into evidence;

(e) a list of documents given on discovery;

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(f) an admission that has not been admitted into evidence;

(g) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

(h) an application for leave to serve a subpoena in New Zealand;

(i) a document in relation to a proceeding about the adoption, custody or guardianship of a child;

(j) a document in relation to a proceeding under the *Family Law Act 1975* (Cwlth);

(k) a document filed in the probate jurisdiction, other than—

(i) a grant of probate or letters of administration; or

(ii) an order to administer an estate; or

(iii) a proceeding about a contested matter;

(l) a deposition taken before an examiner;

(m) a document filed in support of an application made in the absence of a party;

(n) a written submission that has not been read in court;

(o) an unsworn statement of evidence;

(p) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

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

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(3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

(5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production;

(c) an application for leave to serve a subpoena in New Zealand.

(6) Before considering an application for leave under subrule (3), the court may require the applicant for leave to do either or both of the following:

(a) give notice of the application for leave to a party to the relevant proceeding or another interested person;

(b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

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(7) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

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Chapter 3 Particular civil proceedings

Part 3.1 Administration and probate

Division 3.1.1 Administration and probate—general

Note to div 3.1.1

For provisions about accounts and commission, see div 2.20.4 (Executors, administrators and trustees—accounts and commission).

3000 Definitions—pt 3.1

(SCR o 72 r 1; NSW Prob r 1; Qld r 596; Vic Prob r 1.04)

In this part:

Administration and Probate Act means the *Administration and Probate Act 1929*.

administration bond—see rule 3045 (Administration bond—requirement for bond).

estate means estate of a deceased person.

3001 Terms used in Administration and Probate Act

(SCR o 72 r 1A)

A term used in the Administration and Probate Act has the same meaning in this part.

Note For example, the following terms are defined in the Administration and Probate Act, dictionary:

- administration
- administrator
- distribute
- representation
- will.

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3002 Application—pt 3.1

This part applies only in relation to the Supreme Court.

Division 3.1.2 Application for grant of representation

3005 Grant of representation—application

(SCR o 72 r 5; NSW Prob r 1; Qld r 597; Vic Prob r 2.02, r 30.02 and r 4.02)

(1) A proceeding for grant of representation for an estate must be started by originating application.

Note 1 See

- approved form 3.1 (Originating application—probate) AF2006-329
- approved form 3.2 (Originating application—letters of administration—with will) AF2006-330
- approved form 3.3 (Originating application—letters of administration—no will) AF2006-331.

Note 2 For notice of the application, see the following rules:

- r 3006 (Grant of representation—notice of intention to apply to be published in newspaper etc)
- r 3007 (Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin)
- r 3008 (Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (Grant of representation—when notice of intention to apply to be served on public trustee).

(2) The application must be accompanied by—

(a) a draft of the grant of representation sought, in duplicate; and

Note See

- approved form 3.4 (Grant of probate) AF2006-332
- approved form 3.5 (Grant of letters of administration—with will) AF2006-333

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- approved form 3.6 (Grant of letters of administration—no will) AF2006-334.

(b) a supporting affidavit; and

Note Rule 3010 (Grant of representation—supporting affidavit for application) deals with the contents of the supporting affidavit.

(c) for an application for grant of probate or letters of administration with the will annexed—the original will, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; and

(d) an affidavit of search; and

Note Rule 3011 (Grant of representation—affidavit of search) deals with the contents of the affidavit of search.

(e) any other affidavit required by a territory law; and

(f) anything else required under a territory law.

Note 1 Div 3.1.4 (Validity and form of wills) contains provisions requiring other affidavits in certain circumstances.

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

(3) If the application is for grant of probate or letters of administration with the will annexed, a copy of the will must be attached to each copy of the draft of the grant of representation sought.

(4) The application and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

(5) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

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3006 Grant of representation—notice of intention to apply to be published in newspaper etc

(SCR o 72 r 3; NSW Prob r 10; Qld r 598 and r 599; Vic Prob r 2.03 and r 4.03)

(1) A person intending to apply for grant of representation for an estate must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note See

- approved form 3.7 (Notice of intention to apply for probate) AF2006-335
- approved form 3.8 (Notice of intention to apply for letters of administration—with will) AF2006-336
- approved form 3.9 (Notice of intention to apply for letters of administration—no will) AF2006-337.

(2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.

(3) The notice must include—

(a) the name, including any known alias, of the deceased person in relation to whom the grant is to be sought; and

(b) if the deceased person left a will—

(i) the deceased person's address as shown in the will and, if different, the deceased person's last-known address; and

(ii) the date of the will and any other testamentary documents for which the grant of representation is sought; and

(c) if the deceased person did not leave a will—the deceased person's last-known address; and

(d) an address for service for the person intending to apply for the grant; and

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

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(e) a statement requiring creditors of the estate to send particulars of their claims to the address for service included in the notice; and

(f) if an administration bond is required under rule 3045 (Administration bond—requirement for bond) and the person giving the notice wants to ask the court for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under rule 3046 (Administration bond—dispensing with bond)—a statement of the proposed request.

(4) If the court is not satisfied that a notice published under subrule (1) is sufficient advertisement of a person's intention to apply for a grant of representation, the court may, on its own initiative, require any other notice it considers appropriate.

3007 Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin

(SCR o 72 r 18; NSW Prob r 24A (3) and (4) and r 25A (3))

(1) This rule applies to an application for grant of administration of the estate of a deceased person made by only 1 or some of the people entitled to be administrators of the estate.

Note See the Administration and Probate Act, s 12 for the people eligible to be administrators.

(2) At least 14 days before the day the application is filed in the court, the applicant must serve notice of the application on each person (a ***relevant person***) who—

(a) is a domestic partner or next of kin of the deceased person; and

(b) if the person is a next of kin of the deceased person—is an adult; and

(c) is not the applicant or 1 of the applicants; and

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(d) has not consented to the application.

Note 1 See approved form 3.10 (Consent to administration of estate) AF2006-338.

Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(3) For each relevant person, either—

(a) the application must be accompanied by the consent, by affidavit, of the relevant person to the application; or

(b) the supporting affidavit for the application must state that the relevant person—

(i) has been served with notice of the application in accordance with subrule (2); or

(ii) cannot be found.

3008 Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin

(SCR o 72 r 15; Vic Prob r 4.06)

(1) This rule applies to an application for grant of administration of the estate of a deceased person made by a person as a creditor of the deceased person.

(2) At least 14 days before the day the application is filed, the applicant must serve notice of the application, and a copy of the supporting affidavit to accompany the application, on each person (a ***relevant person***) who—

(a) is a domestic partner or next of kin of the deceased person; and

(b) if the person is a next of kin of the deceased person—is an adult; and

(c) is not the applicant or 1 of the applicants; and

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(d) has not consented to the application.

Note 1 See approved form 3.10 (Consent to administration of estate) AF2006-338.

Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(3) For each relevant person, either—

(a) the application must be accompanied by the consent, by affidavit, of the relevant person to the application; or

(b) the supporting affidavit for the application must state that the relevant person—

(i) has been served with notice of the application, and a copy of the supporting affidavit to accompany the application, in accordance with subrule (2); or

(ii) cannot be found.

3009 Grant of representation—when notice of intention to apply to be served on public trustee

(SCR o 72 r 16 and r 63; Qld r 598 (2))

(1) This rule applies to an application for grant of representation of the estate of a deceased person made by someone other than the public trustee if the court has made an order under the Administration and Probate Act, section 88 (Orders to public trustee to collect and administer) for the public trustee to collect and administer an estate.

(2) At least 14 days before the day the application is filed, the applicant must serve notice of the application, and a copy of the supporting affidavit to accompany the application, on the public trustee.

(3) Either—

(a) the application must be accompanied by the written consent of the public trustee to the application; or

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(b) the supporting affidavit for the application must state that the public trustee has been served with notice of the application in accordance with subrule (2).

(4) To remove any doubt, a copy of the supporting affidavit served under this rule need not include details about the service of the notice and the supporting affidavit.

3010 Grant of representation—supporting affidavit for application

(SCR o 72 r 3 (5), r 6, r 12, r 15, r 21 (4); NSW Prob rr 24-27; Qld r 602 and r 609; Vic Prob r 2.04, r 3.02 and r 4.04)

(1) An affidavit made by a person supporting an application by the person for grant of representation for the estate of a deceased person must state the following:

(a) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased person;

(b) if the applicant is an individual—that the applicant is an adult;

(c) the relationship (if any) of the applicant to the deceased person;

(d) if a death certificate for the deceased person is annexed to the affidavit—that the deceased person is the person named in the death certificate;

(e) if the application is made, for the first time, more than 6 months after the date of the deceased person's death—the reasons for the delay;

(f) whether the deceased person left property in the ACT;

(g) if the deceased left property in the ACT—the estimated gross value of the property in the ACT;

(h) whether the deceased person considered that the person's domicile was in the ACT;

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(i) if the application is made by the applicant as a guardian of a person to whom rule 3116 (Grant of administration—grant to child) applies—evidence that the applicant is the person's guardian;

(j) if the application is made by the applicant as a creditor of the deceased person—the following particulars:

(i) that the applicant is a creditor of the deceased person;

(ii) the amount of the debt owed by the deceased person to the applicant;

(iii) the particulars of the debt;

(k) that, if the applicant is granted probate of the will or administration of the estate, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;

(l) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper;

(m) brief details of any responses to the publication of the notice from creditors of the estate.

Note 1 See

- approved form 3.11 (Affidavit of applicant for probate) AF2007-65
- approved form 3.12 (Affidavit of applicant for administration—with will) AF2007-66
- approved form 3.13 (Affidavit of applicant for administration—no will) AF2007-67.

Note 2 The following provisions may require additional matters to be dealt with in the supporting affidavit:

- r 3007 (3) (b) (Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin)

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- r 3008 (3) (b) (Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (3) (b) (Grant of representation—when notice of intention to apply to be served on public trustee).

(2) If the applicant is applying for grant of probate or letters of administration with the will annexed for the estate of the deceased person, the affidavit must also state the following:

(a) the document accompanying the application and signed in the margin by the applicant and the person taking the affidavit is the last will of the deceased person;

(b) if the application is for grant of probate—the applicant is the executor, or 1 of the executors, named in the will;

(c) the will has not been revoked;

(d) the applicant is, or is not, aware of the existence of any other document claiming to contain the testamentary intentions of the deceased person;

(e) the steps taken to find out whether there is any other document mentioned in paragraph (d);

(f) how the applicant identified the will;

(g) the names of the people who attested the will;

(h) the names and addresses (if known) of the people named in the will as the executors;

(i) if the application is not made by the executor or all of the executors of the will—the reason the executor is not, or the other executors are not, applying for probate;

(j) whether the deceased person married after the will was made and, if so, the date of the marriage and the name of the spouse;

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(k) if, under the *Wills Act 1968*, section 20A (Effect of termination of marriage), the deceased person's marriage is taken to have been terminated—the date of the termination;

Note The *Wills Act 1968*, s 20A (4) provides that the termination of a marriage is taken to occur—

(a) when a decree of dissolution of marriage under the Family Law Act becomes absolute; or

(b) on the making of a decree of nullity under the Family Law Act in respect of a purported marriage that is void; or

(c) on the annulment of the marriage in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the Family Law Act.

(l) whether the deceased person was an adult when the person made the will or whether the person made the will in accordance with the *Wills Act 1968*, section 8 (Children—testamentary capacity).

(3) If the applicant is applying for letters of administration without the will annexed for the estate of the deceased person, the affidavit must state the following:

(a) the deceased person did not leave a will;

(b) the applicant is, or is not, aware of the existence of any document claiming to contain the testamentary intentions of the deceased person;

(c) the steps taken to find out whether the deceased person left a will and whether there is any other document mentioned in paragraph (b);

(d) the names of everyone with a beneficial interest in the estate;

(e) the interest of everyone with a beneficial interest in the estate.

(4) If a statement required to be included in the supporting affidavit can only be made (or would be more appropriately made) by a person other than the applicant, the statement must be included in a

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separate supporting affidavit made by that person and filed with the application.

(5) If a supporting affidavit contains statements of information and belief, the person making the affidavit must state the sources of the information and the reasons for the belief.

(6) The following documents must be annexed to the supporting affidavit (or a relevant supporting affidavit):

(a) any death certificate (or a certified copy of any death certificate) issued for the deceased person under the *Births, Deaths and Marriages Registration Act 1997* or a corresponding law of another jurisdiction;

(b) any document (other than the last will of the deceased person) claiming to contain the testamentary intentions of the deceased person that is in the possession of the applicant or other person making the affidavit;

Note ***Possession*** is defined in the dictionary.

(c) an inventory of the property of the estate;

(d) a copy of the notice (or each notice) required by rule 3006 (Grant of representation—notice of intention to apply to be published in newspaper etc);

(e) if the application is made by the applicant as a creditor of the deceased person—documents sufficient to prove the deceased person's debt to the applicant;

(f) for each person with a beneficial interest in the estate—documents sufficient to prove the person's identity and the relationship (if any) of the person to the deceased person.

Note See also div 3.1.4 (Validity and form of wills).

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3011 Grant of representation—affidavit of search

(SCR o 72 r 6, r 12 and r 14; Qld r 602; Vic Prob r 2.04 (2) (b) (xii), r 2.05, r 3.02 and r 4.05)

An affidavit of search accompanying an application for grant of representation for the estate of a deceased person must state that the person making the affidavit has arranged for a search of the registry and, based on information given to the person and the person's belief, made the following findings:

(a) that a caveat against the application has, or has not, been filed in the court and, if a caveat has been filed, details of the caveat and whether it is still in force;

(b) that another application for grant of representation for the estate has, or has not, been made and, if another application has been made, details of the application and the results of the application;

(c) that a grant of representation has, or has not, been granted by the court for the estate and, if representation has been granted, details of the representation and whether the representation is still in force.

Note See approved form 3.14 (Affidavit of search) AF2006-342.

3012 Grant of representation—proof of identity and death

(NSW Prob r 13 and r 23A)

(1) This rule applies if an application is made for grant of representation for the estate of a deceased person.

(2) The court may require further proof of the identity of the deceased person or the applicant.

(3) The court may, on application, allow a death to be proved otherwise than by a death certificate.

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

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3013 Grant of representation—further evidence, documents and notices

(NSW Prob r 23A)

(1) This rule applies if an application is made for grant of representation for the estate of a deceased person.

(2) The court may require, on its own initiative or on application by an interested person, further evidence to be given, further documents to be filed and notices to be given, that it considers appropriate.

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

3014 Grant of representation—no grant to executor etc who has renounced

(NSW Prob r 14)

(1) A person may renounce probate of the will or administration of the estate of a deceased person by affidavit.

Note See approved form 3.15 (Renunciation of probate) AF2006-343.

(2) If a person renounces probate of the will or administration of the estate of a deceased person, the person must not be granted representation of the estate in another capacity.

3015 Grant of representation—when hearing not required

Unless a caveat is in force in relation to the application or division 3.1.9 (Other probate proceedings) applies to the application, the court may grant representation for the estate without a hearing.

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Division 3.1.3 Application for reseal of foreign grant

3020 Reseal of foreign grant—application

(SCR o 72 r 5)

(1) An application under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction) must be made by originating application.

Note See approved form 3.16 (Originating application—reseal of foreign grant) AF2006-344.

(2) The application must be accompanied by—

(a) a draft of the reseal sought, in duplicate, with a copy of the grant of probate or administration, or order to collect and administer, sought to be resealed attached; and

Note See approved form 3.17 (Reseal of foreign grant) AF2006-345.

(b) a copy of the grant or order mentioned in paragraph (a) sealed, or certified, by the court that made it; and

(c) a supporting affidavit; and

Note Rule 3022 (Reseal of foreign grant—supporting affidavit for application) deals with the contents of the supporting affidavit.

(d) an affidavit of search; and

Note Rule 3023 (Reseal of foreign grant—affidavit of search) deals with the contents of the affidavit of search.

(e) anything else required under a territory law.

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

(3) The application and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

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(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

3021 Reseal of foreign grant—notice of intention to apply to be published in newspaper etc

(SCR o 72 r 4)

(1) A person intending to make an application under the Administration and Probate Act, section 80 must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note See approved form 3.18 (Notice of intention to apply for reseal of foreign grant) AF2006-346.

(2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.

(3) The notice must include—

(a) the name, including any known alias, of the deceased person in relation to whom the application is to be made; and

(b) an address for service for the person intending to make the application.

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

(4) If the court is not satisfied that a notice published under subrule (1) is sufficient advertisement of a person's the intention to make an application under the Administration and Probate Act, section 80, the court may, on its own initiative, require any other notice it considers appropriate.

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3022 Reseal of foreign grant—supporting affidavit for application

(SCR o 72 r 14A; NSW Prob r 28)

(1) An affidavit made by a person supporting an application by the person under the Administration and Probate Act, section 80 must state the following:

(a) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of a deceased person has been granted or made by a court of competent jurisdiction in a reciprocating jurisdiction;

(b) the name of the court that made the grant or order and the date the grant or order was made;

(c) that the grant or order has not been revoked;

(d) whether the applicant is the person to whom the grant was made or for whom the order was made;

(e) if the applicant is not that person—whether the applicant is authorised, under a power of attorney, by that person to make the application and, if so, that the applicant has not been given notice of revocation of the power of attorney;

(f) whether the deceased person left property in the ACT;

(g) if the deceased left property in the ACT—the estimated gross value of the property in the ACT;

(g) that, if the application is granted, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;

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(h) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper;

(i) for each notice required under rule 3021 (4) (Reseal of foreign grant—notice of intention to apply to be published in newspaper etc)—how the requirement for the notice was complied with.

Note See approved form 3.19 (Affidavit of applicant for reseal of foreign grant) AF2007-68.

(2) If the supporting affidavit contains statements of information and belief, the applicant must state the sources of the information and the reasons for the belief.

(3) the following documents must be annexed to the supporting affidavit:

(a) a copy of the notice (or each notice) required by rule 3021;

(b) an inventory of the property of the estate in the ACT;

3023 Reseal of foreign grant—affidavit of search

(SCR o 72 r 14A)

An affidavit of search accompanying an application under the Administration and Probate Act, section 80 in relation to the estate of a deceased person must state that the person making the affidavit has arranged for a search of the registry and, based on information given to the person and the person's belief, made the following findings:

(a) that a caveat against the application has, or has not, been filed in the court and, if a caveat has been filed, details of the caveat and whether it is still in force;

(b) that another application under the Administration and Probate Act, section 80 has, or has not, been made in relation to the

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estate and, if another application has been made, details of the application and the results of the application;

(c) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of the deceased person has, or has not, been resealed by the court and, if it has been, details of the resealing and whether it is still in force.

Note See approved form 3.20 (Affidavit of search—reseal of foreign grant) AF2006-348.

3024 Reseal of foreign grant—when hearing required

(1) This rule applies to an application under the Administration and Probate Act, section 80 (Resealing of grant made in reciprocating jurisdiction).

(2) Unless a caveat is in force in relation to the application or division 3.1.9 (Other probate proceedings) applies to the application, the court may grant the application without a hearing.

Division 3.1.4 Validity and form of wills

3030 Grant of representation—evidence of proper attestation of will

(SCR o 72 r 7; NSW Prob r 15; Qld r 604)

(1) This rule applies if a person applies for grant of probate or administration of a will.

(2) If it appears to the court that the will has been attested in the way required by law, the court may accept the attestation as evidence of the proper making of the will.

(3) If there is no attestation clause or the attestation clause does not show how the will was made, the applicant must file an affidavit made by a witness who attested the will stating how the will was made.

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(4) However, if it is not practicable to comply with subrule (3) because, for example, the witnesses who attested the will are dead, the applicant must file an affidavit made by someone else present when the will was made and stating how the will was made.

Note An example is part of 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).

(5) If it is not practicable for the applicant to comply with subrule (4) because, for example, no-one else was present when the will was made, the applicant must file an affidavit stating why it is not practicable and, if possible, giving evidence of the handwriting of the witnesses.

(6) The applicant must also state in the affidavit anything else relevant about the making of the will.

3031 Grant of representation—will by blind or illiterate person

(SCR o 72 r 8; NSW Prob r 16; Qld r 607)

(1) This rule applies if a person applies for grant of probate or administration of a will that—

(a) has been made by a blind or apparently illiterate testator; or

(b) appears to have been signed by someone else on behalf of the testator; or

(c) was made under circumstances that raise doubt about whether the testator knew or approved of the will's contents.

(2) The applicant must file an affidavit giving evidence that, when the testator signed the will, the testator knew and approved of its contents.

(3) If an affidavit mentioned in subrule (2) is made by a witness who attested the will or by someone else present when the will was made, the affidavit must state how the will was made.

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(4) However, unless the court otherwise orders on application by an interested person or on its own initiative, it is not necessary to obtain evidence of the making of a blind or apparently illiterate testator's will if—

(a) the will specifically states the testator is blind or apparently illiterate; and

(b) the attestation of the witnesses who signed the will acknowledges that the testator knew and approved of the contents of the will.

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

3032 Grant of representation—alterations in will

(SCR o 72 r 9 (3); NSW Prob r 19; Qld r 605)

(1) This rule applies if a person applies for grant of probate or administration of a will that appears to have been altered.

(2) The court may require evidence about the alteration.

(3) The court must not include the alteration in a grant of representation unless the alteration—

(a) was in the will when the will was made; or

(b) if made afterwards—was made and attested in a way required by law; or

Note The *Wills Act 1968*, s 12 (Alteration in will) deals with the validity of alterations made after the execution of the will.

(c) was made valid by the remaking of the will or a later codicil.

(4) If it is not shown when the alteration was made, and the words altered can, on inspection, be easily worked out, the original words may be included in the grant of representation.

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(5) If the erased words may have been of importance, the erasure must be explained by evidence.

(6) In this rule:

alter includes alter by omission, substitution or addition.

3033 Grant of representation—documents mentioned in or attached to will

(SCR o 72 r 10 and r 11; NSW Prob r 20 and r 21; Qld r 606)

(1) This rule applies if a person applies for grant of probate or administration of a will.

(2) If the will mentions another document and raises a question whether the document does or does not form part of the will, the applicant must produce the other document or, if possible, explain its absence.

(3) The court must not include in a grant of representation a document mentioned in the will unless it appears to the court to have been in existence when the will was made.

(4) If there is any evidence supporting the inference that any paper may have been attached to the will, the applicant must produce the paper or, if possible, explain its absence.

3034 Grant of representation—evidence of proper execution of will etc

(SCR o 72 r 9 (1) and (2); NSW Prob r 17 and r 18)

(1) This rule applies if a person applies for grant of probate or administration of a will and—

(a) the court considers that—

(i) there is doubt about the proper execution or attestation of the will; or

(ii) any circumstances in relation to the making of the will need explanation; or

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(iii) there is doubt about the date the will was made; or

(b) the will is undated.

(2) The court may, by order, require evidence about the execution, attestation or making of the will, including the date the will was made.

(3) The court may make an order under subrule (2) on application by an interested person or on its own initiative.

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

(4) The court may make an order under subrule (2) even though the following rules may have been complied with:

- rule 3030 (Grant of representation—evidence of proper attestation of will)
- rule 3031 (Grant of representation—will by blind or illiterate person).

3035 Grant of representation—will inoperative or partly inoperative

(SCR o 76 r 13; NSW Prob r 23; Vic Prob r 2.07)

(1) This rule applies if—

(a) a person applies for grant of probate or administration of a will of a deceased person; and

(b) it appears to the court that the will is inoperative or partly inoperative.

(2) The court may require the applicant to file an affidavit stating what, if any, domestic partner, next of kin or other relatives survived the deceased person so far as known and material in law to the right to administer or share in the estate.

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Division 3.1.5 Administration bonds

3045 Administration bond—requirement for bond

(SCR o 72 r 30)

(1) This rule applies if a person applies for grant of letters of administration without the will annexed for the estate of a deceased person.

(2) As a condition of granting administration to the person, the court may require 1 or more sureties acceptable to the court to guarantee by bond (an ***administration bond***) that they will make good, up to the required amount, any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

Note See approved form 3.21 (Administration bond) AF2006-349.

(3) However, an administration bond must not be required if administration is granted to—

(a) a person on behalf of the Territory, the Commonwealth, a State or another Territory; or

(b) the public trustee of the Territory, a State or another Territory; or

(c) a trustee company.

(4) An administration bond for an estate has effect for the benefit of everyone interested in the administration of the estate as if contained in a deed made by the surety or sureties with each interested person and, if there are 2 or more sureties, as if they had bound themselves jointly and severally.

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(5) On application by the administrator or on its own initiative, the court may decide that the required amount for an administration bond for an estate is less than the value of the estate.

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

(6) In this rule:

required amount, for an administration bond for an estate, means—

(a) the value of the estate; or

(b) a lesser amount decided by the court under subrule (5); or

(c) if the value of the estate is less than $10 000—a lesser amount decided by the registrar.

3046 Administration bond—dispensing with bond

(SCR o 72 r 30A)

(1) This rule applies in relation to an estate if—

(a) all or any part of the estate passes to the person to whom administration is granted; or

(b) all or any part of the estate passes to beneficiaries who are of full legal capacity and the beneficiaries consent, in writing, to the administration bond for the estate being dispensed with.

(2) On application by an administrator or beneficiary or on its own initiative, the court may dispense with the administration bond in relation to the estate or part of the estate.

(3) The application may be made in the application for letters of administration or by application in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application in the proceeding for an order to dispense with an administration bond.

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3047 Administration bond—affidavit of justification

(SCR o 72 r 31A)

(1) A surety, other than an exempt surety, must justify by affidavit.

Note See approved form 3.22 (Affidavit of justification) AF2006-350.

(2) A surety that is a corporation must make an affidavit by a proper officer.

(3) An affidavit by a surety for an administration bond must contain enough information about the surety's financial position to satisfy the registrar that the surety can meet any claim under the bond.

(4) The registrar may accept an affidavit of justification from a corporation at least once every year instead of requiring an affidavit in every case that the corporation is a surety.

(5) The registrar may require a surety for an administration bond who justifies by affidavit to give the registrar further information if there is not enough information in the affidavit for the registrar to be satisfied that the surety can meet any claim under the bond.

(6) The further information must be given in the way the registrar requires, either—

(a) by another affidavit; or

(b) by the oral examination of the person who made the affidavit of justification on oath before the registrar.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(7) In this rule:

exempt surety means—

(a) an authorised deposit-taking institution; or

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(b) an entity declared by the registrar under rule 3048 (1) to be an exempt surety.

Note ***Authorised deposit-taking institution*** is defined in the Legislation Act, dict, pt 1 as an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

3048 Administration bond—exempt surety

(SCR o 72 r 32)

(1) The registrar may declare an entity to be an exempt surety.

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

3049 Administration bond—addition or reduction after required but before given

(SCR o 72 r 32A)

(1) This rule applies if the court requires an administration bond under rule 3045 (Administration bond—requirement for bond) for an estate to be given by a surety or sureties for a particular amount.

(2) On the application of anyone interested in the estate or on its own initiative on the registrar's report, the court may, at any time before the bond has been given by the surety or sureties, order that the amount be reduced or increased.

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

(3) However, application must not be made if the court has made a decision about the amount under rule 3045 (5).

(4) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the court makes an order under subrule (2) that the amount be increased; and

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(b) the surety or sureties will not guarantee the increased amount; and

(c) the administrator does not produce another surety or other sureties to cover the increased amount.

(5) In this rule:

required amount—see rule 3045 (6).

3050 Administration bond—addition or reduction after given

(SCR o 72 r 32B)

(1) This rule applies if an administration bond is given under rule 3045 (Administration bond—requirement for bond) for an estate.

(2) On the application of anyone interested in the estate or on its own initiative on the registrar's report, the court may, at any time—

(a) require the surety or sureties to give an additional administration bond; or

(b) order that the liability of a surety under the bond be reduced by a stated amount.

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

(3) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the additional administration bond is not given by the surety or sureties; and

(b) the administrator does not produce another surety or other sureties to give the additional bond.

(4) For these rules, an additional administration bond under this rule is taken to be an administration bond under rule 3045.

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3051 Administration bond—proceeding on bond

(SCR o 72 r 33)

(1) A proceeding on an administration bond may only be started with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to start a proceeding on an administration bond.

(2) A stamped copy of the application and supporting affidavits must be served on the administrator and surety.

3052 Administration bond—application by surety

(SCR o 72 r 33A)

On application by a surety to an administration bond, the court may grant the relief it considers appropriate if it appears to the court that either or both of the following apply:

(a) the estate is being wasted, or is in danger of being wasted;

(b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or omission of the person administering the estate.

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

3053 Administration bond—reseal of foreign grant

(Administration and Probate Act, s 82 (2))

This division applies, with any necessary changes, to the sealing of letters of administration, or order to collect and administer an estate, under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction).

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Division 3.1.6 Administration by public trustee

3055 Administration by public trustee—application

(SCR o 72 r 60)

(1) An application by the public trustee under the Administration and Probate Act, section 88 (Orders to public trustee to collect and administer) to collect and administer the estate of a deceased person must be supported by an affidavit stating—

(a) the person has died, and the date and place of the person's death; and

(b) whether the person died with or without leaving a will; and

(c) whether the person left real or personal property in the ACT; and

(d) the names of any surviving domestic partner or next of kin.

Note 1 See approved form 3.23 (Affidavit in support of application by public trustee) AF2006-351.

Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(2) The affidavit may include anything else the public trustee considers necessary.

3056 Administration by public trustee—renunciation of probate by executors

(SCR o 72 r 61)

(1) This rule applies if the executors of the will of a deceased person want to renounce their rights to apply for probate in favour of the public trustee.

(2) The executors must give the public trustee a notice of renunciation by affidavit.

Note See approved form 3.24 (Notice of renunciation of probate in favour of public trustee) AF2006-352.

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(3) The public trustee must file the notice of renunciation in the court.

3057 Administration by public trustee—renunciation of letters of administration by entitled people

(SCR o 72 r 62)

(1) This rule applies if—

(a) a person died without leaving a will; and

(b) the people primarily entitled to administration of the deceased person's estate want to renounce their rights to letters of administration in favour of the public trustee.

(2) The people must give the public trustee notice of renunciation by affidavit.

Note See approved form 3.25 (Notice of renunciation of letters of administration in favour of public trustee) AF2006-353.

(3) The public trustee must file the notice of renunciation in the court.

3058 Administration by public trustee—service of documents on public trustee

(SCR o 72 r 64)

(1) This rule applies if—

(a) the public trustee is administering an estate; and

(b) someone else brings a proceeding in a court in relation to the estate; and

(c) the public trustee is not a party to the proceeding.

(2) A sealed or stamped copy of every document filed in the proceeding must be served on the public trustee.

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Division 3.1.7 Caveats

3065 Definitions—div 3.1.7

(Qld r 623)

In this division:

caveator means a person who files a caveat in the court under this division.

grant of representation, for an estate, includes a resealing by the court of a grant of probate or administration, or of an order to collect and administer, for the estate made by a court of competent jurisdiction of a reciprocating jurisdiction.

3066 Caveat—filing

(SCR o 72 r 52; NSW Prob rr 61-62A; Qld r 627; Vic Prob r 8.01)

(1) A person claiming to have an interest in an estate may file a caveat in the court.

Note See approved form 3.26 (Caveat) AF2006-354.

(2) A caveat may be—

(a) a caveat against a grant of representation for the estate; or

(b) a caveat requiring proof in solemn form of any will of the deceased person; or

(c) a caveat against distribution of the estate.

(3) A caveat mentioned in subrule (2) (a) or (b) may be filed at any time before a grant of representation is made for the estate.

(4) A caveat mentioned in subrule (2) (c) may be filed at any time before the estate has been fully distributed.

(5) The caveat must state fully the nature of the caveator's interest and the grounds of the caveator's objection.

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(6) If probate or letters of administration is sought in relation to a will (including a document claiming to contain the testamentary intentions of the deceased person), the grounds of objection may be stated as follows:

(a) that there is a later will executed, or act of revocation or made, on a stated date;

(b) that the will was not executed by the testator;

(c) that the will was not executed in accordance with a stated provision of the *Wills Act 1968*;

(d) that the document for which probate or administration is sought was not executed in accordance with the *Wills Act 1968* and was not intended by the deceased person to be the deceased person's will;

(e) that the testator lacked testamentary capacity at the time of execution of the will;

(f) that the testator executed the will under the undue influence of a named person.

(7) If a grant of representation is sought for an intestate estate, the grounds of objection may be stated as follows:

(a) that a will executed on a stated date exists;

(b) that the applicant for the grant of representation does not have the capacity or stand in the relationship for which the applicant seeks administration;

(c) that the caveator or someone else seeking administration has a better stated right;

(d) that the proposed administrator is disqualified because of a stated reason.

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(8) Subrules (6) and (7) do not limit the grounds of objection that may be stated in a caveat.

(9) The caveat must give an address for service of the caveator.

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

3067 Caveat—service

(NSW Prob r 61 (3), r 62 (3) and r 62A (3))

(1) If a person who files a caveat mentioned in rule 3066 (2) (a) or (b) in relation to an estate knows that someone else is making or intending to make application for grant of representation for the estate, the person must serve a stamped copy of the caveat on the other person as soon as possible, but no later than 7 days after the day the caveat is filed.

(2) If a person who files a caveat mentioned in rule 3066 (2) (c) in relation to an estate knows that someone else is distributing or intending to distribute the estate, the person must serve a stamped copy of the caveat on the other person as soon as possible, but no later than 7 days after the day the caveat is filed.

3068 Caveat—period of operation

(SCR o 72 r 52 (1); NSW Prob r 63; Qld r 624 (4); Vic Prob r 8.03 and r 8.05)

(1) A caveat takes effect when it is filed in the court.

(2) A caveat remains in force for 6 months unless it is set aside or withdrawn under this division.

(3) A caveat may be renewed by filing a new caveat in the court.

3069 Caveat—setting aside

(NSW Prob r 69; Qld r 626)

(1) If—

(a) a person has applied or intends to apply for grant of representation for an estate; and

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(b) a caveat is in force in relation to the granting of representation for the estate;

the person may apply to the court for an order setting aside the caveat.

(2) If the person has applied for grant of representation, the application must be made in that proceeding.

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

(3) If the person intends to apply for grant of representation, the application must be made by originating application, naming the caveator as a defendant.

(4) The court may set aside the caveat if it considers that the evidence does not—

(a) show that the caveator has an interest in the estate or a reasonable prospect of establishing an interest; or

(b) raise doubt about whether the grant of representation should be made.

(5) If the court sets aside the caveat under subrule (4), the caveator must not file another caveat in the court in relation to the estate without the court's leave.

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

(6) If the court does not set aside the caveat under subrule (4), the court may give the directions it considers appropriate for the application to be decided quickly, including a direction for the caveator to start a proceeding within a stated time.

(7) The court may give directions under subrule (6) on application by a party or on its own initiative.

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

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(8) If the court gives a direction under subrule (6) for the caveator to start a proceeding with a stated time and the caveator fails to start a proceeding within that time, the caveat is taken to have been withdrawn.

3070 Caveat—withdrawal if no pending proceeding for grant of representation etc

(NSW Prob r 64; Qld r 627; Vic Prob r 8.04)

(1) This rule applies to a caveat in relation to an estate if—

(a) an application has not been made for grant of representation for the estate; or

(b) the caveator is the sole applicant for grant of representation for the estate.

(2) The caveator may withdraw the caveat by filing a notice of withdrawal in the court.

Note See approved form 3.27 (Notice of withdrawal of caveat) AF2006-355.

(3) The caveat is withdrawn on the filing of the notice.

3071 Caveat—leave to withdraw

(NSW Prob r 65; Qld r 627; Vic Prob r 8.04)

(1) This rule applies to a caveat in relation to an estate if rule 3070 (Caveat—withdrawal if no pending proceeding for grant of representation etc) does not apply to the caveat.

(2) The caveator may withdraw the caveat only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under a provision of these rules, it may give the leave on the conditions it considers appropriate, including a condition about costs.

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(3) If the court gives leave for the caveat to be withdrawn, the caveat is taken to be withdrawn when the leave is given.

3072 Caveat—effect if filed on day of grant

(Qld r 628)

A caveat does not affect a grant of representation made on the day the caveat is filed in the court, unless it is filed before the grant is sealed.

Note A caveat against a grant of representation may be filed any time before a grant of representation is made (see r 3066 (3) (Caveat—filing)).

Division 3.1.8 Revocation of grant

3080 Revocation of grant—urgent order before start of proceeding

(NSW Prob r 39)

(1) This rule applies—

(a) in urgent circumstances; and

(b) if the person applying for an order mentioned in subrule (2) intends to start a proceeding for revocation of a grant of representation.

(2) Before the proceeding starts, the court may order the personal representative to bring the original grant, and all sealed copies of the grant, into the registry.

(3) An application for an order mentioned in subrule (2) must be made by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

(4) An application for an order mentioned in subrule (2) should be served, but if the court is satisfied there is adequate reason for doing

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so, it may make the order without the application being served on anyone.

(5) The person must give an undertaking to the court that the person will file an originating application for revocation of the grant of representation not later than—

(a) the end of the time ordered by the court; or

(b) if the court does not make an order mentioned in paragraph (a)—2 days after the day the order mentioned in subrule (2) is made.

3081 Revocation of grant—application

(SCR o 72 r 58A; NSW Prob r 40 and r 43; Qld r 642; Vic Prob r 11.01 and r 11.02)

(1) This rule applies if, after probate of a will or administration of an estate has been granted—

(a) a person interested in the estate wants the grant revoked; or

(b) the personal representative wants to retire from the administration.

(2) The person must apply in the proceeding in which the grant of representation was made for an order to revoke the grant.

Note Pt 6.2 (Applications in proceedings) applies to an application for revocation of a grant.

(3) An application must be supported by an affidavit setting out the facts relied on and the grounds on which the order is sought.

3082 Revocation of grant—orders

(SCR o 72 r 59; Qld r 642)

On the hearing of an application for revocation of a grant of representation, the court may make any of the following orders:

(a) an order revoking the grant;

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(b) an order revoking the grant and making a limited grant of representation;

(c) an order under rule 3091 (2) (Application—div 3.1.9).

3083 Revocation of grant—return of original grant

(SCR o 72 r 59; Qld r 642)

If the court revokes a grant of representation or replaces it with a limited grant of representation, the personal representative must bring the original grant, and all sealed copies of the grant, into the registry as soon as possible, but not later than 7 days after the day the order is made.

Division 3.1.9 Other probate proceedings

3090 Definitions—div 3.1.9

(Qld r 629)

In this division:

division 3.1.9 proceeding means a proceeding to which this division applies.

Note Rule 3091 deals with the proceedings to which this division applies.

script means any of the following:

(a) a will;

(b) a draft of a will;

(c) documentary instructions for a will made by or at the request of a testator;

(d) a solicitor's attendance notes containing a client's instructions written down from the client's oral instructions;

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(e) for a will alleged to have been lost or destroyed—another document that is or may be evidence of the contents, or a copy, of the will.

3091 Application—div 3.1.9

(1) This division applies to the following proceedings:

(a) a proceeding in which the court is asked to pronounce for or against the validity of a will;

(b) a proceeding brought in opposition to an application for a grant of representation;

(c) a proceeding under the *Wills Act 1968*, section 11A (Validity of will etc not executed with required formalities);

(d) a proceeding in opposition to an application under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction);

(e) a proceeding for the removal of an executor;

(f) a proceeding for the revocation of a grant of representation;

(g) any other proceeding in relation to which the court makes an order under subrule (2).

(2) On application by an interested person or on its own initiative, the court may, at any stage of a proceeding started in the court in relation to an estate—

(a) order that a proceeding continue as if it were a proceeding to which this division applied; and

(b) give the directions it considers appropriate for the conduct of the proceeding; and

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(c) make any orders it considers appropriate.

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

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

3092 Division 3.1.9 proceeding—starting

(1) If a person wants to start a division 3.1.9 proceeding in relation to an estate and a proceeding is not before the court in relation to the estate, the person must bring the proceeding by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

(2) If a person wants to start a division 3.1.9 proceeding in relation to an estate and a proceeding is before the court in relation to the estate, the person must bring the proceeding by application in that proceeding.

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

3093 Division 3.1.9 proceeding—application for revocation

(Qld r 635)

(1) This rule applies to a division 3.1.9 proceeding—

(a) that is started by originating application; and

(b) in which the relief sought is, or includes, the revocation of a grant of representation.

(2) The originating application must name as a defendant each person to whom the grant was made.

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3094 Division 3.1.9 proceeding—affidavits

(Qld r 631 and r 632)

(1) This rule applies to a division 3.1.9 proceeding in relation to an estate that is started by a person by originating application or an application in the proceeding.

(2) The application must be supported by an affidavit stating the nature of the person's interest in the estate and, for an affidavit supporting an originating application, the interest in the estate of each defendant named in the originating application.

(3) The court may give directions about the filing and contents of any other affidavits in the proceeding, including a direction for affidavits of scripts to be filed.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for directions.

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

3095 Division 3.1.9 proceeding—affidavits of scripts

(Qld r 632)

(1) This rule applies if, in a division 3.1.9 proceeding, the court gives a direction under rule 3094 for affidavits of scripts to be filed.

(2) The plaintiff, and any party who files a notice of intention to respond, must each file in the court an affidavit—

(a) either—

(i) describing any script of the deceased person of which the person knows; or

(ii) if the party does not know of any script of the deceased person—stating the party does not know of any script of the deceased person; and

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(b) if the party making the affidavit does not have possession of any known script—

(i) stating the name and address of the person who has, last had, or is believed to have or last had, possession of the script and the grounds for any belief; or

(ii) if the party does not know who has possession of the script—stating that fact.

Note ***Possession*** is defined in the dictionary.

(3) The party must ensure any script in the party's possession is filed as an exhibit to the affidavit.

(4) If the party does not possess the original script, the party must file a copy of the original script in the party's possession as an annexure to the affidavit.

(5) The affidavit of a party who files a notice of intention to respond must be filed not later than 14 days after the day the person files the notice of intention to respond.

3096 Division 3.1.9 proceeding—directions for notice to people with beneficial interests

(Qld r 633)

(1) This rule applies to a division 3.1.9 proceeding in relation to an estate that is started by originating application.

(2) The court may give directions about whether the plaintiff is to serve notice on anyone else who has a beneficial interest in the estate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for directions.

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

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3097 Division 3.1.9 proceeding—notice of intention to intervene

(Qld r 634)

(1) Anyone not named in the originating application in a division 3.1.9 proceeding in relation to an estate may give notice of intention to intervene in the proceeding by filing in the court an affidavit showing that the person has an interest in the estate.

(2) The affidavit must include an address for service for the person.

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

(3) The person must serve a stamped copy of the affidavit on everyone named in the proceeding.

3098 Division 3.1.9 proceeding—filing of grant of representation

(Qld r 636)

(1) This rule applies if, in a division 3.1.9 proceeding, the relief sought is, or includes, the revocation of a grant of representation of an estate.

(2) The court may, at any time, order the personal representative to bring the original grant, and all sealed copies of the grant, into the registry.

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

Note 2 The grant and sealed copies must be brought into the registry as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)) unless the court gives a direction about when they must be brought into the registry.

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Division 3.1.10 Administration and probate—other provisions

3110 Administration and probate—registrar may make inquiries

(Qld r 600)

(1) For this part, the registrar may make any inquiry about the identity of a deceased person, an applicant for grant of representation for an estate, or anything else the registrar considers requires proof or explanation.

(2) The registrar may require an answer to an inquiry to be given by affidavit.

3111 Administration and probate—subpoenas

(Qld r 637)

(1) In a proceeding under this part, the court may issue a subpoena under part 6.9 (Subpoenas) requiring a person (the ***subpoenaed person***) to do either or both of the following:

(a) to bring into the registry or otherwise as directed by the court a will or other document;

(b) to attend the court for examination in relation to anything relevant to the proceeding.

(2) The court must not issue a subpoena mentioned in subrule (1) (a) unless an affidavit stating that the will or other document is believed to be in the possession of the subpoenaed person, and the grounds for that belief, has been filed in the court.

Note ***Possession*** is defined in the dictionary.

(3) If the subpoenaed person denies that the will or other document is in the person's possession, the subpoenaed person must file in the court an affidavit to that effect.

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3112 Administration and probate—evidence about domicile

(NSW Prob r 13)

(1) This rule applies if—

(a) a person applies for grant of representation for the estate of a deceased person; and

(b) it appears that the deceased person may have been domiciled outside the ACT.

(2) The court may require evidence of the following:

(a) the domicile of the deceased person;

(b) the requirements of the law of the domicile in relation to the validity of any will or testamentary document made by the deceased person;

(c) the law of the domicile in relation to a person entitled in distribution of the estate

3113 Administration and probate—proof in solemn form

(Qld r 640)

(1) This rule applies if the court has made a grant in common form of probate or letters of administration with the will annexed.

(2) Anyone who claims to have sufficient interest in the administration of the estate may apply to the court for an order for the personal representative to bring the grant of representation into the registry.

(3) The court must not make an order under subrule (2) unless satisfied that the applicant has an interest in the estate or a reasonable prospect of establishing an interest.

(4) If the court makes an order under subrule (2), the court may also give the directions it considers appropriate, including directions about the people to be made parties to the proceeding and about service.

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(5) If the court makes an order under subrule (2), the personal representative must bring the original grant, and all sealed copies of the grant, into the registry.

Note The grant and sealed copies must be brought into the registry as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)) unless the court gives a direction about when they must be brought into the registry.

(6) As soon as practicable after the court makes an order under subrule (2), the personal representative must start a proceeding for grant of representation in solemn form.

3114 Failure of executor to prove will—Administration and Probate Act, s 25

(1) This rule applies if the person named as the executor in a will—

(a) does not prove the will, or renounce probate, within 6 months after the later of the following:

(i) the date of the testator's death;

(ii) the executor turning 18 years old; or

(b) is unknown or cannot be found.

(2) A person interested in the estate, or a creditor of the estate, may apply to the court for orders under this rule.

(3) The application must be made by originating application, unless the application is made in a proceeding that has already started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.

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(4) The application must be supported by an affidavit filed with the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the person named as executor in the will.

(6) On application under this rule, the court may make the order in relation to administration of the estate, and any other orders, the court considers just.

3115 Failure by executor, administrator or trustee to comply with beneficiary's request etc

(Qld r 643)

(1) This rule applies if an executor, administrator or trustee fails to comply with a written request from a beneficiary or another executor, administrator or trustee—

(a) to apply for and take all necessary steps to register the transmission of any interest in property; or

(b) if the executor, administrator or trustee has or is entitled to a legal interest in property—to convey or transfer the interest to the person entitled to it; or

(c) to pay or hand over any legacy or residuary bequest to the person entitled to it; or

(d) to do anything else the executor, administrator or trustee is required or allowed by law to do in relation to the estate.

(2) The beneficiary, or other executor, administrator or trustee, may apply to the court for orders under this rule.

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(3) The application must be made by originating application, unless the application is made in a proceeding that has already started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.

(4) The application must be supported by an affidavit filed with the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the executor, administrator or trustee who failed to comply with the request.

(6) On application under this rule, the court may make the orders the court considers just.

3116 Grant of administration—grant to child

(SCR o 72 r 20; NSW Prob r 29; Qld r 639; Vic Prob r 5.01)

(1) This rule applies if—

(a) a person is under 18 years; and

(b) either—

(i) is the sole executor of a will; or

(ii) would be entitled to a grant of administration on intestacy.

(2) The court may grant administration with the will attached, or administration on intestacy, to the person's guardian, the public trustee or anyone else it considers appropriate until the person becomes an adult.

Note The court may make an order under r (2) on any conditions it considers appropriate (see r 6901 (Orders may be made on conditions)).

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(3) When the person is an adult, the court may, on the person's application, grant administration with the will attached, or administration on intestacy, to the person.

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

3117 Order about administration of real estate—Administration and Probate Act, s 51

(SCR o 72 r 36)

(1) This rule applies if an application has been made for an order under the Administration and Probate Act, section 51 (Supreme Court may make special order) in relation to the administration of a deceased person's real estate.

(2) Stamped copies of the application and any supporting affidavits must be served personally on each party with a beneficial interest in the real estate.

3118 Assessment of costs—Administration and Probate Act, s 71

Part 2.17 (Costs) applies, with all necessary changes, to the assessment of costs for the Administration and Probate Act, section 71 (Limits of professional charges for obtaining probate etc).

3119 Administration and probate book

(Administration and Probate Act, s 125)

(1) The registrar must keep an administration and probate book.

(2) The administration and probate book—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

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(3) The registrar must record in the administration and probate book—

(a) all grants of probate and administration; and

(b) all elections and orders to collect; and

(c) the passing of accounts of, and allowance of commission to, all executors and administrators.

(4) The administration and probate book must set out—

(a) the dates of the grants, elections and orders; and

(b) the names of testators and intestates; and

(c) the place and time of their deaths; and

(d) the names and descriptions of executors and administrators; and

(e) any other information that the court directs.

(5) The registrar may record any other information in the administration and probate book.

3120 Proved wills to be kept by court

(Administration and Probate Act, s 125A and s 125B)

The original of any will filed in the court must be kept by the court.

Note 1 Rule 2901 (Copies of documents from registrar) deals with obtaining copies of documents (including wills) filed in a proceeding.

Note 2 Rule 2903 (Inspection of registry files) deals with the inspection of registry files.

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Part 3.2 Adoption

Division 3.2.1 Adoption—general

3150 Definitions—pt 3.2

(SCR o 76 r 1)

In this part:

Adoption Act means the *Adoption Act 1993*.

adoption proceeding means a proceeding on an application for an adoption order.

amendment order means an order of the court under the Adoption Act, section 41 (Amendment etc of adoption condition) amending or setting aside a condition of an adoption order.

chief executive means the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility).

discharging order means—

(a) an order of the court under the Adoption Act, section 26 (1) (Discharge of adoption order) discharging an adoption order; or

(b) an order of the court under the Adoption Act, section 52 (1) (Discharge) discharging an interim order.

dispensing order means an order of the court under the Adoption Act, section 35 (1) (Dispensing with consent) dispensing with the requirement for consent of a person to the adoption of a child.

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order for access to identifying information means an order of the court under the Adoption Act, section 75 (3) (Application to court for identifying information in absence of consent) or section 76 (3) (Other person's right to identifying information).

3151 Terms used in Adoption Act

(SCR o 76 r 1A)

A term used in the Adoption Act has the same meaning in this part.

Note For example, the following terms are defined in the Adoption Act, s 4 (1):

- adoption order
- child
- interim order
- principal officer
- private adoption agency.

3152 Application—pt 3.2

This part applies to a proceeding in the Supreme Court under the Adoption Act.

Division 3.2.2 Adoption orders

3155 References to *applicants*—div 3.2.2

(SCR o 76 r 2)

For this division, if an application for an adoption order is made on behalf of the proposed adoptive parent or parents by the chief executive or the principal officer of a private adoption agency, the application is taken to have been made by the proposed adoptive parent or parents jointly.

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3156 Adoption order—application

(SCR o 76 r 3)

(1) An application for an adoption order may be made—

(a) by the proposed adoptive parent or parents; or

(b) on behalf of the proposed adoptive parent or parents, by—

(i) the chief executive; or

(ii) the principal officer of a private adoption agency.

Note See approved form 3.28 (Application for adoption order) AF2006-356.

(2) The application must be—

(a) supported by an affidavit in accordance with rule 3157; and

(b) accompanied by the documents required under rule 3158.

3157 Adoption order—supporting affidavit for application

(SCR o 76 r 5)

(1) An affidavit supporting an application for an adoption order must be made by—

(a) the applicant; or

(b) for a joint application—each applicant jointly.

(2) The affidavit must include a statement of the following:

(a) the following particulars about the applicant:

(i) full name;

(ii) usual place of residence;

(iii) occupation;

(iv) domicile;

(v) date and place of birth;

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(vi) state of health;

(vii) financial circumstances;

(b) for a joint application—

(i) the length of the applicants' relationship; and

(ii) the stability of the relationship and the applicant's commitment to the relationship;

(c) the following information about the applicant's children (if any), whether birth children or adopted children:

(i) sex and date of birth;

(ii) the state of health of any living child;

(iii) if any child has died—the date of death;

(d) the likelihood of any children being born to the applicant in the future;

(e) the relationship (if any) to the applicant of the child sought to be adopted;

(f) the period (if any) that the child to be adopted has been living with the applicant;

(g) the full name to be given to the child to be adopted;

(h) the amount and nature of any payment or reward in relation to the proposed adoption that the applicant has made, given or received, or agreed to make, give or receive;

(i) whether the applicant has ever been refused an adoption order;

(j) whether an adoption order or interim order in the applicant's favour has been discharged;

(k) if an arrangement has been made, or is to be made, for the child to be adopted to be brought from a place outside

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Australia for the purpose of the adoption—particulars of that arrangement, together with a statement about the matters mentioned in the Adoption Act, section 20 (2) (a) to (c) (Overseas child);

(l) if the child to be adopted is an Aboriginal child—that fact, together with a statement about the matters mentioned in the Adoption Act, section 21 (2) (a) and (b) (Aboriginal child);

(m) any conditions under the Adoption Act, section 40 (Adoption order subject to certain conditions) sought by anyone in relation to the adoption.

(3) If the affidavit is made by 2 people jointly, a reference in subrule (2) to the applicant is a reference to each of them.

3158 Adoption order—documents accompanying application

(SCR o 76 r 6)

(1) The following documents must accompany an application for an adoption order:

(a) any instrument of consent to the adoption, together with an affidavit verifying the making of the instrument;

(b) any dispensing order in relation to the application;

(c) the child's birth certificate, together with—

(i) any document identifying the child as the person to whom the certificate relates; or

(ii) an affidavit or written statement by the chief executive that the chief executive has made reasonable inquiries and believes that the child is the person to whom the certificate relates;

(d) if the child to be adopted has been, or is to be, brought from a place outside Australia for the purpose of the adoption—any other documents necessary to support the application;

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(e) if the child to be adopted is an Aboriginal child—any other documents necessary to support the application.

(2) Any other document relevant to a matter stated in the affidavit supporting the application may be filed with the application.

(3) If it is impracticable to obtain a birth certificate of the child to be adopted, the applicant or applicants must state why—

(a) in the affidavit supporting the application; or

(b) if the applicant is the chief executive or the principal officer of a private adoption agency—in the report under the Adoption Act, section 19 (1) (a) (Criteria for court's discretion).

(4) If a document filed under this rule is not in English, the applicant or applicants must file with the document a written English translation of the document certified, in writing, by a notary public or proved by affidavit.

(5) In this rule:

birth certificate, of a child, means a document that is—

(a) the official certificate of birth of the child; or

(b) any other written record of the birth of the child.

document includes—

(a) a copy of an original document verified as a true copy by a person having custody of the original; and

(b) a copy of an entry in an official register verified as a true copy by a person having custody of the register; and

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(c) a foreign public document that has placed on it, or annexed to it, a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, a copy of the English text of which is set out in the *Foreign Evidence Act 1994* (Cwlth), schedule.

Note The *Foreign Evidence Act 1994* (Cwlth), pt 5 (Authenticating foreign public documents) sets out the formalities required for authenticating a foreign public document.

foreign public document—see the *Foreign Evidence Act 1994* (Cwlth), section 3 (1).

3159 Adoption order—service of application on chief executive

(SCR o 76 r 4)

If the applicant for an adoption order is not the chief executive or the principal officer of a private adoption agency, the applicant must serve a sealed copy of the application and stamped copies of the following documents on the chief executive not later than 28 days before the return date for the application:

(a) the affidavit under rule 3157 supporting the application;

(b) each document accompanying the application under rule 3158.

3160 Adoption order—notice of intention to oppose

(SCR o 76 r 7)

(1) A person served under the Act, section 22 (Notice of application for adoption order) with notice of an application for an adoption order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice is served on the person.

Note See

- approved form 3.29 (Notice of application for adoption order) AF2006-357

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- approved form 3.30 (Notice of opposition to application for adoption order) AF2006-358.

(2) The chief executive may oppose an application for an adoption order by filing in the court a notice of opposition not later than 10 days after the day the application is served on the chief executive.

(3) A person who files a notice of opposition to an application for an adoption order must serve a stamped copy of the notice on—

(a) if the notice is filed by the chief executive—each person required to be served with notice of the application for the adoption order under the Adoption Act, section 22; or

(b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the chief executive.

Division 3.2.3 Orders for dispensing with consent to adoption

3170 Dispensing order—application

(SCR o 76 r 10)

(1) An application for a dispensing order must be made in the adoption proceeding in relation to which the dispensing order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.31 (Application for dispensing with consent to adoption) AF2007-69.

(2) The application must be supported by an affidavit setting out the circumstances claimed to justify making the dispensing order, including any circumstances mentioned in the Adoption Act, section 35 (1) (a) to (d) (Dispensing with consent).

(3) The supporting affidavit must be made by—

(a) the applicant for the dispensing order; or

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(b) for a joint application—each applicant jointly.

(4) The application for a dispensing order must be made at the same time as the application for an adoption order unless the Adoption Act, section 35 (3) applies.

3171 Dispensing order—service of application

(SCR o 76 r 11)

An applicant for a dispensing order must serve a sealed copy of the application, and a stamped copy of the supporting affidavit, on the following people not later than 28 days before the return date for the application:

(a) each person interested in the adoption proceeding to which the application for a dispensing order relates;

(b) if the application for a dispensing order is made by someone other than the chief executive—the chief executive;

(c) if the court considers it to be in the interests of justice—anyone nominated by the court.

3172 Dispensing order—notice of intention to oppose

(SCR o 76 r 12)

(1) A person served with an application for a dispensing order under rule 3171 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.32 (Notice of opposition to application for dispensing with consent to adoption) AF2006-360.

(2) A person who files a notice of opposition to an application for a dispensing order must serve a stamped copy of the notice on—

(a) if the notice is filed by the chief executive—each person required to be served with the application for the dispensing order under rule 3171 (a) and (c); or

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(b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the chief executive.

Division 3.2.4 Amendment of adoption order

3180 Amendment order—application

(SCR o 76 r 14)

(1) An application for an amendment order must be made in the adoption proceeding in relation to which the amendment order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.33 (Application for amendment of adoption order) AF2006-361.

(2) The application must be—

(a) supported by an affidavit setting out the details of the amendment sought and the circumstances the applicant claims justify the amendment order; and

(b) accompanied by the report from the chief executive required under the Adoption Act, section 41 (2) (Variation etc of condition).

3181 Amendment order—service of application

(SCR o 76 r 15)

An applicant for an amendment order must serve a sealed copy of the application, and a stamped copy of the supporting affidavit, on each person interested in the application not later than 28 days before the return date for the application.

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3182 Amendment order—notice of intention to oppose

(SCR o 76 r 16)

(1) A person served with an application for an amendment order under rule 3181 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.34 (Notice of opposition to application for amendment of adoption order) AF2006-362.

(2) A person who files a notice of opposition to an application for an amendment order must serve a stamped copy of the notice on the applicant for the amendment order.

Division 3.2.5 Discharge of interim orders and adoption orders

3190 Discharging order—application

(SCR o 76 r 17)

(1) An application for a discharging order must be made in the adoption proceeding in relation to which the discharging order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.35 (Application for discharge of adoption order) AF2006-363.

(2) The application must be supported by an affidavit setting out the circumstances the applicant claims justify making the discharging order, including any claim that an interim order, the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means.

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3191 Discharging order—service of application

(SCR o 76 r 18)

A notice of an application for a discharging order served under the Adoption Act, section 26 (5) (Discharge of adoption order) must be accompanied by a copy of the affidavit supporting the application.

Note See approved form 3.36 (Notice of application for discharge of adoption order) AF2006-364.

3192 Discharging order—notice of intention to oppose

(SCR o 76 r 19)

(1) A person served under the Adoption Act, section 26 (5) with notice of an application for a discharging order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice of application is served on the person.

Note See approved form 3.37 (Notice of opposition to application for discharge of adoption order) AF2006-365.

(2) A person who files a notice of opposition to an application for a discharging order must serve a stamped copy of the notice on the applicant for the discharging order.

Division 3.2.6 Access to identifying information

3200 Order for access to identifying information—application

(SCR o 76 r 20)

An application for an order for access to identifying information must be made in the adoption proceeding in relation to which the order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.38 (Application for access to identifying information) AF2006-366.

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3201 Order for access to identifying information—service of application

(SCR o 76 r 21)

An applicant for an order for access to identifying information must serve, not later than 28 days before the return date for the application, sealed copies of the application on—

(a) the chief executive; and

(b) anyone—

(i) whose approval would be sufficient under the Adoption Act, division 5.3 (Identifying information) to entitle the applicant to the identifying information; and

(ii) who has refused approval.

3202 Order for access to identifying information—notice of intention to oppose

(SCR o 76 r 22)

(1) A person served with an application for an order for access to identifying information may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.39 (Notice of opposition to application for access to identifying information) AF2006-367.

(2) A person who files a notice of opposition to an application for an order for access to identifying information must serve a stamped copy of the notice on the applicant for the order.

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Division 3.2.7 Adoption proceedings—general procedures

3210 Adoption proceedings—service of applications

(SCR o 76 r 25)

(1) A sealed copy of an application for an order under the Adoption Act must be served personally.

(2) However, a sealed copy of an application may be served on—

(a) the chief executive by giving the sealed copy to a member of the staff of the chief executive's office; and

(b) the principal officer of a private adoption agency by giving the sealed copy to a member of the staff of the agency.

Note 1 Ch 6 has provisions applying to all proceedings (see r 6000 (Application—ch 6).

Note 2 See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

3211 Adoption proceedings—service of documents containing identifying information

(1) This rule applies if—

(a) a document is required to be served on an associated person in an adoption proceeding; and

(b) the document would, apart from this rule, contain identifying information about a birth parent, a birth relative or the adopted child.

Note ***Associated person*** and ***identifying information*** are defined in the Adoption Act, s 58.

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(2) If the associated person is not entitled, under the Adoption Act, division 5.3 (Identifying information), to access to identifying information about a birth parent, a birth relative or the adopted child, the copy of the document to be served on the associated person must not include that identifying information.

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Part 3.3 Commercial arbitration

3250 Meaning of *Commercial Arbitration Act*—pt 3.3

(SCR o 88 r 1)

In this part:

Commercial Arbitration Act means the *Commercial Arbitration Act 1986*.

3251 Terms used in Commercial Arbitration Act

A term used in the Commercial Arbitration Act has the same meaning in this part.

Note 1 For example, the following terms are defined in the Commercial Arbitration Act, dictionary:

- arbitration agreement
- arbitrator
- award
- court
- party.

Note 2 In particular, ***court*** is defined in the Commercial Arbitration Act, dictionary as follows:

court means—

(a) the Supreme Court; or

(b) the Magistrates Court if—

(i) an arbitration agreement provides that the Magistrates Court has jurisdiction under this Act; or

(ii) the parties to an arbitration agreement that is in force have agreed in writing that the Magistrates Court has jurisdiction under this Act.

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3252 Commercial arbitration—application

(SCR o 88 r 3)

A proceeding under the Commercial Arbitration Act must be started by originating application.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to the originating applications.

Note 2 Pt 6.2 (Applications in proceedings) deals with applications in proceedings. An ***application*** in a proceeding includes an application to the court about the proceeding, whether made during the proceeding or after judgment is given in the proceeding.

3253 Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 38 (4) (b)

(SCR o 88 r 4 and r 6 (2) (a), (d) and (e))

(1) An application for leave to appeal to the Supreme Court under the Commercial Arbitration Act, section 38 (4) (b) (Judicial review of awards) must include, or be accompanied by, a statement of—

(a) the nature of the case; and

(b) the questions involved; and

(c) the reasons why leave should be given.

Note The Commercial Arbitration Act, s 38 (4) (b) provides that an appeal may be brought under s 38 (2) by a party to an arbitration agreement with the court's leave (subject to s 40).

(2) The application must be made not later than 28 days after—

(a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the applicant; or

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(b) in any other case—the day notice of the award is given to the applicant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

3254 Commercial arbitration—appeal under Commercial Arbitration Act, s 38

(SCR o 88 r 6 (1) and (3))

(1) An appeal to the Supreme Court mentioned in the Commercial Arbitration Act, section 38 (4) (a) (Judicial review of awards) must be started not later than 28 days after—

(a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the appellant; or

(b) in any other case—the day notice of the award is given to the appellant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) An appeal to the Supreme Court mentioned in the Commercial Arbitration Act, section 38 (4) (b) must be started not later than 28 days after the day leave is given by the court.

3255 Commercial arbitration—application under Commercial Arbitration Act, s 39

(SCR o 88 r 5)

(1) A proceeding under the Commercial Arbitration Act, section 39 (1) (Determination of preliminary point of law by Supreme Court) must be started not later than 28 days after the day the consent, or consents, mentioned in that subsection is or are given.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

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(2) A decision by the court to hear or not to hear an application under the Commercial Arbitration Act, section 39 (1) (a) must be given by order.

3256 Commercial arbitration—application for order under Commercial Arbitration Act, s 42 (1) or s 43

(SCR o 88 r 6 (2) (b)-(e))

(1) This rule applies in relation to an application for an order—

(a) under the Commercial Arbitration Act, section 42 (1) (Power to set aside award) to set an award aside; or

(b) under the Commercial Arbitration Act, section 43 (Court may remit matter for reconsideration) to remit any matter.

(2) The application must be made not later than 28 days after—

(a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons—the day the statement of reasons is given to the appellant; or

(b) in any other case—the day notice of the award is given to the appellant.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

3257 Commercial arbitration—payment into court

(SCR o 88 rr 6A-6D)

(1) A party to an arbitration agreement (the ***respondent***) may at any time pay an amount into court in satisfaction of a claim to which the agreement applies of another party to the agreement (the ***claimant***).

(2) A respondent cannot plead a defence of tender before the arbitration was started unless the respondent has—

(a) paid the amount tendered into court under rule 1000 as applied by subrule (3); or

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(b) filed a bond for payment of the amount to the registrar under rule 1002 as applied by subrule (3); or

(c) filed a security accepted by the registrar securing payment of the amount to the registrar under rule 1003 as applied by subrule (3).

(3) Part 2.10 (Payment into court) applies, with necessary changes, in relation to the payment into court as if—

(a) the arbitration were a proceeding; and

(b) the respondent were a defendant who has paid an amount into court in a proceeding; and

(c) the claimant were the plaintiff; and

(d) the other parties to the agreement were other parties to the proceeding.

(4) However—

(a) rule 1007 (2) (Payment into court—costs on acceptance by plaintiff) applies unless the arbitrator or umpire otherwise directs; and

(b) for rule 1009 (1) (Payment into court—payment out of remaining amount), the amount may also be paid out in accordance with a certificate of the arbitrator or umpire.

3258 Commercial arbitration—examination of witnesses

(SCR o 88 r 7)

Part 6.10 (Evidence) applies in relation to the examination of a witness in a proceeding under the Commercial Arbitration Act as if the witness were a witness for the purposes of a trial and any other necessary changes were made.

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3259 Commercial arbitration—decision to refuse application for order in application in proceeding

(SCR o 88 r 8)

The court may refuse to make an interlocutory order under the Commercial Arbitration Act, section 47 (General power of court to make interlocutory orders) if the court considers that the arbitrator or umpire has power to make the order applied for.

3260 Commercial arbitration—application for leave to enforce award

(SCR o 88 r 9)

(1) An application for leave under the Commercial Arbitration Act, section 33 (Enforcement of award) to enforce an award—

(a) must be supported by an affidavit that states—

(i) the extent to which the award has not been complied with at the date the application is made; and

(ii) the usual, or last-known home or business address of the person against whom it is sought to enforce the award or, if the person is a corporation, its last-known registered office; and

(b) may be made without giving notice to anyone.

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

3261 Commercial arbitration—evidence of award for purposes of enforcement

(SCR o 88 r 10)

The *International Arbitration Act 1974* (Cwlth), section 9 (Evidence of awards and arbitration agreements) applies in a proceeding in which leave of the court is sought for enforcement of an award under the Commercial Arbitration Act, section 33 (Enforcement of

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award) as that section of the *International Arbitration Act 1974* (Cwlth) applied in a proceeding in which enforcement of a foreign award were sought under the *International Arbitration Act 1974* (Cwlth).

3262 Commercial arbitration—endorsement and service of order for enforcement

(SCR o 88 r 11)

(1) An order under the Commercial Arbitration Act, section 33 (Enforcement of award) giving leave to enforce an award must—

(a) be endorsed with a statement that the person on whom the order is served may, before the end of 5 days after the day the order is served, apply to have the order set aside; and

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

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) An order does not operate to enable an award to be enforced until—

(a) the end of the period mentioned in subrule (1); and

(b) if the person against whom it is sought to enforce the award applies, within the period mentioned in subrule (1), to have the order set aside—the application is decided.

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Part 3.4 Corporations Act and ASIC Act

3270 Rules for proceedings under Corporations Act or ASIC Act

The rules in schedule 6 apply to a proceeding in the Supreme Court under the Corporations Act or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

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Part 3.5 Cross-vesting

3300 Definitions—pt 3.5

(SCR O 78 r 2; FCR o 10A r 1; Qld r 51; Vic Misc r 13.02)

In this part:

Cross-vesting Act means the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

cross-vesting law means any law of the Commonwealth or a State or Territory (including the ACT) relating to the cross-vesting of jurisdiction, and includes the Cross-vesting Act.

special federal matter—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).

3301 Terms used in Cross-vesting Act

(NSW SCR pt 74 r 4)

A term used in the Cross-vesting Act has the same meaning in this part.

Note For example, the following terms are defined in the Cross-vesting Act, dictionary:

- ACT matter
- judgment
- party
- proceeding
- State
- Territory.

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3302 Application—pt 3.5

(Qld r 52; Vic Misc r 13.01)

(1) This part applies only to the Supreme Court.

(2) This part applies to a proceeding to which a cross-vesting law applies.

3303 Cross-vesting—application for transfer or removal of proceedings

(SCR o 78 r 3 and r 5; FCR o 10A r 3; NSW SCR pt 74 r 8)

(1) An application under a cross-vesting law for the transfer of a proceeding pending in the court must be made by application in the proceeding.

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

(2) An application under the Cross-vesting Act, section 8 for an order removing a proceeding from an ACT court (other than the Supreme Court) or a tribunal to the Supreme Court must be made by originating application.

3304 Cross-vesting—application by Attorney-General

(SCR o 78 r 4 (2); FCR o 10A r 4 (2); NSW SCR pt 74 r 7; Qld r 58; Vic Misc r 13.04)

(1) This rule applies if the Attorney-General of the Commonwealth, a State or Territory applies to the court under a cross-vesting law for the transfer of a proceeding pending in the court.

(2) The application may be made without the Attorney-General becoming a party to the proceeding.

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3305 Cross-vesting—removal of proceedings

(SCR o 78 r 5; Qld r 59; Vic Misc o 13 r 13.05)

(1) This rule applies if the court makes an order under the Cross-vesting Act, section 8 removing a proceeding from another ACT court or a tribunal to the court.

(2) Immediately on the removal of the proceeding to the court, the court may give a direction, make a decision or direct the parties to take a step in the proceeding that the court considers appropriate.

(3) The court's powers under subrule (2)—

(a) are in addition to the court's powers under rule 3308 (Cross-vesting—directions); and

(b) include power to give directions that could have been given by the court or tribunal in which the proceeding was pending.

3306 Cross-vesting—relying on jurisdiction under cross-vesting laws

(SCR o 78 r 6 (1) and (2); FCR o 10A r 5; NSW SCR pt 74 r 8; Qld r 53, r 54 and r 56; Vic Misc r 13.06)

(1) This rule applies if a party to a proceeding relies on a provision of a cross-vesting law.

(2) The party must include in the process, pleading or affidavit by which the cross-vesting law is relied on a statement—

(a) identifying the provision of the cross-vesting law relied on; and

(b) identifying each claim or ground of defence for which the provision of the cross-vesting law is relied on; and

(c) the grounds on which the provision is relied on.

(3) Failure to comply with subrule (2) does not invalidate the process, pleading or affidavit.

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(4) If a party who has not complied with subrule (2) wishes to rely on a provision of a cross-vesting law, the court may, on application by the party, give directions.

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

(5) If a matter to be decided in the proceeding is a special federal matter, the statement mentioned in subrule (2) must also—

(a) identify the matter as a special federal matter; and

(b) state the grounds on which it is a special federal matter.

3307 Cross-vesting—service

(SCR o 78 r 6 (3)-(5); Qld r 55)

(1) Despite part 6.8 (Service), an originating process by which a cross-vesting law is relied on may be served outside the ACT.

(2) If a defendant served outside the ACT under subrule (1) does not file a notice of intention to respond or defence, the plaintiff must not take a further step in the proceeding unless the court gives leave to proceed.

(3) The court must not give leave to proceed unless satisfied that—

(a) jurisdiction under a cross-vesting law is being relied on; and

(b) the court is a convenient court in which to decide the matter.

(4) An application for leave to proceed must be made by application in the proceeding or it may be included in the application for directions under rule 3308.

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

(5) An order giving leave to proceed does not prevent the court from later transferring the proceeding to another court.

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3308 Cross-vesting—directions

(SCR o 78 r 6 (1) (b) and r 8; FCR o 10A 5 (1) (b) and r 7; NSW SCR pt 74 r 8 and r 9; Qld r 56; Vic Misc r 13.06 (1) (b), r 13.08 and r 13.09)

(1) The first party in a proceeding to rely on a cross-vesting law must apply to the court for directions.

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

(2) If a plaintiff is required to apply for directions, the plaintiff must make and serve the application not later than 7 days after the day the first notice of intention to respond or defence is served on the plaintiff.

(3) If a defendant is required to apply for directions, the defendant must make and serve the application not later than 7 days after the day the process by which the cross-vesting law is relied on is served.

(4) If a proceeding is transferred to the court from another court, the plaintiff must, not later than 21 days after the day the order for the transfer is made, apply to the court for directions.

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

(5) If the plaintiff does not comply with subrule (4)—

(a) another party may apply for directions; or

(b) the court may call the parties before it on its own initiative.

(6) On hearing an application for directions, the court must give the directions or make the decisions about the conduct of the proceeding that it considers appropriate.

(7) At the trial or hearing of the proceeding, the court may amend or set aside a direction made on application for directions.

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3309 Cross-vesting—procedure following transfer of proceeding from court

(SCR o 78 r 7 (1); FCR o 10A r 6 (1); Qld r 57 (1); Vic Misc r 13.07)

(1) This rule applies if the court makes an order transferring a proceeding to another court under a cross-vesting law.

(2) The registrar must send to the other court all documents filed in the court and a sealed copy of orders made in the proceeding.

3310 Cross-vesting—procedure following transfer of proceeding to court

(SCR o 78 r 7 (2) and (3); FCR o 10A r 6 (2) and (3); Qld r 57 (2); Vic Misc r 13.07)

(1) This rule applies if a proceeding is transferred to the court from another court under a cross-vesting law.

(2) The registrar must—

(a) give a distinguishing number or other unique identifier to the proceeding; and

(b) record in the cause book—

(i) the distinguishing number or other unique identifier given to the proceeding; and

(ii) the date when the proceeding was sent to the court; and

(iii) any other information that the court directs.

(3) The registrar must—

(a) give each party to the proceeding notice of the distinguishing number or other unique identifier given to the proceeding; and

(b) direct each party to file in the court, not later than 7 days after the day the proceeding is transferred to the court, a notice that states the party's address for service.

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

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3311 Cross-vesting—application of another jurisdiction's written law

(SCR o 78 r 8; FCR o 10A r 7; NSW SCR pt 74 r 9; Vic Misc r 13.08)

(1) This rule applies if a party to a proceeding wants to have a written law of another State or Territory applied under the Cross-vesting Act, section 11 (1) (b) (Conduct of proceedings) in the proceeding in deciding a right of action arising under the written law of the other State or Territory.

(2) The party's pleadings must include a statement identifying the right of action and the written law under which it arises.

3312 Cross-vesting—application of another jurisdiction's rules of evidence and procedure

(SCR o 78 r 8; FCR o 10A r 7; NSW SCR pt 74 r 9; Vic Misc r 13.08)

(1) This rule applies if a party to a proceeding wants to have rules of evidence and procedure, other than those of the court, applied under the Cross-vesting Act, section 11 (1) (c) in dealing with a matter to be decided in the proceeding.

(2) The party's pleadings must include a statement identifying the rules that the party wants applied.

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Part 3.6 Electoral matters

Division 3.6.1 Electoral matters—general

3350 Definitions—pt 3.6

(SCR O 79 r 1)

In this part:

election application means an application under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) disputing the validity of an election made in accordance with the Electoral Act, section 258 (Form of application).

Electoral Act means the *Electoral Act 1992*.

3351 Terms used in Electoral Act

A term used in the Electoral Act has the same meaning in this part.

Note For example, the following terms are defined in the Electoral Act, s 250 (Definitions—pt 16):

- application
- Court of Disputed Elections
- election
- proceeding.

Also, the following terms are defined in the Electoral Act, dictionary:

- Assembly
- ballot paper
- commissioner
- newspaper.

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3352 Application—pt 3.6

This part applies only to the Supreme Court when exercising its jurisdiction as the Court of Disputed Elections.

Note The Electoral Act, s 252 (1) (Court of Disputed Elections) provides that the Supreme Court has jurisdiction to hear and decide—

(a) applications disputing the validity of elections; and

(b) questions referred to the Supreme Court by resolution of the Assembly relating to the eligibility of people who have been declared elected to be members of the Assembly or vacancies in the membership of the Assembly.

That Act, s 252 (2) provides that, when exercising jurisdiction under s 252 (1), the Supreme Court is to be known as the Court of Disputed Elections.

3353 Election application etc originating application

(SCR o 79 r 2)

(1) To remove any doubt, these rules apply to an election application as if the application were an originating application.

(2) These rules apply in relation to a reference to the court under the Electoral Act, division 16.4 (Eligibility and vacancies) as if a statement under the Electoral Act, section 276 (Speaker to state case) setting out a question referred by the Assembly were an originating application.

(3) These rules apply to an election application or a statement mentioned in subrule (2)—

(a) subject to the Electoral Act and this part; and

(b) with any necessary changes.

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Division 3.6.2 Disputed elections

3355 Disputed election—deposit as security for costs

(SCR o 79 r 3)

For the Electoral Act, section 260 (1) (Deposit as security for costs), the amount a plaintiff must deposit with the registrar as security for costs is $2 000.

3356 Disputed election—public notice of election application

(SCR o 79 r 4)

(1) This rule applies if a person files an election application in the court.

(2) After filing the election application, the plaintiff must, as soon as possible but not later than 7 days before the return date for the election application, publish a notice of the filing of the application in a newspaper.

(3) The notice must state—

(a) the plaintiff's name, the date of filing and the declaration sought; and

(b) as briefly as practicable, the facts relied on to invalidate the election.

3357 Disputed election—parties to proceeding

(SCR o 79 r 5)

The parties to a proceeding under the Electoral Act, division 16.3 (Disputed elections) are—

(a) the plaintiff; and

(b) each other person who—

(i) is entitled under the Election Act, section 262 (Parties to application under div 16.3) or section 263 (Withdrawal

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and abatement of application) to appear in the proceeding; and

(ii) files a notice of intention to respond.

Note For provisions about when a notice of intention to respond must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

3358 Disputed election—public notice of intention to make application for leave to withdraw

For the Electoral Act, section 263 (3) (Withdrawal and abatement of application), the notices required by that subsection must be published and given not later than 7 days before the leave application is filed in the court.

3359 Disputed election—particulars of contested ballot papers

(SCR o 79 r 6)

(1) This rule applies if an election application—

(a) seeks a declaration that—

(i) a person who has been declared elected was not duly elected; or

(ii) a person who has not been declared elected was duly elected; and

(b) states a claim or objection to ballot papers or a class of ballot papers.

(2) Not later than 7 days before the return date for the election application, each party to the proceeding must file, and serve on each other party—

(a) a list of the ballot papers or classes of ballot papers intended to be claimed or objected to; and

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(b) if the ballot papers are being objected to—a statement of the grounds for the objection.

(3) If a party does not include a ground for an objection in the party's statement mentioned in subrule (2) (b), the party may only rely on the ground with the court's leave.

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

(4) Without limiting rule 6902 (Leave may be given on conditions), leave may be given on any of the following conditions:

(a) conditions about amendment of the statement and service of the amended statement;

(b) conditions about adjournment and costs.

3360 Disputed election—countercharges

(SCR o 79 r 7)

(1) This rule applies if a defendant to an election application to which rule 3359 applies intends to oppose the election application on a ground not mentioned in the party's statement (if any) under that rule.

(2) Not later than 7 days after the day the defendant files a notice of intention to respond, the defendant must—

(a) file in the court a statement of the grounds on which the defendant intends to rely in opposing the election application; and

(b) serve a stamped copy of the statement on the plaintiff.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(3) The statement must set out the facts the defendant relies on with sufficient particularity to identify the ground on which the defendant opposes the election application.

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3361 Disputed election—time of trial etc

(SCR o 79 r 9)

(1) The trial of an election application must be held at a time set by the court.

(2) If the court makes an order setting the time for the trial, the plaintiff must, not later than 14 days before the trial date—

(a) serve a sealed copy of the order on each other party; and

(b) publish notice of the trial in a newspaper.

(3) An order setting the time of the trial may be amended by the court from time to time.

3362 Disputed election—substitution of plaintiff

(SCR o 79 r 10)

(1) This rule applies if—

(a) the court is deciding whether to give leave under the Electoral Act, section 263 (Withdrawal and abatement of application) for the withdrawal of an election application; or

(b) the sole plaintiff, or the last survivor of several plaintiffs, for an election application dies before the trial of the application.

(2) The court may order that someone else be substituted as the plaintiff if the other person—

(a) is entitled to dispute the validity of the election on similar grounds to the plaintiff; and

(b) agrees to be substituted as the plaintiff.

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

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

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3363 Disputed election—withdrawal of defendant

(SCR o 79 r 11 (1))

For the Electoral Act, section 263 (9) (a) (Withdrawal and abatement of application), the defendant's notice of intention not to oppose an election application must be filed in the court.

3364 Disputed election—substitution of defendant

(SCR o 79 r 11 (2))

For the Electoral Act, section 263 (9) (e) (Withdrawal and abatement of application), the period within which a notice of intention to respond must be filed by a person wanting to become a defendant is as soon as possible, but not later than 7 days after the day when notice that a person has ceased to be a defendant is published in a newspaper in accordance with the Electoral Act, section 263 (9) (d) (i).

Division 3.6.3 Questions referred by Legislative Assembly

3400 Question referred—parties to proceeding

(SCR o 79 r 13)

A person is a party to a proceeding under the Electoral Act, division 16.4 (Eligibility and vacancies) if the person—

(a) is entitled under the Electoral Act, section 277 (Parties to a referral) to appear in the proceeding; and

(b) the person files a notice of intention to respond.

Note For provisions about when a notice of intention to respond or defence must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

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Division 3.6.4 Electoral matters—general procedure

3405 Electoral matters—better particulars

(SCR o 79 r 14)

The court may order a party to a proceeding under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) to give another party particulars, or better particulars, of a matter alleged by the party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order for particulars, or better particulars.

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Part 3.7 Foreign and interstate confiscation orders—registration

Division 3.7.1 Foreign confiscation orders—registration

3450 Definitions—div 3.7.1

(SCR o 81 r 1)

In this division:

foreign confiscation order means—

(a) any of the following orders within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 3 (1):

(i) a foreign forfeiture order;

(ii) a foreign pecuniary penalty order;

(iii) a foreign restraining order; or

(b) a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth), section 4.

register means the register of foreign confiscation orders kept under rule 3452.

3451 Application—div 3.7.1

This division applies only in relation to the Supreme Court.

3452 Foreign confiscation orders—register

(SCR o 81 r 2)

(1) The registrar must keep a register of foreign confiscation orders.

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(2) The register—

(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 register, for each foreign confiscation order registered—

(a) the date when the order was filed in the court ;and

(b) the date when the order was made; and

(c) the name of the court or other entity that made the order; and

(d) the name of the person subject to the order; and

(e) the name of the person who applied for registration of the order, or for whose benefit the order was registered; and

(f) if the order is amended—the date the order is amended; and

(g) if the order is cancelled—the date the order is cancelled.

(4) Subrule (3) does not limit the details of the order that the registrar may include in the register.

3453 Foreign confiscation orders—registration

(SCR o 81 r 3)

A foreign confiscation order, or an amendment of a foreign confiscation order, is registered when details of the order or amendment are included in the register.

Note The *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), s 34A (5) (Registration of foreign confiscation orders), and the *International War Crimes Tribunals Act 1995* (Cwlth), s 45 (2) (Registration of order) provide for foreign confiscation orders (and amendments) to be registered in the Supreme Court of a State or Territory where the property (or part of the property) that is the subject of the order is believed to be located. Registration is required by those provisions to be in accordance with the rules of court.

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3454 Foreign confiscation orders—proceedings for registration

(SCR o 81 r 4 (1)–(5))

(1) An application for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, must—

(a) be made by originating application; and

(b) if the application relates to a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995*—be accompanied by an affidavit by the plaintiff setting out particulars necessary to enable the court to comply with that Act, section 45 (1).

Note Section 45 (1) requires the court, on registration of the order, to direct the Commonwealth director of public prosecutions to give notice of registration 'to specified persons…the court has reason to believe may have an interest in the property [that is the subject of the order]'.

(2) The person against whom the foreign confiscation order was made must be named as the defendant to the application.

(3) The application may be made without notice to anyone unless the court otherwise orders.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the foreign confiscation order or amendment in closed court and in the absence of the parties.

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(6) If the court makes an order for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, the plaintiff must serve on the defendant—

(a) a sealed copy of the order for registration; and

(b) a certified copy of the registered foreign confiscation order or registered amendment of a foreign confiscation order.

3455 Foreign confiscation orders—when registration cancelled

(SCR o 81 r 4 (6))

The registration of a foreign confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order filed in the court and details of the cancellation are included in the register.

Division 3.7.2 Interstate confiscation orders—registration

3460 Definitions—div 3.7.2

(SCR o 82 r 1)

In this division:

interstate confiscation order means any of the following within the meaning of the *Confiscation of Criminal Assets Act 2003*:

(a) an interstate restraining order;

(b) an interstate automatic forfeiture decision;

(c) an interstate civil forfeiture order;

(d) an interstate conviction forfeiture order.

register means the register of interstate confiscation orders kept under rule 3461.

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3461 Interstate confiscation orders—register

(SCR o 82 r 2)

(1) The registrar must keep a register of interstate confiscation orders.

(2) The register—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

(3) The registrar must record in the register, for each interstate confiscation order filed—

(a) the date when the order was filed in the court ;and

(b) the date when the order was made; and

(c) the name of the court or other entity that made the order; and

(d) the name of the person subject to the order; and

(e) the name of the person who applied for registration of the order, or for whose benefit the order was registered; and

(f) if the order is amended—the date the order is amended; and

(g) if the order is cancelled—the date the order is cancelled.

(4) Subrule (3) does not limit the details of the order that the registrar may include in the register.

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3462 Interstate confiscation orders—registration

(SCR o 82 r 3)

An interstate confiscation order, or an amendment of an interstate confiscation order, is registered when details of the order or amendment are included in the register.

Note The *Confiscation of Criminal Assets Act 2003*, s 137 provides for interstate confiscation orders (and amendments) to be registered in court if the property (or part of the property) is situated in the ACT. They may be registered in the Supreme Court or the Magistrates Court (see that Act, s 238, s 240 and s 241). Registration is required to be in accordance with the procedure of the relevant court (see that Act, s 137 (5)).

3463 Interstate confiscation orders—proceedings for registration

(SCR o 82 r 4 (1)–(4))

(1) An application for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, must be made by originating application.

(2) The person against whom the interstate confiscation order was made must be named as the defendant to the application.

(3) The application may be made without notice to anyone unless the court otherwise orders.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the interstate confiscation order or amendment in closed court and in the absence of the parties.

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(6) If the court makes an order for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, the plaintiff must serve on the defendant—

(a) a sealed copy of the order for registration; and

(b) a certified copy of the registered interstate confiscation order or registered amendment of an interstate confiscation order.

3464 Interstate confiscation orders—when registration cancelled

(SCR o 82 r 4 (5))

The registration of an interstate confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order filed in the court and details of the cancellation are included in the register.

3465 Interstate confiscation orders—filing of amendments etc

(SCR o 82 r 5)

For the *Confiscation of Criminal Assets Act 2003*, section 141 (1) (b), details of any amendment of an interstate confiscation order, or any direction of the entity that made an interstate confiscation order, may be given to the court only by filing in the court a copy of the amendment or direction sealed by the entity that made the order or gave the direction or otherwise authenticated to the court's satisfaction.

Note Section 141 (1) provides that unless details of these amendments or directions are given to the court in accordance with the procedures of the court, the registration of the order may be cancelled.

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Part 3.8 Foreign judgments—reciprocal enforcement

3470 Definitions—pt 3.8

(SCR o 74A r 1; Qld r 947A)

In this part:

Foreign Judgments Act means the *Foreign Judgments Act 1991* (Cwlth).

judgment means a judgment to which the Foreign Judgments Act, part 2 applies.

3471 Terms used in Foreign Judgments Act

(SCR o 74A r 1A)

A term used in the Foreign Judgments Act has the same meaning in this part.

Note For example, the following terms are defined in the Foreign Judgments Act, s 3 (Interpretation):

- judgment
- judgment creditor
- judgment debtor
- money judgment
- non-money judgment
- non-recoverable tax
- original court
- recoverable Papua New Guinea income tax

3472 Application—pt 3.8

(Qld r 947C)

This part applies only in relation to the Supreme Court.

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3473 Foreign judgment—application for registration

(SCR o 74A r 6 (1); Qld r 947D)

(1) An application for registration of a judgment must be made by originating application.

Note See approved form 3.40 (Originating application for registration of judgment under Foreign Judgments Act 1991 (Cwlth)) AF2006-368.

(2) The application must be accompanied by—

(a) a copy of the judgment certified by the original court; and

(b) if the certified copy of the judgment is not English—a written English translation of the judgment certified, in writing, by a notary public or proved by affidavit; and

(c) the supporting affidavit required by rule 3474.

(3) An application for registration of a judgment may be made without notice to anyone or on notice given to the judgment debtor.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

3474 Foreign judgment—evidence in support of application for registration

(SCR o 74A r 4; Qld r 947E)

(1) The supporting affidavit for an application for registration of a judgment must state the following particulars:

(a) the full name and last-known address of the judgment creditor and judgment debtor;

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(b) the facts that show that the Foreign Judgments Act, part 2 applies to the judgment;

(c) the regulation under the Foreign Judgments Act that extends that Act, part 2 in relation to the judgment;

(d) the nature of the causes of action to which the judgment relates;

(e) that a regulation has not been made under the Foreign Judgments Act, section 13 applying the section to the country of the original court;

(f) if the judgment is a money judgment—the amount of the judgment, on the day the application is made, in the currency of the original judgment and in Australian currency;

(g) that the judgment has not been completely satisfied or, if the judgment has been partly satisfied, the amount for which it remains unsatisfied on the day the application is made;

(h) if some only of the provisions of the judgment are subject to the application—the provisions of the judgment to which the application applies;

(i) that there is no reason why the judgment could not be enforced in the country of the original court;

(j) the costs of registration of the judgment incurred by the applicant;

(k) if the judgment creditor wants the judgment to be registered in a currency other than Australian currency—the rate of exchange prevailing on the day the affidavit is made;

(l) if it is more than 6 years after the day the judgment was entered—whether there has been a proceeding by way of appeal against the judgment and, if so, the date of the last judgment in the proceeding;

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(m) if interest is payable on the judgment under the law of the country of the original court and the interest is not stated in the judgment—the rate of interest;

(n) if interest is payable on the judgment—the amount of interest that has accrued by the day the application is made;

(o) if the judgment is a judgment of a court of Papua New Guinea—the amount (if any) payable under the judgment that is recoverable Papua New Guinea income tax or non-recoverable tax;

(p) if the judgment is a judgment of a court of New Zealand—that it was not given in a proceeding, or part of a proceeding, in which a matter for decision arose under the *Commerce Act 1986* (New Zealand), section 36A, section 98H or section 99A.

(2) The person making the affidavit may state the particulars mentioned in subrule (1) as the belief of the person, giving the source of the person's information and the grounds of the person's belief.

3475 Foreign judgment—security for costs of application for registration

(SCR o 74A r 10; Qld r 947F)

The court may order that a judgment creditor who has applied for registration of a judgment give security for the costs of any proceeding that may be brought under the Foreign Judgments Act, section 7 to set aside registration of the judgment.

3476 Foreign judgment—order for registration

(SCR o 74A r 5; Qld r 947G)

The court may order the registration of a judgment on application in accordance with this part.

Note See approved form 3.41 (Order for registration of judgment under Foreign Judgments Act 1991 (Cwlth)) AF2006-369.

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3477 Foreign judgment—register

(Qld r 947H)

(1) The registrar must keep a register of registered judgments.

(2) The register—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

3478 Foreign judgment—registration

(SCR o 74A r 11; Qld r 947I)

(1) If the court orders that a judgment be registered, the registrar must register the judgment by entering in the register of foreign judgments the following particulars of the judgment:

(a) the full name and last-known address of the judgment creditor and judgment debtor;

(b) the name of the original court;

(c) the details of the judgment;

(d) the date of the order that the judgment be registered;

(e) if the judgment is a money judgment—the amount of the judgment, at the time of registration of the judgment, in the currency of the original judgment and in Australian currency after deducting any amount paid in satisfaction of the judgment;

(f) if the judgment is a non-money judgment—a brief description of the terms of the judgment;

(g) the amount payable under the judgment after deducting any amount paid in part satisfaction of the judgment;

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(h) any interest that, under the law of the country of the original court, has become payable under the judgment up to the time of registration.

(2) The registrar must also record the following details in the register:

(a) the reasonable costs of, and incidental to, registration of the judgment including—

(i) the cost of obtaining a certified copy of the judgment from the original court; and

(ii) the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed;

(b) any special directions contained in the order for registration.

3479 Foreign judgment—notice of registration

(SCR o 74A r 6; Qld r 947J)

(1) The judgment creditor under a registered judgment must, not later than 28 days after the day the judgment is registered, serve—

(a) notice of the registration on the judgment debtor; and

Note See approved form 3.42 (Notice of registration of judgment order under Foreign Judgments Act 1991 (Cwlth)) AF2006-370.

(b) a sealed copy of the order for registration; and

(c) a stamped copy of the affidavit filed under rule 3474 (1) (c).

(2) Unless the court otherwise orders, the notice and accompanying documents must be served personally.

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

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3480 Notice of registration—affidavit of service to be filed

(SCR o 74A r 7; Qld r 947K)

An affidavit of service of the notice of registration of a judgment and accompanying documents must be filed in the court before any step is taken to enforce the judgment.

3481 Registration of judgment—application to set aside

(SCR o 74A r 8; Qld r 947L)

An application to set aside the registration of a judgment must—

(a) be made within the period stated in the order for registration of the judgment; and

(b) be supported by an affidavit setting out the specific grounds on which the application is made.

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

3482 Foreign judgment—enforcement

(Qld r 947M)

(1) The form of enforcement order used in relation to the enforcement of a registered judgment must be amended, in a way approved by the registrar, by stating—

(a) that the judgment is a registered judgment; and

(b) the date of, and the amount payable under, the judgment.

(2) If a registered judgment is enforced, the registrar must, as soon as practicable after the return of the enforcement order to the court, enter details of the enforcement in the register of registered judgments.

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3483 Australian judgment—certificate for foreign registration

(Qld r 947N)

(1) An application under the Foreign Judgments Act, section 15 (Issue of certificates of judgments obtained in Australian courts) in relation to a judgment that has been given in an Australian court may be made without notice to anyone.

(2) The application must be made—

(a) in the proceeding in which the judgment was obtained; and

(b) by filing—

(i) a draft of the certificate sought; and

(ii) a supporting affidavit.

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

(4) The supporting affidavit must include all information that would enable the certificate to be issued.

(5) For the Foreign Judgments Act, section 15 (1) (b), the certificate must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for the certificate.

Note See approved form 3.43 (Certificate of judgment under the Foreign Judgments Act 1991 (Cwlth)) AF2006-371.

(6) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

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Part 3.9 Habeas corpus

3500 Definitions—pt 3.9

(SCR o 55 r 43 (1); Qld r 586)

In this part:

custody includes confinement.

defendant means the person named as the defendant in—

(a) a habeas corpus order; or

(b) an application for a habeas corpus order.

habeas corpus order includes an order for the production of a person in custody for the purpose of examination or trial.

3501 Application—pt 3.9

(Qld r 587)

This part applies only to the Supreme Court.

3502 Habeas corpus—writs of habeas corpus abolished

Writs of habeas corpus are no longer to be issued by the court.

3503 Habeas corpus—order instead of writ of habeas corpus

(1) If, before the commencement of these rules, the court had jurisdiction to grant any relief by way of a writ of habeas corpus, the court continues to have jurisdiction to grant the relief.

(2) However, the court may grant the relief only by making an order under these rules in the nature of, and to the same effect as, the relief that would have been available before the commencement of these rules.

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3504 Habeas corpus—application and service

(SCR o 55 r 43 (1); Qld r 588 and r 591)

(1) A proceeding for a habeas corpus order must be started by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a habeas corpus order.

(2) However, if an application for a habeas corpus order in relation to a proceeding is made during the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(3) The application must be supported by an affidavit.

(4) The affidavit may—

(a) be made by someone else on behalf of the person in custody; and

(b) contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

Note The hearsay rule does not apply to evidence in an application in a proceeding if the party adducing the evidence also adduces evidence of its source (see Commonwealth Evidence Act, s 75 (Exception: interlocutory proceedings)).

(5) The application need not be served on anyone unless the court otherwise orders on its own initiative.

3505 Habeas corpus—parties

(Qld r 590)

An application for a habeas corpus order may be made by the person in custody or by someone else.

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3506 Habeas corpus—procedure on application etc

(SCR o 55 r 44 (1), r 45 and r 49; Qld r 592)

(1) On the hearing of an application for a habeas corpus order, the court may—

(a) order the release or other disposition of the person in custody; or

(b) order the issue of a habeas corpus order directed to the defendant and to anyone else and give directions about the course to be taken under the habeas corpus order; or

(c) dismiss the application.

Note See approved form 3.44 (Habeas corpus order) AF2006-372.

(2) If a habeas corpus order is issued—

(a) the person to whom the order is directed must bring the person in custody before the court as directed in the order; and

(b) unless the court otherwise orders, the following must be served personally on everyone to whom the order is directed:

(i) a sealed copy of the order;

(ii) the application for the order;

(iii) the supporting affidavits;

(iv) a notice stating the things to be done by the person under the order and the consequences of failing to comply with the order.

Note 1 See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

Note 2 The documents must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

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Note 3 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(3) However, if a habeas corpus order is directed to the person in charge of the place where the person is in custody, a document mentioned in subrule (2) (b) may be served—

(a) by sending a copy by prepaid post to the place where the person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

(4) The court may, pending the return of the habeas corpus order, make an order about the custody of the person in custody.

3507 Habeas corpus—return of order

(SCR o 55 r 48; Qld r 593)

On the return of a habeas corpus order, the court may do any of the following:

(a) receive further evidence in support of the application for release from custody;

(b) allow a person to whom the order is directed to show cause why the person should not be released from custody;

(c) if it considers the person's custody is unlawful—order the person's release or other disposition;

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(d) set aside the order;

(e) if the evidence presented to the court suggests someone else has custody of the person in custody—order another habeas corpus order issue directed to the other person;

(f) make an order or give directions about the disposal of the proceeding, or about the person in custody, it considers appropriate.

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Part 3.10 Judicial review

3550 Definitions—pt 3.10

(SCR o 87 r 1; QldJRA s 3; Qld r 564)

In this part:

certiorari order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of certiorari.

Judicial Review Act means the *Administrative Decisions (Judicial Review) Act 1989*.

judicial review application means—

(a) an application for a statutory order of review; or

(b) an application for prerogative relief; or

(c) an application for a statutory order of review and prerogative relief; or

(d) an application mentioned in rule 3561 (Judicial review—application for statutory order of review and prerogative relief etc); or

(e) an application in relation to which an order is made under rule 3562 (Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review).

prerogative injunction means an injunction mentioned in rule 3554 (3) (c) (Judicial review—relief previously granted by prerogative writ etc).

prerogative order means an order mentioned in rule 3554 (2) (Judicial review—relief previously granted by prerogative writ etc).

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prerogative relief means a prerogative order, and includes a prerogative injunction or declaration.

prohibition order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of prohibition.

quo warranto order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted on an information in the nature of *quo warranto*.

statutory order of review means an order on an application made—

(a) under the Judicial Review Act, section 5 (Applications for review of decisions) in relation to a decision to which that Act applies; or

(b) under the Judicial Review Act, section 6 (Applications for review of conduct related to making of decisions) in relation to conduct engaged in, or proposed to be engaged in, for the purpose of making a decision to which that Act applies; or

(c) under the Judicial Review Act, section 7 (Applications for failures to make decisions) in relation to a failure to make a decision to which that Act applies.

3551 Terms defined in Judicial Review Act

A term defined in the Judicial Review Act has the same meaning in this part.

Note For example, the Judicial Review Act defines the following terms:

- conduct engaged in (for the purpose of making a decision) (see s 3C)
- decision to which this Act applies (see dict)
- failure to make (a decision) (see s 3A)
- making (a decision) (see s 3A)
- statement of reasons (for a decision) (see dict).

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3552 Application—pt 3.10

(Qld r 565)

This part applies only to the Supreme Court.

3553 Judicial review—prerogative writs etc abolished

(QldJRA s 41 and s 42; SA r 98.01; Vic r 56.01)

(1) The prerogative writs of mandamus, prohibition and certiorari are no longer to be issued by the Supreme Court.

(2) Informations in the nature of *quo warranto* are abolished.

3554 Judicial review—relief previously granted by prerogative writ etc

(QldJRA s 41 and s 42; SA r 98.01; Vic r 56.01)

(1) If, before the commencement of these rules, the court had jurisdiction to grant any relief by way of a writ of mandamus, prohibition or certiorari, or on an information in the nature of *quo warranto*, the court continues to have jurisdiction to grant the relief.

(2) However, the court may grant the relief only by making an order under these rules in the nature of, and to the same effect as, the relief that would have been available before the commencement of these rules.

(3) For example, if—

(a) someone acts in an office in which the person is not entitled to act; and

(b) an information in the nature of *quo warranto* would, but for rule 3553 (2) (Judicial review—prerogative writs etc abolished), lie against the person;

the court may—

(c) grant an injunction restraining the person from acting in the office; and

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(d) declare the office to be vacant.

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).

3555 Judicial review—other jurisdiction not excluded

(SA r 98.01 (4))

The existence of prerogative relief under this part does not exclude any other jurisdiction of the court to grant relief.

Note The Judicial Review Act, s 8 (1) (Effect of Act on other rights) provides that the rights given to someone under that Act, ss 5-7 to seek an order for review are additional to the person's rights to seek a review in another way.

3556 Judicial review—application etc

(SCR o 55 r 9 and r 35 and o 87 r 3 and r 3A; QldJRA s 43 (1) and s 44; Qld r 566 and r 567; Vic r 56.01 (2)-(4); SA r 98.01 (1))

(1) A statutory order of review or prerogative relief must be sought by way of judicial review by originating application.

Note 1 See approved form 3.45 (Originating application—judicial review) AF2006-373.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a statutory order of review or prerogative relief.

(2) The application must state—

(a) if the grounds of the application include an allegation of fraud or bad faith—particulars of the fraud or bad faith on which the plaintiff relies; and

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(b) if the application is an application for prerogative relief and the grounds of the application include an allegation of a mistake or omission in an order or proceeding—particulars of the mistake or omission on which the plaintiff relies; and

(c) if the application is for a quo warranto order in relation to a person's office—particulars of the objection to the person's entitlement to act in the office.

Note Rule 60 (3) (Originating application—content etc) provides that the originating application must state specifically the orders or other relief sought in the proceeding.

(3) A person may apply for prerogative relief if the person's interests are, or would be, adversely affected in or by the matter to which the application relates.

(4) A person must be included as a defendant to the application if—

(a) the application relates to a decision made by an entity authorised to make the decision, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application or is interested in maintaining the decision; or

(b) for a statutory order of review—the application relates to conduct engaged in, or proposed to be engaged in, by an entity for the purpose of making a decision to which the Judicial Review Act applies, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application or is interested in maintaining the decision; or

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(c) for a statutory order of review—the application relates to a failure by an entity to make a decision to which the Judicial Review Act applies, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application.

Note For an application for a statutory order of review, the Judicial Review Act, s 12 (Application to be made a party to a proceeding) provides that a person interested in a decision, conduct or failure in relation to which an application has been made to the Supreme Court under that Act may apply to the Supreme Court to be made a party to the application.

(5) If the application relates to an order of a judicial officer of a court or member of a tribunal, the application must name as defendant the court or tribunal and not the judicial officer or member personally.

(6) The application must be accompanied by a supporting affidavit.

(7) The supporting affidavit must contain—

(a) the grounds relied on in support of the relief sought; and

(b) the facts relied on.

(8) If subrule (2) (b) applies, but has not been complied with, a ground mentioned in the subrule must not be relied on.

(9) If subrule (2) (c) applies, but has not been complied with, a ground mentioned in the subrule must not be relied on without the court's leave.

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3557 Judicial review—time for starting proceeding

(QldJRA s 46; Vic r 56.02; SA r 98.06)

(1) This rule applies in relation to an application for prerogative relief.

Note For an application for a statutory order of review, see the Judicial Review Act, s 10 (Period in which application for order of review must be made).

(2) The application must be filed in the court not later than 60 days after the day when the grounds for the grant of the relief sought first arose.

(3) If the relief sought is in relation to any order, conviction or other proceeding, the day when the grounds for the grant of the relief first arose is taken to be the day of the making of the order, conviction or other proceeding.

(4) The court may extend the time mentioned in subrule (2) only in special circumstances.

Note Rule 6351 (Time—extending and shortening by court order) authorises the extending of time.

3558 Judicial review—declaration or injunction

(QldJRA s 43 (2) and (3) and s 47 (1); SA r 98.01 (3) and r 98.11 (5))

(1) A declaration or injunction (other than a prerogative injunction) may also be sought in an application for prerogative relief if appropriate, having regard to—

(a) the nature of the matters in relation to which relief may be sought; and

(b) the nature of the entities against whom relief may be sought; and

(c) all the other circumstances of the case.

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(2) The court may make the declaration or grant the injunction sought instead of, or in addition to, the prerogative relief if it considers it appropriate, having regard to the matters mentioned in subrule (1).

(3) However, if the court considers that—

(a) the declaration or injunction mentioned in subrule (1) should not be granted in the application for prerogative relief; and

(b) the relief may have been granted if it had been sought in a proceeding started by another originating process at the time of starting the application for prerogative relief;

the court may, instead of refusing the application, order the proceeding to continue as if it had been started in the way mentioned in paragraph (b).

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights).

3559 Judicial review—other prerogative relief etc

(QldJRA s 47 (2); SA r 98.02 and r 98.08)

On an application for prerogative relief—

(a) any prerogative relief, declaration or injunction may be sought instead of, or in addition to, any other prerogative relief, declaration or injunction if it relates to the same matter; or

(b) the court may grant the prerogative relief, declaration or injunction it considers the most appropriate available, even if it is not included in the application.

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights) and s 11 (Application for order of review not limited to grounds in application).

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3560 Judicial review—additional orders

(QldJRA s 47 (3) and (4); SA r 98.05 (4) and (5) and r 98.11 (3) and (4))

(1) If—

(a) the relief sought in an application for prerogative relief is a certiorari order in relation to an order of an entity; and

(b) the court is satisfied that there are grounds for setting the order aside;

the court may, in addition to setting aside the order, remit the matter to the entity for further consideration, with any directions (including, for example, the setting of time limits for further consideration, and for preparatory steps in the further consideration) the court considers appropriate.

Note An example is part of 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).

(2) If the relief sought in an application for prerogative relief is a certiorari order or prohibition order in relation to an order made in a proceeding, the court may—

(a) by order, suspend the operation of the order, either indefinitely or until further order of the court; or

(b) order a stay of the proceeding until—

(i) the application is decided; or

(ii) another time that the court orders.

Note For statutory orders of review, see the Judicial Review Act, s 16 (Stay of proceedings) and s 17 (Powers of Supreme Court in relation to applications for order of review).

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3561 Judicial review—application for statutory order of review and prerogative relief etc

(Qld r 568)

(1) This rule applies if the following relate to the same matter:

(a) an application for a statutory order of review;

(b) an application for—

(i) prerogative relief; or

(ii) prerogative relief and a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction).

(2) The applications may be made in a single application.

Note See the Judicial Review Act, s 8 (Effect of Act on other rights).

3562 Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review

(Qld r 569)

(1) This rule applies if—

(a) an application is made under this part for a statutory order of review in relation to—

(i) a decision; or

(ii) conduct engaged in, or proposed to be engaged in, for the purpose of making a decision; or

(iii) a failure to make a decision; and

(b) the court considers—

(i) the decision is not a decision to which this Act applies as defined in the Judicial Review Act, dictionary; and

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(ii) prerogative relief or a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction) may have been granted in relation to the decision, conduct or failure if it had been sought in an application for prerogative relief at the time of starting the application for a statutory order of review.

(2) The court may, instead of refusing the application, order the proceeding to continue as if it had been started as an application for prerogative relief.

3563 Judicial review—filing and serving statements

(SCR o 87 r 4; Qld r 570 and r 572)

(1) On the filing of a judicial review application in relation to a decision by a person (the ***decision-maker***), or not later than 7 days after the day the application is filed, the plaintiff must file copies of any of the following documents in the plaintiff's possession, unless a copy of the document has been filed previously in the proceeding:

(a) a statement made by the decision-maker of the terms of the decision;

(b) either—

(i) for an application for a statutory order of review—a statement under the Judicial Review Act, section 13 (Reasons for decision may be obtained) or the *Administrative Appeals Tribunal Act 1989*, section 26 (Person affected by decision may obtain reasons for decision); or

(ii) any other statement given by or on behalf of the decision-maker purporting to be a statement of reasons for the decision.

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(2) The plaintiff must serve a stamped copy of each statement filed by the plaintiff under subrule (1) on each person on whom a copy of the judicial review application is served not later than 5 days after the day the statements are filed.

Note 1 See r 62 (When originating application must be served) and r 64 (Originating application—filing and service of supporting affidavits).

Note 2 If a defendant objects to the competency of an application for a statutory order of review, the defendant may file a conditional notice of intention to respond under r 111 (Conditional notice of intention to respond).

3564 Judicial review—stay or dismissal of application for statutory order of review on return date

(Qld r 576)

(1) This rule applies if—

(a) a person files an application in the court for a statutory order of review (the ***review application***); and

(b) a party to the review application applies for an order under the Judicial Review Act, section 8 (2) (b).

(2) The party may apply for the review application to be stayed or dismissed as mentioned in rule 3566 (1) (a) (ii) (Judicial review—power of the court to stay or dismiss applications in certain circumstances) on the return date for the review application.

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

(3) The party must serve a stamped copy of the application on each other party to the review application at least 3 days before the return date for the review application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the shortening of time.

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3565 Judicial review—directions on return date

(SCR o 87 r 6; Qld r 573; SA r 98.05 (6) and (7))

(1) On the return date for a judicial review application, the court may give any direction about the conduct of the proceeding it considers appropriate.

(2) Without limiting subrule (1), the court may consider, and give directions in relation to, the following matters:

(a) discovery and interrogatories;

(b) inspection of property;

(c) admissions of fact or documents;

(d) defining the issues by pleadings or otherwise;

Note Pt 2.6 (Pleadings) applies to a proceeding started by an originating application only if the court orders the plaintiff to file and serve a statement of claim.

(e) the standing of affidavits as pleadings;

(f) including parties;

(g) service of documents;

(h) amendments;

(i) the filing of affidavits.

Note The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

(3) Without limiting subrule (1), the court may—

(a) order that an agreed bundle of documents be prepared by the parties; or

(b) order the service or exchange of expert reports; or

(c) order that a party serve a copy of the application on the Attorney-General; or

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(d) order that a party give notice of the application to the people, and in the way, the court directs; or

(e) set a date for hearing; or

(f) set a date after which the parties are directed to arrange with the registrar a date for hearing.

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

3566 Judicial review—power of the court to stay or dismiss applications in certain circumstances

(SCR o 87 r 7; QldJRA s 48; SA r 98.05 (3))

(1) The court may, by order, stay or dismiss a judicial review application, or a claim for relief in a judicial review application, if the court considers that—

(a) it would be inappropriate—

(i) for the proceeding in relation to the application or claim to be continued; or

(ii) to grant the application or claim (including, for an application for a statutory order of review, because the Judicial Review Act, section 8 (2) (b) (Effect of Act on other rights) applies); or

(b) the application is incompetent; or

(c) no reasonable basis for the application or claim is disclosed; or

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(d) the application or claim is frivolous or vexatious; or

(e) the application or claim is an abuse of the court's process.

Note The registrar may also reject a document that is filed if it does not comply with these rules (see r 6140 (Rejecting documents—noncompliance with rules etc) or if it is an abuse of the court's process or is frivolous or vexatious (see r 6142 (Rejecting documents—abuse of process etc)).

(2) A power of the court under this rule may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.

(3) The court may make an order under this rule on application by a party to the proceeding or on its own initiative.

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

(4) The court may receive evidence on the hearing of an application for an order under this rule.

3567 Judicial review—additional requirements for certiorari order

(SCR o 55 r 8; Qld r 580; Vic 56.01 (5); SA r 98.11 (2))

A certiorari order may be granted only if—

(a) a copy of the order, warrant, conviction, inquisition or record relevant to the proceeding, verified by an affidavit, has been filed in the court; or

(b) the failure of the plaintiff to file the copy has been explained to the court's satisfaction.

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3568 Judicial review—no proceeding in relation to things done under mandamus order

(SCR o 55 r 29; Qld r 581; SA r 98.12)

A proceeding must not be started or continued against someone in relation to anything done in obedience to an order of the court for relief in the nature of mandamus.

3569 Judicial review—disclaimer in relation to quo warranto order

(SCR o 55 r 41)

(1) This rule applies in relation to an application for a quo warranto order in relation to the defendant's office mentioned in the application.

(2) The defendant may, by notice, disclaim the office.

(3) The notice must be signed by the defendant and witnessed by a person authorised to take an affidavit.

Note 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).

(4) The defendant must file the notice in the court, and serve a stamped copy on the plaintiff for the quo warranto order, not later than 28 days after the day the application for the order is served on the defendant.

(5) The plaintiff for the quo warranto order may apply to the court for judgment of ouster against the defendant, with costs.

(6) The application is made by filing a draft judgment in the court.

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

(8) The draft judgment need not be served on anyone unless the court otherwise orders on its own initiative.

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(9) The court may enter judgment of ouster against the defendant, with costs without a hearing.

3570 Judicial review—proceeding in relation to statement of reasons

(Qld r 583)

(1) This rule applies if a decision-maker or requester applies to the court for an order or declaration under the Judicial Review Act, section 13 (Reasons for decisions may be obtained).

Note 1 The application is an originating application (see r 34 (2)). Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc).

Note 2 Rule 60 (3) (Originating application—content etc) provides that the originating application must state specifically the orders or other relief sought in the proceeding.

(2) The application must be supported by an affidavit.

(3) The affidavit must contain—

(a) the plaintiff's name and description; and

(b) the decision for which reasons are sought; and

(c) the grounds relied on in support of the relief sought; and

(d) the facts relied on.

(4) On the return date for the application, the court may give any direction about the conduct of the proceeding it considers appropriate, including any direction in rule 3565 (Judicial review—directions on return date) appropriate to the proceeding.

(5) In this rule:

decision-maker—see the Judicial Review Act, section 13 (1).

requester—see the Judicial Review Act, section 13 (1).

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Part 3.11 Legal profession

Division 3.11.1 Legal profession—general

3600 Definitions—pt 3.11

In this part:

admission means admission to the legal profession under the Legal Profession Act.

application for admission means an application under the Legal Profession Act, section 26 (1).

Legal Profession Act means the *Legal Profession Act 2006*.

3601 Terms used in Legal Profession Act

(SC(ALP)R r 4 (2))

A term used in the Legal Profession Act has the same meaning in this part.

Note For example, the following terms are defined in the Legal Profession Act, dict:

- admissions board
- admission to the legal profession
- bar council
- compliance certificate (see s 30)
- conviction (see s 13 (1))
- law society council
- local roll
- suitability matters (for an individual) (see s 11).

3602 Application—pt 3.11

This part applies only in relation to the Supreme Court.

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Division 3.11.2 Admission of local lawyers

3605 Admission—approved academic qualifications (Legal Profession Act, s 21 (5))

(SC(ALP)R r 5)

The academic qualifications approved for admission to the legal profession in the ACT are—

(a) the completion of a course of studies that qualifies a person for admission to the degree of Bachelor of Laws at the Australian National University or the University of Canberra or the degree of Juris Doctor at the University of Canberra; and

Note Academic qualifications that would qualify a person for admission to the legal profession in another jurisdiction are acceptable if the admissions board is satisfied that substantially the same minimum criteria apply for the approval of academic qualifications for admission in the other jurisdiction as apply in the ACT (see Legal Profession Act, s 21).

(b) the passing, whether or not as part of a course mentioned in paragraph (a), of examinations, approved by the court, in courses in the following areas of law:

(i) criminal law and procedure;

(ii) the law of torts;

(iii) the law relating to contracts;

(iv) the law relating to property, both real (including the law relating to Torrens system land) and personal;

(v) equity, including trusts;

(vi) company law;

(vii) administrative law;

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(viii) constitutional law of—

(A) the Commonwealth; and

(B) the Territory, a State or the Northern Territory;

(ix) civil procedure;

(x) evidence;

(xi) professional conduct and the maintenance of trust accounts.

3606 Admission—approved practical legal training requirements (Legal Profession Act, s 21 (5))

(SC(ALP)R r 6)

The legal training requirements approved for admission to the legal profession in the ACT are satisfactory completion of the course of professional training in law in the Legal Workshop within the ANU College of Law of the Australian National University.

Note Practical legal training requirements that would qualify a person for admission to the legal profession in another jurisdiction are acceptable if the admissions board is satisfied that substantially the same minimum criteria apply for the approval of legal training requirements for admission in the other jurisdiction as apply in the ACT (see Legal Profession Act, s 21).

3607 Admission—evidence of completion of courses

(SC(ALP)R r 7)

For rule 3605 and rule 3606, a person is taken not to have completed, or satisfactorily completed, a course or passed an examination unless the appropriate officer of the university that conducted the course or examination gives a written certificate that the person has completed, or satisfactorily completed, the course or passed the examination.

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3608 Admission—application for admission

(SC(ALP)R rr 9-12)

(1) An application for admission must be made by originating application.

Note See approved form 3.46 (Originating application for admission as a lawyer) AF2007-70.

(2) The application must be supported by—

(a) an affidavit by the applicant; and

(b) at least 3 affidavits of character.

(3) The applicant must file with the application a copy of the application and the affidavits mentioned in subrule (2).

(4) The applicant's affidavit must—

(a) state whether the person has been convicted of an offence in Australia or a foreign country, and if so—

(i) the nature of the offence; and

(ii) the court by which, and the date when, the person was convicted; and

(iii) how long ago the offence was committed; and

(iv) the person's age when the offence was committed; and

(b) state whether there are other suitability matters relevant to the applicant's fitness for admission; and

(c) state an address that is the applicant's address for service.

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

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(5) An affidavit of character by a person must state—

(a) how long the person has known the applicant; and

(b) the circumstances in which the person has known the applicant; and

(c) whether there is or has been any professional or business relationship between the person and the applicant and, if so, the nature of the relationship; and

(d) whether the person is related to the applicant by blood, affinity or adoption; and

(e) the person's opinion about the fame and character of the applicant.

(6) The court may direct that further evidence about an applicant's fame and character be given in support of the application.

3609 Admission—when application must be made

(SC(ALP)R r 12)

An application for admission must be filed in the court not later than 14 days before the day the application is to be heard.

3610 Admission—compliance certificate (Legal Profession Act, s 30 (2))

The admissions board must do the things required under the Legal Profession Act, section 30 (2) in relation to an application for admission not later than 7 days after the day the admissions board decides to give a compliance certificate to the applicant for admission.

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3611 Admission—objection by bar council or law society council

(SC(ALP)R r 13)

(1) This rule applies if the bar council or law society council intends to object to an application for admission.

(2) Not later than 4 days before the day the application is to be heard, it must serve on the applicant—

(a) notice of its intention to object and the grounds for the objection; and

(b) a copy of each affidavit it intends to use in support of its objection.

(3) After serving a notice under subrule (2), and before the hearing of the application for admission, the bar council or law society council must file in the court a copy of—

(a) the notice; and

(b) each affidavit it intends to use in support of its objection; and

(c) an affidavit of service.

3612 Admission—appearance by bar council or law society council

(SC(ALP)R r 14)

(1) The bar council or law society council must, if asked by the court, appear and be heard on the hearing of an application for admission.

(2) The bar council or law society council may, on its own initiative, appear and be heard on the hearing of an application for admission, otherwise than for the purpose of objecting to the admission of the applicant.

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3613 Admission—applicant's duty of frankness

(SC(ALP)R r 15)

In addition to complying with the requirements of this division, an applicant for admission must bring to the attention of the court anything that is relevant to the applicant's fitness for admission.

3614 Admission—oath or affirmation

(1) A person must, before being admitted, take an oath or make an affirmation before the court.

(2) An oath taken under this rule must be in the following form:

I, (*name*), swear that I will well and honestly conduct myself in the practice of law as a lawyer of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

So help me God!

(3) An affirmation made under this rule must be in the following form:

I, (*name*), solemnly and sincerely affirm that I will well and honestly conduct myself in the practice of law as a lawyer of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

3615 Admission—entry on local roll

After a person is admitted, the registrar must enter on the local roll—

(a) the person's name; and

(b) the date of the person's admission.

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Part 3.12 Small Claims Court

Division 3.12.1 Small Claims Court—preliminary

3730 Definitions—pt 3.12

(MC(CJ)R s 394)

In this part:

conference means a conference under division 3.12.7.

court means the Small Claims Court.

Magistrates Court Act means the *Magistrates Court Act 1930*.

order includes—

(a) a debt declaration; and

(b) a common boundaries determination; and

(c) a judgment of the court.

restoration order means an order made under rule 3780 (Small Claims Court—restoration of proceeding).

3731 Meaning of *applicant* and *respondent*—pt 3.12

For a proceeding on a counterclaim or third-party notice (the ***process***) under this part—

(a) a reference in this part to the ***applicant*** includes a reference to the party who files the process; and

(b) a reference in these rules to the ***respondent*** includes a reference to the person on whom the process is served.

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3732 Terms used in Magistrates Court Act

A term used in the Magistrates Court Act, part 4.6 (Small Claims Court) has the same meaning in this part.

Note 1 For example, the following terms are defined in the Magistrates Court Act, s 278:

- common boundaries determination
- debt declaration
- inquiry
- nuisance application
- trespass application.

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

3733 Application—pt 3.12

This part applies to a proceeding in the Small Claims Court.

3734 Small Claims Court—application of ch 2 generally

(MC(CJ)R s 395)

(1) Except as provided by this rule, chapter 2 does not apply to a proceeding in the court.

(2) The applied civil rules apply, with any necessary changes, to a proceeding in the court.

(3) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- part 2.18 (Enforcement)
- part 2.19 (Interpleader proceedings)

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- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

Division 3.12.2 Small Claims Court—starting proceeding

3735 Small Claims Court—assistance to members of public

(MC(CJ)R s 403)

The registrar or a member of the staff of the Magistrates Court must, if asked, explain the procedures of the Small Claims Court to a person to assist the person to participate in a proceeding in the court.

3736 Small Claims Court—who may start and carry on a proceeding

(MC(CJ)R s 484 and s 488)

(1) A person may start and carry on a proceeding in the court—

(a) in person; or

(b) by a solicitor acting for the person; or

(c) if the person is a corporation—by an officer or employee of the corporation authorised by the corporation to represent it.

Note Rule 275 (1) (Person with legal disability—litigation guardian to start proceeding etc) provides that a person with a legal disability may start or defend and carry on a proceeding only by the person's litigation guardian.

(2) An officer or employee mentioned in subrule (1) (c) must file with the first document that is filed in the court for the corporation in the proceeding—

(a) an affidavit stating—

(i) the position the person holds in the corporation; and

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(ii) that the person has been authorised by the corporation to represent the corporation in the proceeding; and

(iii) that the authority has not been revoked; and

(iv) that the person is aware that the person may be liable to pay some or all of the costs of the proceeding; and

(b) a copy of an instrument authorising, or evidencing the authorisation of, the person to represent the corporation in the proceeding.

Note An ***instrument*** is defined in the Legislation Act, s 14 as any writing or other document. ***Writing*** and ***document*** are defined in the Legislation Act, dict, pt 1.

(3) However, subrule (2) does not apply if—

(a) the officer or employee has already filed with the court an instrument that—

(i) states the position the person holds in the corporation; and

(ii) authorises, or evidences the authority of, the person to represent the corporation in proceedings in the court; and

(iii) states that the person is aware that the person may be liable to pay some or all of the costs of a proceeding in which the corporation is a party; and

Note An ***instrument*** is defined in the Legislation Act, s 14 as any writing or other document. ***Writing*** and ***document*** are defined in the Legislation Act, dict, pt 1.

(b) the authority has not been revoked.

(4) An authority mentioned in subrule (3) remains in force until notice of its revocation is filed with the court.

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3737 Small Claims Court—originating application etc

(MC(CJ)R s 404)

(1) A proceeding in the court may be started by—

(a) an originating application; or

(b) if the proceeding is for a common boundaries determination—an application in accordance with the *Common Boundaries Act 1981*, and not by originating application.

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

(2) A proceeding starts on the day the application under subrule (1) is filed in the court.

Note Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

(3) The application must state—

(a) the nature of the claim and the relief sought; and

(b) any claim for interest up to the day of judgment; and

(c) the applicant's address for service.

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

3738 Small Claims Court—single application for each matter

(MC(CJ)R s 405)

A person may file only 1 originating application in relation to a claim for relief arising out of a single cause of action.

3739 Small Claims Court—debt declaration

(MC(CJ)R s 406)

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A person may file an application for a debt declaration only if the person named as respondent has made a written demand on the person for payment of the debt.

3740 Small Claims Court—claim for interest

(MC(CJ)R s 407 and s 454 (1))

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if interest up to the day of judgment is claimed in a proceeding—

(a) under a contractual agreement between the parties to the proceeding; or

(b) for a debt or liquidated amount.

(3) The claim for interest—

(a) must state the period or periods for which interest is claimed; and

(b) must state the amount or amounts for which interest is claimed; and

(c) may state the rate or rates at which interest is claimed.

(4) If a rate is not claimed under subrule (3) (c), the rate is taken to be the rate applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

3741 Small Claims Court—service of originating application etc

(MC(CJ)R s 408)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 18 deals with the service of an application under that Act.

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(2) If an originating application is filed in the court, the registrar must—

(a) give the applicant a written notice summarising the possible courses of action open to the applicant in the proceeding and when a conference or inquiry may be directed; and

(b) serve on the respondent—

(i) a sealed copy of the application; and

(ii) a written notice summarising the possible courses of action open to the respondent in the proceeding and when a conference or inquiry may be directed.

(3) A person authorised by the registrar to serve an originating application must—

(a) if the application is served by post under rule 6412 (Service of originating process by post—Magistrates Court)—complete and file in the court a certificate of postal service for the application; or

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

(b) if the application is served otherwise than by post under rule 6412—file in the court an affidavit of service; or

(c) if service is attempted but the application is not served—endorse on the originating application the reason for non-service, sign the endorsement and return the application to the registrar not later than 14 days after the day service is attempted.

3742 Small Claims Court—response to originating application

(MC(CJ)R s 410, s 411 (1) and (4))

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

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(2) The respondent may file a response to an originating application not later than—

(a) 21 days after the day the application is served on the respondent; or

(b) any shorter period directed by the registrar under rule 3744 (Small Claims Court—response to nuisance application or trespass application).

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

(3) If a respondent files a response, the registrar must serve a sealed copy of the response on the applicant.

3743 Small Claims Court—counterclaim and set-off

(MC(CJ)R s 453)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) The respondent may make a counterclaim in a response instead of filing a separate originating application.

(3) The respondent may rely on set-off (whether or not of a known amount) as a response to all or part of the applicant's claim for relief, whether or not it is also included as a counterclaim.

(4) A counterclaim or set-off must not exceed $10 000.

(5) If the respondent's total entitlement to any set-offs and in relation to any counterclaim exceeds $10 000, the respondent may—

(a) abandon the excess by limiting the total amount to $10 000; or

(b) apply to transfer the proceeding to the Magistrates Court under rule 3776 (Small Claims Court—transfer of proceeding to Magistrates Court).

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3744 Small Claims Court—response to nuisance application or trespass application

(MC(CJ)R s 411 (2) and (3))

(1) This rule applies to a nuisance application or trespass application.

(2) The registrar may, on written application by the applicant, order that any response to the application be filed less than 21 days after the day the application is served.

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

(3) The registrar may make an order under subrule (2) only if satisfied that the order is necessary or desirable to avoid unreasonable hardship to the applicant.

(4) If the registrar makes an order under subrule (2), the registrar must serve a sealed copy of the order on the respondent.

3745 Small Claims Court—amendment

(MC(CJ)R s 409)

The court may, at any stage of a proceeding, on application by a party or on its own initiative, amend a document in the proceeding in any way the court considers appropriate.

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

Division 3.12.3 Small Claims Court—third-party proceeding

3746 Application of div 3.12.3—common boundary applications

This division does not apply to an application under the *Common Boundaries Act 1981*.

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3747 Small Claims Court—third-party notice

(1) A respondent may file a third-party notice if the respondent wants to—

(a) claim a contribution or indemnity against a person who is not already a party to the proceeding; or

(b) claim relief against a person who is not already a party to the proceeding that—

(i) relates to or is connected with the original subject matter of the proceeding; and

(ii) is substantially the same as some relief claimed by the applicant; or

(c) require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the applicant and respondent but also between either of them and a person not already a party to the proceeding.

(2) A third-party notice—

(a) must not be filed by a respondent until the respondent has filed a response; and

(b) must be filed not later than 21 days after the end of whichever of the following periods ends last:

(i) the time limited for filing the response of the respondent who is filing the third-party notice (the ***prescribed period***);

(ii) if the applicant agrees to an extension of the prescribed period—the agreed period.

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(3) A third-party proceeding starts on the day the third-party notice for the proceeding is filed in the court.

Note Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

(4) The third-party notice must state—

(a) the nature of the claim and the relief sought; and

(b) any claim for interest up to the day of judgment; and

(c) the respondent's address for service.

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

Note 2 ***Address for service*** is defined in the dictionary.

3748 Small Claims Court—service of third-party notice

(1) Rule 6412 (Service of originating process by post—Magistrates Court) applies, with necessary changes, to a third-party notice as if a reference to an originating process were a reference to a third-party notice.

(2) If a third-party notice is filed in the court, the registrar must—

(a) serve on the third party—

(i) a sealed copy of the notice; and

(ii) a copy of a sealed copy of the originating application; and

(iii) a copy of a sealed copy of the respondent's response to the originating application; and

(iv) a written notice summarising the possible courses of action open to the third party in the proceeding and when a conference or inquiry may be directed; and

(b) serve on the applicant a sealed copy of the notice.

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(3) A person authorised by the registrar to serve a third-party notice on a third party must—

(a) if the notice is served by post under rule 6412—complete and file in the court a certificate of postal service for the notice; or

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

(b) if the notice is served otherwise than by post under rule 6412—file in the court an affidavit of service; or

(c) if service is attempted but the notice is not served—endorse on the notice the reason for non-service, sign the endorsement and return the application to the registrar not later than 14 days after the day service is attempted.

3749 Small Claims Court—response to third-party notice

(1) A third party may file a response to a third-party notice not later than 21 days after the day the notice is served on the third-party.

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 third party files a response, the registrar must serve a sealed copy of the response on the other parties to the proceeding.

3750 Small Claims Court—counterclaim and set-off by third party

(1) A third party who has a claim against the respondent who included the third party may counterclaim against the respondent.

(2) A third party may rely on set-off (whether or not of a known amount) as a response to all or part of a respondent's claim for relief against the third party, whether or not it is included as a counterclaim.

(3) A counterclaim or set-off must not exceed $10 000.

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(4) If the third party's total entitlement to any set-offs and in relation to any counterclaim exceeds $10 000, the third party may—

(a) abandon the excess by limiting the total amount to $10 000; or

(b) apply to transfer the proceeding to the Magistrates Court under rule 3776 (Small Claims Court—transfer of proceeding to Magistrates Court).

3751 Small Claims Court—default by third party

(1) This rule applies if—

(a) a default judgment is entered for the applicant against the respondent who included the third party; and

(b) the third party is in default in relation to the third-party notice.

(2) The third party is bound by the default judgment between the applicant and respondent as far as it is relevant to a claim or issue stated in the third-party notice.

(3) The respondent at any time after satisfaction of the default judgment, or, with the court's leave, before satisfaction, may file in the court an application for default judgment.

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

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

(4) If the respondent applies for default judgment under subrule (3), the court must—

(a) if the amount of damages claimed is stated in the third-party notice—enter default judgment for the respondent against the third party; or

(b) if the amount of damages claimed is not stated in the third-party notice, or another order is sought—enter default

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judgment for the respondent against the third party for damages to be assessed or the orders sought to be decided.

(5) If subrule (4) (a) applies, the registrar must—

(a) serve a sealed copy of the judgment on the respondent and third party; and

(b) tell the respondent and third party about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(6) If subrule (4) (b) applies, the registrar must—

(a) serve a sealed copy of the judgment on the respondent and third party; and

(b) tell the respondent and third party about the right to apply for a restoration order; and

(c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and

(d) tell the respondent and third party the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(7) If the third party does not have an address for service, the registrar may serve the copy of the judgment on the third party by post by sending the copy by prepaid post to the third party's last known address.

(8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3), other than an application for leave.

(9) The court may enter default judgment under this rule in favour of the respondent without a hearing.

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3752 Small Claims Court—judgment between respondent and third party

(1) In a proceeding, the court may enter judgment in favour of—

(a) a respondent who included a third party against the third party; or

(b) the third party against the respondent.

(2) If—

(a) judgment is entered in favour of the applicant against a respondent; and

(b) judgment is entered in favour of the respondent against a third party;

the respondent must not enforce the judgment against the third party unless the judgment against the respondent is satisfied, or the court otherwise orders.

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

Division 3.12.4 Small Claims Court—admission of liability

3753 Application of div 3.12.4—common boundary applications

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3754 Small Claims Court—admission of liability

(MC(CJ)R s 412 and s 415)

(1) A respondent to a proceeding may, in a response filed in the court—

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(a) admit liability for all or part of the applicant's claim for relief; and

(b) state any conditions on which liability is admitted, for example, time for payment or payment by instalments.

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

(2) If the respondent admits liability under subrule (1), the applicant may accept the admission of liability by filing in the court a notice accepting liability not later than 21 days after the day the response is served on the applicant.

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

(3) The court must enter judgment for the applicant by consent if—

(a) the respondent admits the whole of the applicant's claim for relief without any condition; or

(b) the applicant accepts the respondent's admission of liability, subject to the conditions (if any) on which the respondent admitted liability.

3755 Small Claims Court—payment into court

(MC(CJ)R s 413)

(1) If a respondent in a proceeding admits liability to pay an amount to the applicant, the respondent may pay the amount into court.

(2) If the amount paid into court is the amount claimed by the applicant, and the applicant's claim for relief does not ask for any other order, the court must enter judgment for the applicant for the amount.

(3) If the court enters judgment under subrule (2), the registrar must—

(a) serve a sealed copy of the judgment on the parties; and

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(b) pay the amount paid into court to the applicant.

(4) If the amount paid into court is not the amount claimed by the applicant, or the applicant's claim for relief asks for another order, the amount must stay in court until the court otherwise orders.

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

3756 Small Claims Court—payment into court by bond

(MC(CJ)R s 414)

(1) When paying an amount into court under rule 3755, a respondent may lodge a bond for the amount with the registrar instead of actually paying the amount into court.

(2) Rule 1002 (Payment into court—bond) applies, with any necessary changes, to a bond lodged under this rule.

Division 3.12.5 Small Claims Court—no response to claim

3757 Small Claims Court—default judgment

(MC(CJ)R s 417)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if the respondent in a proceeding—

(a) does not file a response to the originating application in accordance with rule 3742 (2) (Small Claims Court—response to originating application); or

(b) files a response to the application but later withdraws the response by written notice filed in the court.

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(3) The applicant may file in the court an application for default judgment not later than 1 year and 21 days after the day the originating application was served on the respondent.

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

(4) If the applicant applies for default judgment under subrule (3), the court must—

(a) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the applicant against the respondent; or

(b) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the applicant against the respondent for damages to be assessed or the orders sought to be decided.

(5) If subrule (4) (a) applies, the registrar must—

(a) serve a sealed copy of the judgment on the parties; and

(b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(6) If subrule (4) (b) applies, the registrar must—

(a) serve a sealed copy of the judgment on the parties; and

(b) tell the parties about the right to apply for a restoration order; and

(c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and

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(d) tell the parties the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(7) If the respondent does not have an address for service, the registrar may serve the copy of the judgment on the respondent by post by sending the copy by prepaid post to the respondent's last known address.

(8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3).

(9) The court may enter default judgment under this rule in favour of the applicant without a hearing.

3758 Small Claims Court—striking out application

(MC(CJ)R s 418)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) An originating application is taken to be struck out at the end of 1 year and 22 days after the day the application is filed in the court if—

(a) a response has not been filed; and

(b) judgment has not been entered or the application has not otherwise been disposed of.

(3) An applicant whose application is struck out under this rule may file a new originating application not later than 1 year after the day it is struck out.

(4) For any time limit (including a limitation period), an originating application that is started under subrule (3) is taken to have started on the day the originating application that was struck out under subrule (2) was filed.

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Division 3.12.6 Small Claims Court—disputed claim

3759 Small Claims Court—disputed claim

(MC(CJ)R s 410 and s 416)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if a respondent in a proceeding—

(a) files a response in the court in accordance with rule 3742 (2) (Small Claims Court—response to originating application) denying liability for the applicant's claim for relief; or

(b) files a response in the court in accordance with rule 3742 (2) admitting liability for the applicant's claim for relief, but—

(i) any amount paid into court under rule 3755 (Small Claims Court—payment into court) is less than the amount claimed by the applicant; and

(ii) the applicant does not accept the respondent's admission of liability in accordance with rule 3754 (2) (Small Claims Court—admission of liability).

(3) The registrar must—

(a) set a date for a conference between the parties; and

(b) tell the parties the date set for the conference not later than 10 days before the date set.

(4) However, if the registrar is satisfied that a conference will not help the resolution of the issues in dispute between the parties, the registrar must—

(a) set a date for an inquiry; and

(b) tell the parties the date set for the inquiry not later than 10 days before the date set.

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Division 3.12.7 Small Claims Court—conferences

3760 Application—div 3.12.7

(MC(CJ)R s 419)

This division applies if—

(a) a proceeding is set down for a conference under rule 3759 (3) or another territory law; or

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

(b) the court orders a conference to be held in accordance with a restoration order, or at any stage of the proceeding; or

(c) an application under the *Common Boundaries Act 1981* is set down for a conference; or

(d) a territory law provides that a conference be held.

3761 Small Claims Court conference—setting conference date

If the court orders a conference to be held as mentioned in rule 3760 (b), the registrar must—

(a) set a date for the conference; and

(b) tell the parties the date set for the conference not later than 10 days before the date set.

3762 Small Claims Court conference—changing time or place of

(MC(CJ)R s 421 and s 424)

(1) The court may change the time or place of a conference if it considers the change appropriate.

(2) The court may adjourn a conference if satisfied a party to the proceeding, or the party's representative, has a reasonable reason for not being able to attend the conference.

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(3) If the court changes the time or place of, or adjourns, a conference, the registrar must tell the parties about the change or adjournment.

3763 Small Claims Court conference—representation

(MC(CJ)R s 422)

A party to a proceeding may be represented at a conference by someone else.

3764 Small Claims Court conference—who may attend

(MC(CJ)R s 423)

Only the following people may attend a conference:

(a) a party to the proceeding;

(b) a representative of a party to the proceeding;

(c) the registrar or any officer or member of the staff of the Magistrates Court;

(d) anyone authorised in writing by the Chief Magistrate to attend the conference, or to attend conferences generally;

(e) anyone authorised in writing by the Attorney-General to attend the conference, or to attend conferences generally.

3765 Small Claims Court conference—failure to attend

(MC(CJ)R s 428)

(1) This rule applies to a party to a proceeding if—

(a) the registrar tells the party the date set for a conference; and

(b) the party fails to attend the conference, either personally or by a representative; and

(c) the court is not satisfied the party has a reasonable excuse for failing to attend the conference.

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(2) If this rule applies to the applicant, or all parties to the proceeding, the court must dismiss the application.

(3) If this rule applies to a respondent, but does not apply to the applicant—

(a) the court must—

(i) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the applicant against the respondent; or

(ii) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the applicant against the respondent for damages to be assessed or the orders sought to be decided; and

(b) if the respondent has filed a third-party notice in the proceeding—the court must dismiss the notice.

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

(4) If this rule applies to a third party, but does not apply to the applicant or the respondent who filed the third-party notice, and the court enters consent judgment in favour of the applicant, the court must—

(a) if the amount of damages claimed is stated in the third-party notice—enter default judgment for the respondent against the third party for the lesser of—

(i) the amount of damages claimed in the third-party notice; and

(ii) the amount of the consent judgment; or

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(b) if the amount of damages claimed is not stated in the third-party notice, or another order is sought—enter default judgment for the respondent against the third party for damages to be assessed or the orders sought to be decided.

(5) If subrule (2), (3) (a) (i) or (4) (a) applies, the registrar must—

(a) serve a sealed copy of the order dismissing the application or the judgment on the parties; and

(b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(5) If subrule (3) (b) or (4) (b) applies, the registrar must—

(a) serve a sealed copy of the judgment on the parties; and

(b) tell the parties about the right to apply for a restoration order; and

(c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and

(d) tell the parties the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3766 Small Claims Court conference—procedure

(MC(CJ)R s 420, s 425 and s 426)

(1) At a conference in a proceeding, the court may—

(a) decide what are the real issues in dispute between the parties; and

(b) by conciliation, help the parties reach an agreement on conditions the court considers just; and

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(c) if an adjournment of the conference is likely to help the parties reach an agreement—adjourn the conference on the conditions the court considers appropriate; and

(d) if the issues in dispute cannot be resolved—ensure the parties do everything reasonable and necessary for an inquiry to take place as soon as practicable; and

(e) order that an inquiry be held.

(2) If the issues in dispute are resolved between the parties at the conference, the parties may file a consent judgment in accordance with rule 3782 (Small Claims Court order—consent judgment).

(3) If the issues in dispute are not resolved at the conference, and the court is satisfied there is no reasonable possibility of the parties reaching an agreement about the issues in dispute, the court must—

(a) order that an inquiry be held; and

(b) estimate the time required for the inquiry; and

(c) adjourn the conference.

(4) If subrule (3) applies, the registrar must—

(a) set a date for the inquiry; and

(b) tell the parties the date set for the inquiry not later than 10 days before the date set.

Division 3.12.8 Small Claims Court—inquiries

3767 Application—div 3.12.8

(MC(CJ)R s 429)

(1) This division applies if—

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(a) a proceeding has been set down for an inquiry under this part or another territory law; or

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

(b) an application under the *Common Boundaries Act 1981* has been set down for an inquiry; or

(c) a territory law provides that an inquiry be held.

3768 Small Claims Court inquiry—constitution

(MC)CJ)R s 430)

(1) A magistrate or referee sitting alone must preside at an inquiry.

(2) In this rule:

referee means a referee appointed under the *Magistrates Court Act 1930*, section 280 (Referees—appointment).

3769 Small Claims Court inquiry—changing time or place of

(MC(CJ)R s 437)

(1) The court may change the time or place of an inquiry if it considers the change appropriate.

(2) The court may adjourn an inquiry if satisfied that an adjournment is necessary in the interests of justice.

(3) If the court changes the time or place of, or adjourns, an inquiry, the registrar must tell the parties about the change or adjournment.

3770 Small Claims Court inquiry—representation

(MC(CJ)R s 434)

A party to a proceeding may be represented at an inquiry by someone else.

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3771 Small Claims Court inquiry—failure to attend

(MC(CJ)R s 441)

(1) This rule applies to a party to a proceeding if—

(a) the registrar tells the party the date set for an inquiry; and

(b) the party fails to attend the inquiry, either personally or by a representative; and

(c) the court is not satisfied the party has a reasonable excuse for failing to attend the inquiry.

(2) If this rule applies to the applicant, or all parties to the proceeding, the court may dismiss the application.

(3) If this rule applies to a respondent, but does not apply to the applicant, the court may enter default judgment for the applicant against the respondent.

(4) If this rule applies to a respondent, but does not apply to the applicant, in an application in a proceeding, the court may make the orders sought in the application.

(5) If the court makes an order under this rule, the registrar must—

(a) serve a sealed copy of the order on the parties; and

(b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3772 Small Claims Court inquiry—procedure

(MC(CJ)R s 431 and 433)

(1) At an inquiry, the court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.

(2) Evidence in an inquiry must not be given on oath.

Note ***Oath*** includes affirmation (see Legislation Act, dict.)

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(3) However, the court may require a witness to give evidence on oath if the court considers it necessary or desirable for properly deciding the application.

(4) The court must otherwise adopt procedures that it considers appropriate for an inquiry to be finalised promptly and with as little formality as possible.

3773 Small Claims Court inquiry—investigators

(MC(CJ)R s 432)

(1) For an inquiry, the court may appoint an investigator to investigate any question of fact arising in a proceeding.

(2) An appointment under subrule (1) must state—

(a) particulars of the question to be investigated; and

(b) any conditions on which the appointment is made.

(3) An investigator appointed under subrule (1) must—

(a) investigate any question of fact mentioned in the appointment; and

(b) file a written report on the question in the court.

(4) The court may accept, amend or reject all or part of the investigator's report, as the court considers appropriate.

(5) The court may decide the remuneration of an investigator.

(6) The Territory must pay the investigator's remuneration.

(7) However, the court may order a party to pay a proportion of the remuneration.

(8) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

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Division 3.12.9 Small Claims Court—transfer of proceedings between courts

3774 Application of div 3.12.9—common boundary applications

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3775 Small Claims Court—transfer of proceedings from Magistrates Court

(MC(CJ)R s 439)

(1) The Magistrates Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Magistrates Court be transferred to the Small Claims Court.

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

(2) The Magistrates Court may make an order under subrule (1) only if satisfied that—

(a) the proceeding could have been started in the Small Claims Court; and

(b) transferring the proceeding to the Small Claims Court would not be unfair to any party to the proceeding.

(3) If the Magistrates Court makes an order under subrule (1) in relation to a proceeding—

(a) this part applies as if, for any step taken in the proceeding under chapter 2 (Civil proceedings generally), the corresponding step under this part had been taken in the proceeding; and

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(b) any evidence given in the proceeding in the Magistrates Court is taken to have been given in the Small Claims Court.

(4) Rule 3777 (Small Claims Court—applications in proceedings) does not apply to an application under this rule.

3776 Small Claims Court—transfer of proceeding to Magistrates Court

(MC(CJ)R s 438)

(1) The Small Claims Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Small Claims Court be transferred to the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

(2) The Small Claims Court may make an order under subrule (1) only if satisfied that transferring the proceeding to the Magistrates Court would not be unfair to any party to the proceeding.

(3) If the Small Claims Court makes an order under subrule (1) in relation to a proceeding—

(a) chapter 2 (Civil proceedings generally) applies as if, for any step taken in the proceeding under this part, the corresponding step under that chapter had been taken in the proceeding; and

(b) any evidence given in the proceeding in the Small Claims Court is taken to have been given in the Magistrates Court.

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Division 3.12.10 Small Claims Court—general provisions

3777 Small Claims Court—applications in proceedings

(MC(CJ)R s 436)

(1) This rule applies to an application in a proceeding under this part, other than an application in a proceeding under the *Common Boundaries Act 1981*.

Note 1 An ***application*** in a proceeding is defined in r 6006 (Application—pt 6.2)

Note 2 Part 6.2 (Applications in proceedings) applies to an application under this rule. See also r (3).

(2) If an application to which this rule applies is filed in the court, the registrar must—

(a) set a date for an inquiry in relation to the application; and

(b) serve a stamped copy of the application on each other party to the proceeding not later than 3 days before the date set for the inquiry; and

(c) tell the parties the date set for the inquiry.

(3) Part 6.2 (Applications in proceedings) does not apply in relation to service of the application or of the supporting material (if any) for the application.

3778 Small Claims Court—discontinuance of proceeding

(MC(CJ)R s 440)

(1) The applicant may, at any stage of a proceeding, discontinue the proceeding by filing a notice of discontinuance in the court.

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

(2) If the applicant discontinues the proceeding, the registrar must—

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(a) serve a stamped copy of a notice of discontinuance on the other parties to the proceeding; and

(b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3779 Small Claims Court—dismissal for abuse of process

(MC(CJ)R s 442)

(1) The court may, at any stage of a proceeding, dismiss all or part of the proceeding, if it considers the proceeding to be—

(a) frivolous, scandalous, unnecessary or vexatious; or

(b) otherwise an abuse of the process of the court.

(2) The court may make an order under subrule (1) on the application of a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

(3) The court may receive evidence in an inquiry for an order under subrule (1).

(4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3780 Small Claims Court—restoration of proceeding

(MC(CJ)R s 443)

(1) On application by a party to a proceeding, the court may order that the proceeding be restored (a ***restoration order***) if—

(a) the proceeding has been dismissed under—

(i) rule 3765 (2) (Small Claims Court conference—failure to attend); or

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(ii) rule 3771 (2) (Small Claims Court inquiry—failure to attend); or

(b) the proceeding has been discontinued under rule 3778 (Small Claims Court—discontinuance of proceeding); or

(c) default judgment has been entered in the proceeding under—

(i) rule 3751 (Small Claims Court—default by third party); or

(ii) rule 3757 (4) (Small Claims Court—default judgment); or

(iii) rule 3765 (3) (Small Claims Court conference—failure to attend); or

(iv) rule 3771 (3) (Small Claims Court inquiry—failure to attend); or

(d) consent judgment has been entered in the proceeding under—

(i) rule 3754 (3) (Small Claims Court—admission of liability); or

(ii) rule 3782 (Small Claims Court order—consent judgment).

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

(2) If the court makes a restoration order in a proceeding, the court may also make any of the following orders:

(a) an order setting aside a judgment, including a judgment entered by default or by consent;

(b) an order for the payment of costs;

(c) an order staying a proceeding until costs are paid;

(d) an order setting aside any proceeding taken to enforce a judgment set aside under this rule;

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(e) any order the court considers appropriate for the future conduct of the proceeding, including an order that a conference be held between the parties, or an order about the priority of an inquiry in a proceeding;

(f) any other order the court considers just.

(3) The court may set aside a consent judgment only if any of the following apply in relation to the application for judgment or the entry of judgment:

(a) fraud;

(b) duress;

(c) suppression of relevant information or evidence;

(d) false evidence or information given and relied on;

(e) change of circumstances;

(f) impracticability of enforcement;

(g) any other ground the court considers just.

(4) If the court does not make a restoration order on an application under subrule (1), the court may make any order for costs it considers appropriate.

(5) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3781 Small Claims Court—costs

(MC(CJ)R s 456)

(1) The court must not make an order in relation to costs in a proceeding, except in accordance with this part.

(2) A judgment in favour of a party must include an order that the party liable for the judgment pay to the party entitled to the judgment—

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(a) the amount of any fee paid by the party entitled to the judgment; and

(b) any expenses incurred by the party entitled to the judgment in relation to the proceeding, other than the costs of representation by a lawyer.

(3) The court may make an order for costs (other than the costs of representation by a lawyer) in favour of a party to a proceeding (the ***first party***) against another party to the proceeding (the ***second party***) for expenses unnecessarily incurred by the first party because of any act or omission of the second party.

(4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

Division 3.12.11 Small Claims Court—orders

3782 Small Claims Court order—consent judgment

(MC(CJ)R s 425 and s 451)

(1) A party to a proceeding may file a draft consent judgment at any time before judgment is entered by the court if—

(a) the parties to the proceeding agree on the judgment; and

(b) the judgment is signed by, or on behalf of, each party to the proceeding; and

(c) the judgment is witnessed by the registrar, a lawyer or a justice of the peace.

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

(2) If a consent judgment is filed under this rule the court must enter judgment in accordance with the draft consent judgment.

(3) If subrule (2) applies, the registrar must—

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(a) serve a sealed copy of the judgment on the parties; and

(b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3783 Small Claims Court order—counterclaim or set-off

(MC(CJ)R s 453 (2))

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if—

(a) the respondent relies on set-off or makes a counterclaim; and

(b) the set-off or counterclaim is successful; and

(c) the total amount of any successful set-off and counterclaim exceeds the amount for which the applicant is otherwise entitled to judgment.

(3) The court must enter judgment for the respondent for the amount of the excess.

3784 Small Claims Court order—to perform work etc

(MC(CJ)R s 457)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if the court enters judgment in a proceeding.

(3) The court may order a respondent in the proceeding either to—

(a) perform work, or do something else, to rectify a defect in goods or services related to the applicant's claim for relief in accordance with any conditions the court considers appropriate; or

(b) pay an amount to the applicant.

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(4) Alternatively, the court may order a respondent in the proceeding—

(a) to pay an amount to the applicant; and

(b) either to—

(i) perform work, or do something else, to rectify a defect in goods or services related to the applicant's claim for relief in accordance with any conditions the court considers appropriate; or

(ii) pay a further amount to the applicant.

3785 Small Claims Court order—payment on condition work performed etc

(MC(CJ)R s 458)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

(2) This rule applies if the court enters judgment in a proceeding requiring—

(a) a party (the ***first party***) to pay an amount into court; and

(b) another party (the ***second party***) to perform work, or do something else, to rectify a defect in goods or services.

(3) The court may include in the judgment a condition that the registrar is not to pay the amount out of court until the second party has performed the work or otherwise complied with the judgment.

3786 Small Claims Court order—detention of goods

(MC(CJ)R s 217 and s 459)

(1) This rule applies to a proceeding in relation to the detention of goods.

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(2) The court may give judgment for the applicant against the respondent, in accordance with the applicant's claim for relief, for either—

(a) the return of the goods to the applicant, or the retention of the goods by the respondent and payment to the applicant of the value of the goods; or

(b) payment to the applicant of the value of the goods.

(3) If the court gives judgment for the return of goods, it may state a date before which the return must take place.

(4) If the court gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the applicant's application, order the respondent to pay the value of the goods to the applicant.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

(5) If the court gives judgment under subrule (2) (a), and the applicant subsequently applies for an order under this subrule, the court may make an order for the return of the goods to the applicant without the option of the respondent retaining the goods and paying their value.

(6) In this rule:

value, of the goods, means the value assessed by, or in accordance with the directions of, the court.

3787 Small Claims Court order—nuisance application

(MC(CJ)R s 463 (d))

(1) The court may grant the same relief on a nuisance application as the Supreme Court may grant in a proceeding for nuisance.

(2) Subrule (1) is subject to this part.

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3788 Small Claims Court order—trespass application

(MC(CJ)R s 460)

(1) The court may grant the same relief on a trespass application as the Supreme Court may grant in a proceeding for trespass to land.

(2) Subrule (1) is subject to this part.

3789 Small Claims Court order—debt declaration

(MC(CJ)R s 461)

The court may make a debt declaration in a proceeding for a debt declaration.

3790 Small Claims Court order—joint liability

(MC(CJ)R s 464)

(1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 19 deals with apportionment of liability for orders made in relation to an application under that Act.

(2) This rule applies if—

(a) 2 or more people are jointly liable in relation to a cause of action in a proceeding; and

(b) 1 or more, but not all, of the people jointly liable are served with the originating application.

(3) The court may enter judgment in relation to the cause of action against any 1 or more of the people served with the originating application, and the judgment may be enforced against anyone against whom judgment is entered.

(4) If judgment is entered in relation to the cause of action against 1 or more, but not all, of the people jointly liable in relation to the cause of action—

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(a) the liability of the people jointly liable against whom judgment is not entered (the ***other people***) is not discharged by the judgment or any enforcement of the judgment; and

(b) the people against whom judgment is entered (the ***judgment parties***) and the other people are, as between the judgment parties on the one hand and the other people on the other hand, liable severally but not jointly; and

(c) if there are 2 or more other people—the other people are jointly liable as between themselves; and

(d) if the judgment is satisfied or partly satisfied—the liability of the other people is discharged to the extent to which the judgment is satisfied.

(5) Subrule (4) does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.

(6) This rule does not apply to a proceeding to which the *Civil Law (Wrongs) Act 2002*, section 107F (Proportionate liability for apportionable claims) applies.

3791 Small Claims Court order—notice

(MC(CJ)R s 465)

(1) This rule applies if the court makes an order affecting a person in the person's absence.

(2) The registrar must serve a sealed copy of the order on the person.

3792 Small Claims Court order—payment of amount

(MC(CJ)R s 467)

(1) If an amount is payable under an order, the person liable to pay must pay the amount into court.

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(2) The registrar must pay an amount paid into court to the person entitled to the payment.

(3) Subrule (2) is subject to any condition included in a judgment under rule 3785 (3) (Small Claims Court order—payment on condition work performed etc).

3793 Small Claims Court order—other orders

(MC(CJ)R s 462)

The court may, in a proceeding—

(a) make any order it considers necessary in exercising its jurisdiction under another territory law; or

(b) make any other order it considers appropriate.

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Part 3.13 Workers compensation

Division 3.13.1 Workers compensation proceedings—general

3900 Definitions—pt 3.13

(WCR dict)

In this part:

arbitration means arbitration under the Workers Compensation Act.

case management meeting means a case management meeting held under rule 3942 (1).

claim includes a matter or question arising under the Workers Compensation Act to be decided by arbitration.

conciliation means conciliation under the Workers Compensation Act.

contractor—see the Workers Compensation Act, section 13 (Subcontracting).

injury notice—see the Workers Compensation Act, section 123 (The notice for an injury).

prescribed scale of costs means the scale of costs in schedule 4 (Scale of costs).

principal—see the Workers Compensation Act, section 13 (Subcontracting).

representative, for a party to an arbitration, means a lawyer or other person who represents the party.

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third-party respondent—see rule 3920 (Arbitration—including other parties).

Workers Compensation Act means the *Workers Compensation Act 1951*.

3901 Terms used in Workers Compensation Act

A term used in the Workers Compensation Act has the same meaning in this part.

Note For example, the following terms are defined in the Workers Compensation Act, dictionary:

- compulsory insurance policy
- dependant
- employer
- injured worker (see s 86)
- insurer
- medical referee
- registered agreement
- self-insurer.

3902 Application—pt 3.13

(WCR r 5)

This part applies only in relation to—

(a) the Magistrates Court; and

(b) an injury to which the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, applies.

Note With some exceptions (see Workers Compensation Act, s 234 (now expired)), the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, does not apply to injuries that happened before the commencement of the amending Act ie 1 July 2002.

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3903 Workers compensation proceedings—application of ch 2 generally

(WCR r 64)

(1) Except as provided by this rule, chapter 2 does not apply to a proceeding under this part.

(2) The applied civil rules apply, with any necessary changes, to a proceeding under this part.

(3) Part 2.18 (Enforcement) applies, with any necessary changes, to a proceeding for enforcement of, or the recovery of money payable under, an award of the court or a registered agreement as if it were a judgment of the court.

(4) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
  - rule 282 (Person with legal disability—approval of settlement etc)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
  - rule 1015 (Payment into court—amount recovered by person with legal disability)
  - rule 1017 (Person with legal disability—orders about recovered amounts etc)
- division 2.12.1 (Expert evidence generally)
- part 2.17 (Costs), other than the following:
  - rule 1722 (Costs—solicitors' costs generally)
  - rule 1723 (Costs—*relevant amount* for Magistrates Court proceedings)
  - rule 1726 (Costs—amendment of documents)
  - rule 1729 (Costs—extending or shortening time)
- part 2.21 (Representation by solicitors)

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- part 2.22 (Miscellaneous).

Division 3.13.2 Workers compensation—applications for arbitration

Note to div 3.13.2

The *Workers Compensation Regulation 2002*, div 6.2 deals with conciliation. A conciliation of a matter in issue arising from a worker's claim for compensation (other than rejection of the claim by an insurer) must be held before arbitration of the matter (see s 38). The *Workers Compensation Regulation 2002*, pt 7 provides for a committee rather than the court to arbitrate matters in certain cases (see esp s 51).

3904 Application for arbitration—Commercial Arbitration Act not apply

(WC Reg s 49)

The *Commercial Arbitration Act 1986* does not apply to an arbitration.

3905 Application for arbitration—by worker

(WCR r 9)

(1) An injured worker may ask that a claim be decided by arbitration by filing an application in the court.

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

(2) The application must state briefly, but specifically, the claim to be arbitrated.

3906 Application for arbitration—by dependant or estate of deceased worker

(WCR r 10)

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(1) A dependant, or the personal representative, of a deceased worker may ask that a claim be decided by arbitration by filing an application in the court.

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

(2) The application must—

(a) contain details of each dependant on whose behalf the application is made; and

(b) state briefly, but specifically, the claim to be arbitrated; and

(c) be accompanied by a certified copy of—

(i) the worker's death certificate; and

(ii) the birth certificate of each dependant.

(3) In this rule:

dependant includes a person claiming to be a dependant.

3907 Application for arbitration—by employer or insurer

(WCR r 11)

(1) An employer or insurer may ask that a claim be decided by arbitration by filing an application.

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

(2) The application must state briefly, but specifically, the claim to be arbitrated.

3908 Application for arbitration—when application may be filed

(WC Reg s 48)

An injured worker or the worker's employer may file an application for the arbitration of—

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(a) a matter in issue arising from the worker's claim for compensation only if—

(i) the worker or employer has asked a conciliator to help the parties reach agreement on the matter; and

(ii) the parties have attended the conciliation; and

(iii) either the matter was not resolved at the conciliation or the conciliator decided that the matter was not suitable for conciliation; or

(b) the insurer's rejection of the worker's claim for compensation.

3909 Application for arbitration—injury notice and medical evidence

(WCR r 12)

(1) An application for arbitration filed in the court must be accompanied by—

(a) if available to the applicant—a copy of the injury notice in relation to the claim; and

(b) a copy of all available medical evidence the applicant intends to rely on.

(2) If no injury notice was given in relation to the claim, the application must contain details of why no notice was given.

3910 Application for arbitration—copies

(WCR r 13)

When filing an application for arbitration, and the documents accompanying the application mentioned in rule 3909, in the court, the applicant must also file—

(a) 1 copy for each respondent; and

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(b) for each respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3911 Application for arbitration—service on respondent

(WCR r 14)

(1) An applicant for arbitration must serve a sealed copy of the application on each respondent not later than 14 days after the day the application is filed in the court.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) The applicant must file in the court an affidavit of service of the application on a respondent unless the respondent has filed an answer.

(3) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the applicant must serve a sealed copy of the order with the application.

3912 Application for arbitration—service on insurer

(WCR r 15)

(1) An employer (other than a self-insurer) who is a respondent to an application for arbitration must serve a copy of the application on the employer's insurer not later than 7 days after the day the employer is served with the application.

(2) A party included as a third-party respondent must serve a copy of the notice including the party on the party's insurer not later than 7 days after the day the party is served with the notice.

Note Rule 3920 deals with including other parties.

3913 Application for arbitration—answer by respondent or third-party respondent

(WCR r 16)

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(1) A respondent to an application for arbitration may file an answer.

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

(2) The answer must be filed not later than 28 days after the day the respondent is served with the application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(3) A third-party respondent may file an answer to the third-party notice that includes the third-party respondent not later than 28 days after the day the respondent is served with the notice.

Note Rule 3920 deals with including other parties.

(4) When filing an answer in the court, the respondent must also file—

(a) 1 copy for the applicant; and

(b) 1 copy for each other respondent; and

(c) for each other respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3914 Application for arbitration—liability and particulars subject to answer

(WCR r 39)

(1) An answer to an application for arbitration must admit or deny each claim and admit or deny each particular set out in the application.

(2) If no admission or denial of a claim or particular is made, the claim or particular is taken to be admitted.

(3) If a respondent worker does not file an answer, subrule (2) does not apply to a particular denying, completely or partly, liability to pay compensation.

(4) If a respondent employer wishes to deny a claim or particular, but has not done so in an answer, the court may—

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(a) allow the respondent to raise a matter the respondent should have included, or given notice of, in an answer; or

(b) adjourn the arbitration to a stated time or for a stated period to allow the respondent to file an answer.

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

3915 Application for arbitration—service of answer

(WCR r 17)

(1) A respondent must serve a sealed copy of the answer on the applicant and each other respondent.

Note The answer must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(2) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the respondent must serve a sealed copy of the order with the answer.

3916 Application for arbitration—amendment

(WCCR (NSW) r 17)

(1) At any stage of a proceeding, the court may give leave for a party to amend, or direct a party to amend, any document filed in the court in the proceeding in the way the court considers appropriate.

(2) However, this rule does not apply to a document accompanying an application for arbitration mentioned in rule 3909 (Application for arbitration—injury notice and medical evidence).

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(3) The court may give leave, or give a direction, on application by the party or on its own initiative.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or a direction under this rule.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

(4) If there is a mistake in the name or identity of a party, the court may give leave for, or direct the making of, amendments necessary to correct the mistake, even if the effect of the amendments is to substitute another person as a party.

(5) An amendment of a document made under this rule must be distinguished so that the changes are identifiable.

(6) A party amending a document must file and serve on each other active party—

(a) a copy of the document that contains the amendments written on it; or

(b) a revised document incorporating and distinguishing the amendments.

(7) This rule does not apply in relation to an amendment of an order.

Note See r 6906 (Mistakes in orders or court certificates) for amendment of orders.

3917 Application for arbitration—minor amendment or amendment by consent

(WCCR (NSW) r 17 (5))

(1) This rule applies to an amendment to a document in a proceeding that is—

(a) minor and will not have any substantive effect on the case to be put by any party to the proceeding; or

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(b) consented to by all parties to the proceeding.

(2) Rule 3916 does not apply to an amendment mentioned in subrule (1).

(3) A party may amend the document by filing, and serving on each other active party in the proceeding—

(a) a copy of the document that contains the amendments written on it; or

(b) a revised document incorporating and distinguishing the amendments.

3918 Application for arbitration—discontinuance

(WCCR (NSW) r 74)

(1) An applicant may discontinue a proceeding, or withdraw part of it, at any time.

(2) The applicant and another party to the proceeding may agree, in writing, that the applicant may discontinue the proceeding, or withdraw part of it, against the other party at any time.

(3) A discontinuance or withdrawal under this rule is made by filing in the court a notice of discontinuance or withdrawal and serving a stamped copy of the notice on the other active parties in the proceeding.

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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(4) If a proceeding is discontinued or withdrawn, a party who has not agreed to the discontinuance or withdrawal may apply to the court for an order that the applicant pay the party's costs of the proceeding up to when notice of the discontinuance or withdrawal is served on the party.

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

(5) Subrule (4) is subject to rule 3968 (Workers compensation costs—generally).

Division 3.13.3 Workers compensation—parties for arbitration

3919 Arbitration—necessary parties

(WCR r 28)

(1) A person whose participation is necessary for the court to completely and finally decide all matters in issue in an arbitration must be included as a party in the arbitration.

Example

If both a principal and a contractor, or more than 1 employer, may be liable in relation to the compensable injury, each of them must be included as a respondent.

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

(2) The court may require a person to be included as a party.

Example

If, for an application on behalf of dependants of a deceased worker, a dependant fails to join in the application, the dependant may be included as a respondent.

(3) Each party other than the applicant is a respondent.

(4) The court may decide a claim even if a person is incorrectly included or not included as a party.

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3920 Arbitration—including other parties

(WCR r 29)

(1) An applicant may include someone else as a party to an arbitration by naming the person in the application.

(2) A respondent may include someone else as a party to an arbitration (a ***third-party respondent***) by filing a third-party notice.

Example

If a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease, a respondent employer claiming to be entitled to contribution from another employer may include the other employer as a third-party respondent.

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

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

(3) A party including a person as a third-party respondent must, not later than 14 days after the day the party files the notice—

(a) serve a sealed copy of the notice, the application for arbitration and any answer filed in the arbitration, on the person; and

(b) serve a sealed copy of the notice on each other party to the arbitration.

(4) The court may, at any time, order a party who has included a person as a party in an arbitration to—

(a) serve on the person any document in the arbitration; or

(b) file and serve on the person and each other party an affidavit setting out the basis on which the person has been included.

3921 Arbitration—person may apply to be included as party

(WCR r 30)

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A person may apply to the court to be included as a party to an arbitration.

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

3922 Arbitration—party may apply to be removed as party

(WCR r 31)

A party to an arbitration may apply to the court to be removed as a party.

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

3923 Arbitration—employer not respondent in certain applications by dependant or personal representative

(WCR r 32)

(1) This rule applies if—

(a) a dependant, or the personal representative, of a deceased worker asks that a claim be decided by arbitration; and

(b) the amount of compensation payable to the dependants of the deceased worker is not an issue in the arbitration.

(2) The employer is not a respondent in the arbitration if the employer has paid the amount of compensation—

(a) to the applicant; or

(b) into court to be dealt with as the court directs.

Division 3.13.4 Workers compensation—representation in arbitrations

3924 Arbitration—party may be represented

(WCR r 34)

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(1) A party to an arbitration may be represented by—

(a) a lawyer; or

(b) with leave of the court—

(i) if the party is an injured worker—a member of the party's family; or

(ii) an employee of the party; or

(iii) if the party is a corporation—a director or officer of the corporation; or

(iv) if the party is a member of an organisation—an officer or member of the organisation; or

(v) in special circumstances, anyone else.

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

(2) A person who represents a party with the court's leave must file in the court an authority to act signed by the party.

(3) The court may allow a person other than a lawyer to claim travelling expenses for representing a party in an arbitration.

Note A lawyer representing a party may claim costs and reasonable disbursements, see r 3968 (Workers compensation costs—generally).

(4) Also, the court may allow a worker, or a member of the worker's family who represents the worker, an allowance for time spent at the arbitration.

3925 Arbitration—separate representation of employer for insurer's period on risk

(1) An employer who is a party to an arbitration in relation to a claim may be separately represented in the arbitration for each insurer on risk in relation to the claim.

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(2) This part applies to the employer as if, for each separate representation, the employer were a separate party.

(3) An answer filed under rule 3913 (Application for arbitration—answer by respondent or third-party respondent) in relation to the separate representation must state the period of the representation.

(4) In this rule:

on risk—an insurer is ***on risk*** in relation to a claim if the insurer issued a compulsory insurance policy to the employer for any part of the period in which the injured worker says the injury happened.

Division 3.13.5 Workers compensation—listing procedure for arbitrations

3926 Arbitration listing procedure—certificate of readiness

(MCPD 1/2000 par 5 and 6)

(1) If a party to an arbitration is ready for arbitration, the party must—

(a) complete and sign a certificate of readiness for the party; and

(b) serve a copy of the completed and signed certificate on each other party to the arbitration to be completed and signed by each other party.

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

(2) Each party who is served with a certificate of readiness must—

(a) if the party is ready for arbitration—complete and sign the certificate for the party and return it to the party who served it; or

(b) if the party is not ready for arbitration—return the unsigned certificate to the party who served it.

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(3) If a certificate of readiness is filed in the court for an application for arbitration, the court must include the application in a callover list.

(4) The registrar must tell the parties the date set for the callover.

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

(5) At the callover the court may set a hearing date for the arbitration.

3927 Arbitration listing procedure—certificate of readiness not signed

(MCPD 1/2000 par 8)

(1) This rule applies if—

(a) a party to an arbitration has served a certificate of readiness under rule 3926 (1); and

(b) another party to the arbitration has failed to complete and sign the certificate, and return the completed and signed certificate to the first party, within 21 days after the day the certificate was served on the other party.

(2) The first party may apply to the court for an order that the application be placed in the callover list, even though the certificate of readiness has not been filed in the court.

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

(3) On an application under subrule (2), the court—

(a) must decide whether the application is ready for arbitration; and

(b) may—

(i) give the directions it considers appropriate to have the application made ready for arbitration; or

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(ii) order that the application be placed in the callover list, even though a certificate of readiness has not been filed; or

(iii) adjourn the application.

(4) If the court orders that an application be placed in the callover list even though a certificate of readiness has not been filed, the court must include the application in a callover list.

(5) The registrar must tell the parties the date set for the callover.

(6) At the callover the court may set a hearing date for the application.

Division 3.13.6 Workers compensation—medical reports for arbitrations

3928 Arbitration—service of medical reports

(MCPD 1/2000, par 18, 19 and 20)

(1) Each party to an arbitration must, not later than 28 days before the hearing date for the arbitration, serve on each other party to the arbitration a copy of all medical reports then available to the party—

(a) on which the party intends to rely at the arbitration; or

(b) obtained from a doctor whom the party intends to call at the arbitration.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(2) If a party serves a medical report from a doctor, the party must serve every medical report from that doctor obtained by the party.

(3) If, after serving a medical report under subrule (1), a party obtains a further report from the same doctor, the party—

(a) must serve the further report not later than 3 days after the day the party obtains the report; or

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(b) must not serve the report and tell the other parties that the party does not intend to rely on the reports of that doctor already served.

(4) A doctor's report must not be tendered, and is not admissible, in the arbitration unless it has been served in accordance with this rule, except with—

(a) the court's leave; or

(b) the agreement of all parties to the arbitration.

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

(5) This rule applies subject to any order of the court.

3929 Arbitration—supplementary medical reports

(CPR r 1242)

(1) If a doctor changes in a material way an opinion in a medical report that has been served, the doctor must provide a supplementary medical report (a ***supplementary report***) to the party who engaged the doctor (the ***engaging party***) stating the change and the reason for it.

(2) The doctor may provide the engaging party with other supplementary reports (also a ***supplementary report***).

(3) If a doctor provides a supplementary report under this rule, the engaging party, and any other party having the same interest as the engaging party, must not use an earlier medical report (including an earlier supplementary report) on an issue to which the earlier medical report relates unless the engaging party has served a copy of the supplementary report on all active parties in the proceeding on whom the engaging party served the earlier medical report.

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3930 Arbitration—doctor's evidence to be covered by medical report

(MCPD 1/2000 par 23)

Except with the court's leave or as otherwise agreed by all the parties to an arbitration, the oral evidence in chief of a doctor is not admissible unless the doctor's medical report served in accordance with rule 3928 (Arbitration—service of medical reports) contains the substance of the matters sought to be adduced in evidence.

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

3931 Arbitration—medical reports admissible as evidence of opinion etc

(MCPD 1/2000 par 21)

A medical report served under rule 3928 is admissible as evidence of—

(a) the author's opinion; and

(b) if the author's direct oral evidence of a fact on which the opinion was formed would be admissible as evidence of that fact without further evidence (whether oral or otherwise)—that fact.

3932 Arbitration—requiring attendance of doctor for cross-examination etc

(MCPD 1/2000 par 22)

(1) This rule applies if a medical report is served under rule 3928 by a party to an arbitration.

(2) Another party to the arbitration may, by notice served on the party who served the medical report, require the doctor who prepared the report to be available during the arbitration to be cross-examined on the report.

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(3) The notice must be served not later than 14 days after the day the report is served on the other party.

3933 Arbitration—tender of medical report

(1) A party to an arbitration who is served with a medical report under rule 3928 may tender the report.

(2) If the doctor who prepared the report is required under rule 3932 to be available during the arbitration, the report must not be tendered or otherwise used in the proceeding by any party unless—

(a) the doctor is available as required to be cross-examined on the report; or

(b) the doctor has died; or

(c) the court gives leave.

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

(3) If the doctor is cross-examined on the report, the party using the report may re-examine the doctor.

Division 3.13.7 Workers compensation—medical referees for arbitrations

3934 Arbitration—party may apply for medical referee etc

(WCR r 44; WC Reg s 54)

(1) The court may, on application by a party to an arbitration or on its own initiative, ask a medical referee to—

(a) help the court to assess a medical matter during an arbitration; or

(b) report on a medical matter during, or arising from, the arbitration.

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

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(2) An application must set out the reasons for the application.

Note Rule 6008 (Application in proceeding—filing and service) deals with service of the application.

3935 Arbitration—number of medical referees

(WC Reg s 55)

(1) The same medical referee must help the court throughout an arbitration.

(2) However, another medical referee may help the court if the medical referee is unavailable for any reason.

3936 Arbitration—notice of request to medical referee

(WCR r 45)

If the court, on the application of a party to an arbitration or its own initiative, decides to ask a medical referee to help the court assess, or to report on, a medical matter in an arbitration, the registrar must tell each party, in writing, about the decision.

3937 Arbitration—assessment of worker by medical referee

(WCR r 46)

(1) If a medical referee is to do a medical assessment of an injured worker for an arbitration, the court may order the worker to undergo the assessment.

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

Note 2 The *Workers Compensation Regulation 2002*, div 3.1 deals with how a medical assessment must be done.

(2) If an order is made under this rule, the registrar must tell each other party to the arbitration, in writing, about the order.

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3938 Arbitration—medical referee to review medical evidence etc

(WC Reg s 14)

(1) This rule applies if a medical referee is asked under rule 3934 (Arbitration—party may apply for medical referee etc) to help the court assess, or report on, a medical matter in an arbitration.

(2) The medical referee must—

(a) review the medical evidence about the injured worker; and

(b) review any relevant approved medical guidelines or clinically relevant research about the worker's injury; and

(c) apply the referee's clinical expertise to the review under paragraphs (a) and (b); and

(d) do a medical assessment of the worker, unless the referee considers it unnecessary.

(3) In this rule:

approved medical guidelines—see the *Workers Compensation Regulation 2002*, dictionary.

clinically relevant research—see the *Workers Compensation Regulation 2002*, section 6.

medical evidence—see the *Workers Compensation Regulation 2002*, dictionary.

3939 Arbitration—medical referee's report

(WC Reg s 15)

(1) A medical referee's report for an arbitration must state—

(a) the results of the referee's assessment of the cause or diagnosis of, or the prognosis or recommended medical treatment for, the worker's injury; and

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(b) if the referee's assessment differs from the medical evidence about the worker's injury—

(i) how the assessment differs and why; and

(ii) why the referee's assessment is preferable; and

(c) if the referee considered it unnecessary to assess the worker—why the referee did not consider it necessary.

Example of why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

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

(2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

3940 Arbitration—medical referee's report to be given to parties

(WCR r 47)

If a medical referee prepares a report for an arbitration, the registrar must give a copy of the report to each party to the arbitration.

3941 Arbitration—court may decide claim without medical referee report

(WCR r 48)

This division does not prevent the court from deciding a claim without the help of, or a report from, a medical referee.

Division 3.13.8 Workers compensation—case management meeting for arbitrations

3942 Arbitration—case management generally

(WCR r 20)

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(1) The court may hold a case management meeting with the parties to each application for arbitration.

(2) The purpose of the case management meeting is—

(a) to assess the likelihood of the parties settling the claim before the arbitration is heard; and

(b) to give directions for the arbitration.

3943 Arbitration—time of case management meeting

(WCR r 21)

(1) If the court decides to hold a case management meeting for an arbitration, the registrar must—

(a) set a time and place for the case management meeting; and

(b) tell the parties to the arbitration the time and place set.

(2) If practicable, the registrar must set a time for the case management meeting after—

(a) each respondent's answer is filed; and

(b) each party to the arbitration has served its medical reports under rule 3928.

(3) The registrar may require the parties to sign and file a certificate of readiness under rule 3926 (Arbitration listing procedure—certificate of readiness) before setting a time for the case management meeting.

3944 Arbitration—attendance at case management meeting

(WCR r 22)

(1) Unless the court otherwise orders, the injured worker or, for a claim by a dependant, the dependant or personal representative, must attend the case management meeting.

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

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(2) If the injured worker or dependant is represented, the representative must also attend the case management meeting.

(3) Each other party must be represented at the case management meeting.

(4) A party's representative at the case management meeting must—

(a) have authority to negotiate a settlement on behalf of the party; or

(b) be able to obtain instructions to negotiate a settlement on behalf of the party during the meeting.

(5) This rule does not prevent the court from directing a party to attend the case management meeting.

3945 Arbitration—parties must make genuine effort to settle at case management meeting

(WCR r 23)

(1) The parties must make a genuine effort to settle the claim at the case management meeting.

(2) If the court is satisfied that a party did not make a genuine effort, the court may take this into account when making an order for costs.

3946 Arbitration—settling of claim at case management meeting

(WCR r 24)

If, at a case management meeting, the court considers there are reasonable prospects for the parties to settle the claim, the court—

(a) must promote the settlement of the claim (at the meeting or by referral to other dispute resolution mechanisms); and

(b) may adjourn the arbitration to a stated time or for a stated period to allow the parties to negotiate a settlement.

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3947 Arbitration—settling of claim unlikely at case management meeting

(WCR r 25)

(1) If, at a case management meeting, the court considers it unlikely that the parties will settle the claim, the court must give directions about how the arbitration will be conducted.

(2) In deciding what directions to give, the court must try to facilitate—

(a) hearing the claim as quickly as practicable; and

(b) keeping costs as low as practicable.

3948 Arbitration—record of terms of settlement at case management meeting

(WCR r 27)

If agreement is reached at a case management meeting, the parties must record the agreement in writing in the way required by the registrar.

Division 3.13.9 Workers compensation—conduct of arbitration

3949 Conduct of arbitration—date

(WCR r 38)

The registrar must—

(a) set a date for an arbitration in accordance with the directions (if any) of the court; and

(b) tell the parties the date set.

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3950 Conduct of arbitration—burden of proof on party asserting fact

(WCR r 40)

The burden of proof of a fact that is not admitted in an arbitration is the same whether the applicant is an employer or insurer, an injured worker, or a dependant, or personal representative, of a deceased worker.

3951 Conduct of arbitration—directions about third-party respondents

(WCR r 41)

(1) A party may apply for directions about the procedure to decide a question between a respondent and a third-party respondent.

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

(2) The court may give the directions it considers appropriate.

(3) Without limiting subrule (2), the court may—

(a) give the third-party respondent leave to answer the applicant's claim against the respondent; or

(b) give directions about the extent to which the third-party respondent is to be liable to or be bound by an award in the arbitration.

(4) This rule does not affect an applicant's claim against a respondent.

3952 Conduct of arbitration—directions and orders if remedy against employer and stranger

(WCR r 42)

(1) This rule applies to an arbitration if—

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(a) the injury to the applicant worker happened in circumstances mentioned in the Workers Compensation Act, section 183 (Remedies against employer and stranger); and

(b) a respondent to the application claims that, if compensation is paid under the Workers Compensation Act to the applicant, the respondent is entitled to be indemnified by a person under that section.

(2) The respondent may file a notice of claim naming the person.

(3) The respondent must serve a sealed copy of the notice on the person.

Note The copy of the notice must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(4) If this rule applies, the court may make the orders it considers appropriate.

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

(5) Without limiting subrule (4), the court may give the person leave to answer the applicant's claim against the respondent.

(6) If the person wishes to dispute the notice, the person may appear at the arbitration.

(7) Without limiting subrule (4), the court may, under the subrule, order that the person is not entitled in any future proceeding between the respondent and the person to dispute the validity of the award of the court on the arbitration.

(8) If the person does not appear at the arbitration, the person is taken to admit the validity of the award of the court on the arbitration.

(9) With the consent of the respondent and the person, the court may, under subrule (4)—

(a) if the person's liability to indemnify the respondent is admitted—make an order for the respondent against the

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person, to be enforced only after payment is made by the respondent under the award; or

(b) order that the question of the person's liability to indemnify the respondent be settled by arbitration between the respondent and the person (the ***later arbitration***) after the arbitration between the applicant and the respondent.

(10) If the court makes an order mentioned in subrule (9) (b), the court may make the orders it considers appropriate in relation to the later arbitration.

(11) Without limiting subrules (4) and (10), the court may make any order it considers appropriate about costs between the respondent and the person in the arbitration or the later arbitration.

3953 Conduct of arbitration—directions generally

(1) The court may, at any stage of a proceeding, give any direction about the conduct of the proceeding 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 proceeding on application by a party 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.

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(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).

Division 3.13.10 Workers compensation—submission to award and payments into court

3954 Arbitration—payment into court generally

(WCR r 49)

If a party to an arbitration pays an amount of compensation into court, the registrar must tell each other party to the arbitration, in writing, about the payment.

3955 Arbitration—admission of liability to claim by worker

(WCR r 50)

(1) This rule applies to the arbitration of a claim if the application is by a worker.

(2) An employer may, before the day set for the arbitration, act under subrule (3) or (4).

(3) The employer may file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of the amount of weekly compensation stated in the notice.

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

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(4) The employer may—

(a) file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of a lump sum amount of compensation stated in the notice that is sufficient to cover the employer's liability on the claim; and

(b) pay the amount into court.

(5) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3956 Arbitration—admission of liability to claim for deceased worker

(WCR r 51)

(1) This rule applies to the arbitration of a claim if the application is by a dependant, or the personal representative, of a deceased worker.

(2) An employer may, before the day set for the arbitration—

(a) file in the court a notice stating that the employer admits liability; and

(b) pay into court an amount sufficient to cover the employer's liability on the claim.

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

(3) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3957 Arbitration—denial and submission to award or payment by employer

(WCR r 52)

(1) An employer who is a party to an arbitration may, before the day set for the arbitration—

(a) file in the court a notice stating that—

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(i) the employer does not admit liability on the claim; or

(ii) the employer submits to an award of the court for the payment of the amount of weekly compensation stated in the notice but does not admit liability on the claim; and

(b) pay into court—

(i) an amount sufficient to cover the liability the employer would have on the claim if the employer did not deny liability; or

(ii) the amount stated in the notice.

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

(2) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3958 Arbitration—acceptance of payment by worker

(WCR r 53)

(1) This rule applies if a notice is filed under rule 3955 (Arbitration—admission of liability to claim by worker) in relation to a claim by a worker.

(2) The worker may accept the amount of compensation in satisfaction of the worker's claim by giving written notice of the acceptance to the employer and registrar.

(3) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3955.

3959 Arbitration—acceptance of payment for deceased worker

(WCR r 54)

(1) This rule applies if an employer files a notice under rule 3956 (Arbitration—admission of liability to claim for deceased worker) in

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relation to a claim made by a dependant, or the personal representative, of a deceased worker.

(2) The applicant dependant or personal representative may accept the amount of compensation in satisfaction of the claim by giving written notice of the acceptance to the employer, registrar and any other party.

(3) If a respondent other than the employer is willing to accept the amount of compensation in satisfaction of the claim, the respondent may accept the amount of compensation in the same way as the applicant dependant or personal representative.

(4) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3956.

3960 Arbitration—payment on worker's acceptance

(WCR r 55)

(1) This rule applies if a worker accepts payment of an amount under rule 3958 (Arbitration—acceptance of payment by worker).

(2) The court may order payment of the amount to the worker or the application of the amount for the worker's benefit.

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

(3) The court may order the employer to pay any costs of the worker properly incurred before the worker receives the notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance.

3961 Arbitration—payment on dependant's etc acceptance

(WCR r 56)

(1) This rule applies if an applicant dependant or personal representative and each respondent other than the employer (the

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other parties) accept payment of an amount under rule 3959 (Arbitration—acceptance of payment for deceased worker).

(2) Further proceedings against the employer are stayed and—

(a) if the other parties agree about the apportionment and application of the amount—the court may make an award for the apportionment and application of the amount; or

(b) in any other case—the arbitration may proceed as between the other parties.

(3) The court may order the employer to pay any costs of another party properly incurred before the party receives notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance).

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

3962 Arbitration—no prompt acceptance of submission or payment

(WCR r 57)

(1) This rule applies if a party given a notice under rule 3955, rule 3956 or rule 3957 does not accept the amount of compensation mentioned in the notice within a reasonable time after receiving the notice.

(2) The party may accept the amount at any time before the arbitration starts.

(3) However, if the party accepts the amount, the party is liable to pay the costs the court is satisfied were reasonably incurred by the employer after the day the employer filed the notice or made the payment into court.

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

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(4) The court may order that the costs payable by a party under subrule (3) be set off against any costs payable to the party, or be deducted from any amount awarded to the party.

3963 Arbitration—award not greater than submission or payment

(WCR r 58)

(1) This rule applies if—

(a) an employer to an arbitration has submitted to an award, or paid an amount into court, and given notice under rule 3955, rule 3956 or rule 3957; and

(b) the award on arbitration is not more than the amount submitted to or paid.

(2) The employer is not liable to pay the costs of a party in whose favour the submission or payment is made that were incurred by the party after the party received notice about the submission or payment.

(3) The court may—

(a) order that any costs incurred by the employer after giving notice under rule 3955, rule 3956 or rule 3957 be paid by any party who has not accepted the amount submitted to or paid; and

(b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

(4) The court may also—

(a) order that any costs incurred by a party who accepted the amount submitted to or paid after receiving the notice be paid by any other party who has not accepted the amount; and

(b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

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Division 3.13.11 Workers compensation—awards

3964 Arbitration—award

(WCR r 59)

(1) If the court makes findings in support of an award in favour of a party on an arbitration, the party must prepare draft terms of the award for making by the court.

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

(2) The party preparing draft terms of the award must, not later than 7 days after the day the court makes the findings, give a copy of the draft terms to each other party to the arbitration.

(3) Each other party to the arbitration must, not later than 7 days after the day the party receives a copy of the draft terms—

(a) endorse the party's agreement on the draft terms; or

(b) object to the draft terms.

(4) If the draft terms of the award are agreed, the draft terms must be given to the registrar for making by the court.

(5) A party objecting to the terms must ask the registrar to list the matter before the court.

Note The party must, as soon as possible, ask the registrar to list the matter (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(6) After the award is made by the court, the registrar must serve a sealed copy of the award on each party to the arbitration.

(7) The court may at any time correct a clerical error in an award made on an arbitration.

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3965 Arbitration—setting aside or amending award

(WCR r 60)

(1) The court may, by order, set aside or amend an award made on arbitration if satisfied that—

(a) the award was obtained by fraud or other improper means; or

(b) a person included in the award as a dependant is not a dependant; or

(c) a person who is a dependant is not included in the award.

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

(2) The court may give directions it considers appropriate about the conduct of a proceeding to set aside or amend an award.

(3) The court may give the directions under subrule (2) on application by a party or on its own initiative.

(4) In setting aside or amending an award, the court may make any order it considers just.

(5) An application to set aside or amend an award must not be made more than 6 months after the date of the award without the court's leave.

(6) The court may give leave only if the failure to make the application not later than 6 months after the date of the award was because of mistake, absence of the party from the ACT, or other reasonable grounds.

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Division 3.13.12 Workers compensation—registered agreements

3966 Registered agreement—application for registration

(WCR r 61 and r 62)

(1) This rule applies to an agreement under the Workers Compensation Act, part 4.7 (Registration of agreements for compensation).

(2) A person who is a party to the agreement may apply to the court for registration of the agreement by filing a copy of the agreement in the court.

Note 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 Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).

(3) If the person is also a party to an arbitration about the matter in the agreement, the party may apply to the court for registration of the agreement by filing a copy of the agreement or handing it to the court at the arbitration.

(4) The copy of the agreement filed or handed to the court must—

(a) be signed by the injured worker, the injured worker's representative and each other party or the party's representative; and

(b) include a statement by a lawyer that the lawyer—

(i) has provided independent legal advice about the agreement to the injured worker; and

(ii) based on the lawyer's experience in worker's compensation proceedings and knowledge of the injured worker's claim, considers that the amount of compensation set out in the agreement is not manifestly inadequate.

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(5) Part 6.2 (Applications in proceedings) does not apply to the application to register the agreement.

(6) Unless the court otherwise orders on its own initiative, the application to register must be dealt with without a hearing and in the absence of the parties.

(7) However, at any time before registering an agreement, the court may require a party to provide additional information.

(8) If the court registers the agreement, the registrar must give a sealed copy of the registered agreement, endorsed with the date of registration, to—

(a) each party to the agreement; and

(b) if applicable, any party to the arbitration who is not a party to the agreement.

3967 Registered agreement—application for amendment or cancellation

(WCR r 63)

(1) A party to a registered agreement may apply to the court to amend or cancel the agreement under the Workers Compensation Act, section 81 (Cancellation or amendment of registered agreements) by filing an application in the court.

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

(2) The court may give the directions it considers appropriate about the conduct of the proceeding.

(3) The court may give directions under subrule (2) on application by a party or on its own initiative.

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Division 3.13.13 Workers compensation—costs

3968 Workers compensation costs—generally

(WC Reg s 57 and WCR r 68)

(1) The successful party to an arbitration or related proceeding is entitled to be paid party and party costs (including reasonable disbursements) by the unsuccessful party, unless the court otherwise orders.

(2) The court may make any order about costs between a third-party respondent and another party to an arbitration the court considers appropriate.

(3) However, the court must not award the costs of, or incidental to, an arbitration or related proceeding (including reasonable disbursements) against someone claiming compensation honestly in the arbitration or proceeding.

(4) The costs of, and incidental to, an arbitration or related proceeding are payable at $^{2}/_{3}$ of the prescribed scale of costs, unless the court otherwise orders.

(5) Disbursements are payable in full.

(6) This rule is subject to rule 3962 (Arbitration—no prompt acceptance of submission or payment) and rule 3963 (Arbitration—award not greater than submission or payment).

3969 Workers compensation costs—claim against arbitration award

(WC Reg s 58)

(1) This rule applies if a worker is paid an amount of compensation on arbitration.

(2) The worker's lawyer or the lawyer's agent may claim costs in relation to the arbitration, or claim a lien in relation to the costs,

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from the compensation only if, on application by the worker, lawyer or agent, the court awards the lawyer or agent the costs.

(3) Costs to be awarded to the lawyer or the lawyer's agent are payable at 2/3 of the prescribed scale of costs, unless the court otherwise orders.

(4) Part 2.17 (Costs) applies in relation to costs awarded to a worker's lawyer or the lawyer's agent under this rule as if the lawyer or lawyer's agent were a party to the proceeding entitled to costs.

Division 3.13.14 Workers compensation—appeals

3970 Appeal—order of Supreme Court

(WCR r 65)

(1) This rule applies if an order is made by the Supreme Court on an appeal from a decision or award of the Magistrates Court in an arbitration.

(2) A party may file a sealed copy of the order in the Magistrates Court.

Note The Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).

(3) If the order has effect as a decision or award in favour of a party, the decision or award must be recorded by the registrar of the Magistrates Court as if it were a decision or award of that court.

(4) If the order requires an award be made in favour of a party, the Magistrates Court must make the award.

(5) If the judgment directs a re-hearing or further hearing of the arbitration, the registrar of the Magistrates Court must—

(a) set a date for directions; and

(b) tell the parties the date for directions.

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(6) The Magistrates Court must make any other direction, decision or award that is necessary to give effect to the order.

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Chapter 4 Criminal proceedings

Part 4.1 Criminal proceedings—general

Division 4.1.1 Criminal proceedings—application of ch 2

4000 Criminal proceedings—application of expert witness code of conduct

Division 2.12.1 (Expert evidence generally) applies to a criminal proceeding as if—

(a) a reference to a ***proceeding*** were a reference to a criminal proceeding; and

(b) a reference to an ***active party*** were a reference to each party to the proceeding; and

(c) any other necessary changes were made.

Division 4.1.2 Criminal proceedings—service

4005 Meaning of *accused person* for div 4.1.2—bail applications

(SCR o 80 r 4)

In this division:

accused person includes—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—a person who is an accused person for that division; and

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(b) for any other application in relation to bail—a convicted person.

Note See also r 4700, def ***accused person***.

4006 Criminal proceedings—application of pt 6.8

(SCR o 80 r 5)

The following rules do not apply to a criminal proceeding:

(a) rule 6412 (Service of originating process by post—Magistrates Court);

(b) rule 6413 (Doubtful service—Magistrates Court);

(c) rule 6421 (Service by filing);

(d) division 6.8.5 (Service—particular cases);

(e) rule 6460 (Substituted service);

(f) rule 6461 (Informal service);

(g) rule 6462 (Service on agent);

(h) rule 6463 (Service under contract);

(i) division 6.8.9 (Service outside Australia—general);

(j) division 6.8.10 (Service of subpoenas in New Zealand);

(k) division 6.8.11 (Service of foreign legal process in the ACT).

4007 Criminal proceedings—service on accused person by filing if no address for service

(SCR o 80 r 6)

(1) This rule applies if an accused person in a criminal proceeding—

(a) is not in custody; and

(b) is not represented by a solicitor.

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(2) If the accused person does not have an address for service, a document for which personal service is not necessary may be served on the person by—

(a) filing it; and

(b) sending a copy by prepaid post addressed to the accused person at the person's last-known address.

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

(3) A document filed under subrule (2) (a) must have endorsed on its first page a statement that it is filed under this rule.

4008 Criminal proceedings—service if no-one found at accused person's address for service

(SCR o 80 r 7)

(1) This rule applies if—

(a) an accused person in a criminal proceeding—

(i) is not in custody; and

(ii) is not represented by a solicitor; and

(iii) has an address for service; and

(b) no-one can be found at the address.

(2) Any document in the proceeding (including a document for which personal service is otherwise necessary) may be served on the accused person by leaving a copy at the person's address for service.

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

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4009 Criminal proceedings—service of documents when unrepresented accused person in custody

(SCR o 80 r 8)

(1) This rule applies if an accused person in a criminal proceeding—

(a) is in custody; and

(b) is not represented by a solicitor.

(2) A document required or allowed to be served by the accused person for the proceeding may be served on the registrar for service by the registrar on another party to the proceeding.

(3) A document required or allowed to be served on the accused person for the proceeding may be served by leaving the document with the person in charge of the place where the person is in custody.

(4) If a document mentioned in subrule (3) is served by the registrar, the document may be served—

(a) by sending a copy by prepaid post to the place where the accused person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

Note ***Prepaid post*** is defined in the dictionary.

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Division 4.1.3 Criminal proceedings—enforcement

4020 Criminal proceedings—failure of individual to comply with subpoena etc

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

(1) This rule applies if an individual fails to comply with—

(a) a subpoena; or

(b) an or order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of the individual; and

(b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

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

(3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.

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

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

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4021 Criminal proceedings—failure of corporation to comply with subpoena etc

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

(1) This rule applies if a corporation fails to comply with—

(a) a subpoena; or

(b) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of a named senior officer of the corporation; and

(b) the production of the senior officer as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the senior officer until released by the court.

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

(3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

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

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

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Division 4.1.4 Criminal proceedings—other provisions

4050 Criminal proceedings—production of person in custody

(SCR o 80 r 30)

(1) The court may make the following orders:

(a) an order requiring the production of a person who is in custody;

(b) an order about the continuing custody of a person who is in custody.

Note See approved form 4.1 (Order for production of person in custody) A2006-375.

(2) The court may order that the person in custody be produced—

(a) in person; or

(b) by audiovisual link or audio link.

(3) An order under this rule may be made on the application of a party or on the court's initiative.

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

4051 Criminal proceedings—defence response to prosecutor's opening address

(SCR o 80 r 31)

If an accused person, or the person's counsel, makes an opening response to the prosecutor's opening address in a trial, the response—

(a) must identify the acts, facts, matters and circumstances with which issue is taken in the prosecutor's opening address and the basis on which issue is taken; and

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(b) must not state facts that cannot be supported by evidence to be presented, or that has been presented, at the trial.

4052 Criminal proceedings—execution of documents

(SCR o 80 r 32)

The registrar or a justice of the peace may witness any document required or allowed to be entered into under an order, decision or other sentence (however described) of the court in a criminal proceeding.

4053 Criminal proceedings—inspection of registry files

(SCR o 80 r 33)

(1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry in a criminal proceeding.

Note A fee may be determined under the *Court Procedures Act 2004* for this provision.

(2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person appears to the registrar to have a sufficient interest in the document or the court gives leave:

(a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;

(b) an affidavit that has not been read in court;

(c) a part of an affidavit ruled to be inadmissible in evidence;

(d) an admission that has not been admitted into evidence;

(e) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

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(f) a deposition taken before an examiner;

(g) a document filed in support of an application made in the absence of a party;

(h) a written submission that has not been read in court;

(i) an unsworn statement of evidence;

(j) a draft indictment filed by the prosecution;

(k) a case statement filed by the prosecution until read in court;

(l) a questionnaire completed by the parties;

(m) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

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

(3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

(5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production.

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(6) Before considering an application for leave under subrule (2), the court may require the applicant for leave to do either or both of the following:

(a) give notice of the application for leave to a party to the relevant proceeding or another interested person;

(b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

(7) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

4054 Criminal proceedings—certificate of conviction

(SCR o 80 r 34)

(1) For a criminal proceeding, the registrar may issue a certificate of conviction.

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(2) In this rule:

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

(a) a conviction recorded by the court for the person; or

(b) a finding of guilt recorded by the court for the person.

4055 Criminal proceedings—preparation of judgments

(SCR o 80 r 35)

(1) In this rule:

judgment means sentence or other order.

(2) At any time after a judgment has been given in a criminal proceeding, a party may give a draft of the judgment to the registrar.

Note See

- approved form 4.2 (General form of order—criminal proceeding) AF2006-376
- approved form 4.3 (General form of judgment—criminal proceeding) AF2006-377.

(3) If an appeal is made from the judgment, or an application is made in relation to the judgment, the appellant or applicant must give a draft of the judgment to the registrar, unless the judgment has been already entered.

(4) The registrar—

(a) may approve a draft of the judgment given to the registrar, with or without amendment; and

(b) must, on the filing of the engrossed judgment with the approved draft, enter the judgment.

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Part 4.2 Magistrates Court criminal proceedings

Division 4.2.1 Magistrates Court criminal proceedings—preliminary

4300 Definitions—pt 4.2

In this part:

conviction includes a finding of guilt recorded by the court for a person.

defendant means a person against whom an information is laid.

order includes a conviction or sentence.

4301 Application—pt 4.2

This part applies to a criminal proceeding in the Magistrates Court.

Division 4.2.2 Magistrates Court criminal proceedings—setting aside orders

4310 Magistrates Court order made in absence of party may be set aside—general

(MCR s 10 (1) and (2))

(1) This rule applies if a party does not appear in a criminal proceeding and an order is made.

(2) However, this rule does not apply if the defendant—

(a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and

(b) did not withdraw the plea before the order was made; and

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(c) did not appear in the proceeding.

(3) On application by the party who did not appear, the court may set aside the order.

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

4311 Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence

(MCR s 10 (3))

(1) This rule applies to an order made against a defendant in the defendant's absence if—

(a) the defendant was served with a summons under the *Magistrates Court Act 1930*, section 116B (Service of summons for prescribed offence); and

(b) any of the following subparagraphs apply:

(i) the defendant did not return the notice of intention to defend form or the plea of guilty form to the registrar before the day when the defendant was required by the summons to appear before the court;

(ii) the court has previously, in the absence of the defendant, adjourned the hearing under the *Magistrates Court Act 1930*, section 116E (3) (Procedure if plea of guilty entered), and the court is satisfied that a notice under that subsection did not come to the defendant's attention before the conviction was recorded or the order made;

(iii) the court is satisfied that a notice mentioned in the *Magistrates Court Act 1930*, section 116F (Procedure if notice of intention to defend given) or section 116H (Restricted penalties under pt 3.7) did not come to the defendant's attention before the date set under the section for the hearing of the proceeding.

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(2) On the application of the defendant, the court must set aside the order.

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

4312 Magistrates Court order made in absence of party may be set aside—other offences

(MCR s 10 (4))

(1) This rule applies to an order made in the absence of a party if rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence) does not apply to the order.

(2) On application by the party, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note An example is part of 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).

4313 Magistrates Court conviction made in absence of party set aside—warrant may be set aside

(MCR s 10 (5))

(1) This rule applies if the court sets aside a conviction in a criminal proceeding under any of the following rules:

- rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
- rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence)
- rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).

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(2) The court must set aside a warrant issued under the *Magistrates Court Act 1930* because of the conviction, unless the warrant has been executed before the conviction is set aside.

4314 Magistrates Court conviction made in absence of party set aside—hearing

(MCR s 10 (6) and (7)

(1) This rule applies if the court has set aside a conviction in a criminal proceeding under any of the following rules:

- rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
- rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence)
- rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).

(2) The court may—

(a) on giving the parties reasonable notice, hear and decide the proceeding; or

(b) adjourn the hearing of the proceeding to a time and place the court considers appropriate.

(3) If the court adjourns the hearing of the proceeding under subrule (2) (a), the court may direct the registrar to tell the parties the date set for the adjourned hearing.

4315 Magistrates Court order made in absence of party may be set aside—application by informant

(MCR s 11)

(1) This rule applies if a defendant does not appear in a criminal proceeding and an order is made against the defendant.

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(2) However, this rule does not apply if the defendant—

(a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and

(b) did not withdraw the plea before the order was made; and

(c) did not appear in the proceeding.

(3) On application by the informant, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 An example is part of 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).

(4) If, under this rule, the court sets aside a conviction, the court must dismiss the information and set aside any warrant issued under the *Magistrates Court Act 1930* because of the conviction.

Division 4.2.3 Magistrates Court criminal proceedings—witnesses

4330 Magistrates Court witness—informant may request attendance

(MCR s 12)

(1) The informant may, by letter sent by a form of post that requires a signature on receipt, request a person to attend to give evidence as a witness at the hearing of an information.

Note See approved form 4.12 (Request to attend hearing as witness) AF2006-505.

(2) The letter must—

(a) set out the time and place for the hearing; and

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(b) be accompanied by an undertaking to attend the hearing to be signed by the person and returned to the informant by the date stated in the undertaking; and

Note See approved form 4.13 (Undertaking to attend as a witness) AF2006-506.

(c) be accompanied by a form to be completed by the person to claim the person's reasonable expenses incurred in attending the hearing.

Note See approved form 4.14 (Claim for expenses by witness) AF2006-507.

4331 Magistrates Court witness—expenses

(MCR s 21)

A person who attends the hearing of a criminal proceeding as a witness is entitled to be paid witness expenses assessed in accordance with schedule 4.

Division 4.2.4 Magistrates Court criminal proceedings—enforcement of fines

4340 Definitions—div 4.2.4

In this division:

enforcement hearing subpoena—see rule 4341 (2).

enforcement hearing warrant—see rule 4345 (2).

fine—see the *Magistrates Court Act 1930*, section 146.

fine defaulter—see the *Magistrates Court Act 1930*, section 146.

outstanding fine—see the *Magistrates Court Act 1930*, section 146.

4341 Enforcement of fine—enforcement hearing

(1) This rule applies to a person who is liable to pay a fine to the court.

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(2) The registrar may—

(a) set a date for an enforcement hearing; and

(b) by subpoena (an ***enforcement hearing subpoena***), require the person to attend the court, at the time and place stated in the subpoena—

(i) to answer questions and give information; and

(ii) to produce the documents or other things (if any) stated in the subpoena.

(3) The registrar may adjourn an enforcement hearing from time to time and may, by order, require the person to attend an adjourned enforcement hearing.

4342 Enforcement of fine—service of enforcement hearing subpoena

(1) An enforcement hearing subpoena must be served on a person who is liable to pay a fine at least 14 days before the date set for the enforcement hearing.

(2) A copy of the form of the statement to be completed in accordance with rule 4343 must be served with the enforcement hearing subpoena.

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

4343 Enforcement of fine—statement of person's financial position

(1) At least 8 days before the date set for the enforcement hearing, the person who is liable to pay a fine must file in the court a sworn statement of the person's financial position.

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(2) If the person receives regular payments (for example, wages or social security benefits), the statement of financial position must include—

(a) the dates the last 4 payments were received; and

(b) if the payments were paid to the person by payment into an account with a financial institution—a statement to that effect, and the account number and any other details necessary to identify the account.

Note An example is part of 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) If the person, without reasonable excuse, contravenes the subpoena by failing to complete, swear or file a statement of the person's financial position in accordance with this rule, the person may be dealt with for contempt of court.

(4) Subrule (3) does not limit any other power of the court in relation to the contravention.

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

4344 Enforcement of fine—determining capacity to pay fine

(MCR s 18 (1) and (2))

(1) A person who is liable to pay a fine may—

(a) be examined orally on oath about—

(i) the person's assets, liabilities, expenses and income; and

(ii) any other means the person has of paying the fine; and

(ii) the person's financial circumstances generally; and

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

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(b) be required to produce any document substantiating anything relevant to—

(i) the person's assets, liabilities, expenses and income; and

(ii) any other means the person has of paying the fine; and

(iii) the person's financial circumstances generally.

(2) The examination—

(a) must be conducted by the registrar; and

(b) may be conducted in open court or in the absence of the public, as the registrar directs.

4345 Enforcement of fine—enforcement hearing warrant issue

(MCR s 9 and 18 (3))

(1) This rule applies if—

(a) a person who is liable to pay a fine is required under this division to attend an enforcement hearing or an adjourned enforcement hearing; and

(b) the person fails to attend the hearing as required.

(2) The registrar may issue a warrant (an ***enforcement hearing warrant***) ordering an enforcement officer to apprehend the person and bring the person before the registrar to be examined at an enforcement hearing under rule 4344 if the registrar—

(a) is satisfied that the person was served with the subpoena or was otherwise aware that the person was required by the enforcement hearing subpoena to attend the hearing as required by the subpoena; and

(b) considers that the person does not have a reasonable excuse for not attending the hearing.

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(3) Rule 2111 (Enforcement hearing—enforcement hearing warrant contents etc) applies to an enforcement hearing warrant issued under this rule as if a reference to rule 2109 were a reference to rule 4344.

(4) A person apprehended under an enforcement hearing warrant must be brought before the registrar to be examined at an enforcement hearing under rule 4344.

(5) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom an enforcement hearing warrant has been issued by the court.

4346 Enforcement of fine—orders

(MCR s 19)

(1) The registrar may, if satisfied that a fine defaulter has the capacity to pay an outstanding fine—

(a) make a seizure and sale order under division 2.18.5 (Enforcement of money orders—seizure and sale orders) as applied by rule 4347 against personal property of the fine defaulter to enforce the outstanding fine; or

(b) make a debt redirection order under division 2.18.6 (Enforcement of money orders—debt redirection orders generally) as applied by rule 4347 in relation to the outstanding fine; or

(c) make a regular redirection order under division 2.18.7 (Enforcement of money orders—regular redirections from financial institutions) as applied by rule 4347 in relation to the outstanding fine; or

(d) make an earnings redirection order under division 2.18.8 (Enforcement of money orders—earnings redirection orders) as applied by rule 4347 in relation to the outstanding fine.

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(2) If the registrar makes a seizure and sale order in relation to 2 or more outstanding fines payable by a fine defaulter, the order operates in relation to the amount of each outstanding fine separately.

4347 Application of pt 2.18

(MCR s 20)

(1) The purpose of this rule is to ensure, as far as practicable, that—

(a) a seizure and sale order under rule 4346 has the same effect as a seizure and sale order in relation to an enforcement debtor; and

(b) a debt redirection order under rule 4346 has the same effect as a debt redirection order in relation to an enforcement debtor; and

(c) a regular redirection order under rule 4346 has the same effect as a regular redirection order in relation to an enforcement debtor; and

(d) an earnings redirection order under rule 4346 has the same effect as an earnings redirection order in relation to an enforcement debtor.

(2) For subrule (1) (a), division 2.18.5 (Enforcement of money orders—seizure and sale orders) applies, with any necessary changes, and in particular, as if the following rules were omitted:

- rule 2200 (2) (Seizure and sale order—making);
- rule 2201 (Seizure and sale order—application);
- rule 2208 (Seizure and sale order—application for instalment order stays sale of seized property);
- rule 2210 (Seizure and sale order—seizure of real property);
- rule 2211 (Seizure and sale order—enforcement debtor not to deal with real property);

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- rule 2214 (Seizure and sale order—suspension etc of enforcement);
- rule 2215 (Seizure and sale order—agreements to withdraw and re-enter);
- rule 2217 (1) (b) and (2) (Seizure and sale order—setting reasonable amount);
- 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 2223 (3) (Seizure and sale order—amounts received);
- rule 2230 (Seizure and sale order—documents giving effect to sale);
- rule 2235 (2) and (4) (Seizure and sale order—order for disposal and return of property to enforcement debtor).

(3) For subrule (1) (b), division 2.18.6 (Enforcement of money orders—debt redirection orders generally) applies, with any necessary changes, and in particular, as if the following rules were omitted:

- rule 2301 (Debt redirection order—making);
- rule 2302 (Debt redirection order—application).

(4) For subrule (1) (c), division 2.18.7 (Enforcement of money orders—regular redirections from financial institutions) applies, with any necessary changes, and in particular, as if rule 2332 (Regular redirection order—making) were omitted.

(5) For subrule (1) (d), division 2.18.8 (Enforcement of money orders—earnings redirection orders) applies, with any necessary changes, and in particular, as if the following rules were omitted:

- rule 2350 (Earnings redirection order—making);
- rule 2351 (Earnings redirection order—application).

(6) The provisions applied by subrules (2), (3), (4) and (5) have effect as if, in addition to any other necessary changes—

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(a) a reference to a seizure and sale order were a reference to a seizure and sale order under rule 4346; and

(b) a reference to a debt redirection order were a reference to a debt redirection order under rule 4346; and

(c) a reference to a regular redirection order were a reference to a regular redirection order under rule 4346; and

(d) a reference to an earnings redirection order were a reference to an earnings redirection order under rule 4346; and

(e) a reference to an enforceable money order of the court were a reference to an outstanding fine; and

(f) a reference to an enforcement debtor were a reference to a fine defaulter; and

(g) a reference to an enforcement creditor were a reference to the Territory.

(7) If, under a provision applied by this rule, the registrar's power to do anything depends on the enforcement creditor doing something, the registrar may exercise the power on his or her own initiative.

(8) The registrar must not make an instalment order for the payment of a fine or administrative fee under a provision applied by this rule.

4348 Enforcement of fine—security for payment

(MCR s 71 and 72)

(1) This rule applies if, under the *Magistrates Court Act 1930*, section 148 (Court may allow time to pay), the court has ordered a person to give security with or without sureties for the payment of an amount.

(2) If the person does not enter into the security at the court house when the order is made, the person before whom the security is entered must send the security to the court.

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Part 4.3 Supreme Court criminal proceedings

Division 4.3.1 Supreme Court criminal proceedings—preliminary

4700 Definitions—pt 4.3

(SCR o 80 r 1)

In this part:

accused person means a person charged with an indictable offence—

(a) who is committed to the court for trial or sentence; or

(b) for whom an indictment has been filed in the court.

Note For applications in relation to bail, see also def ***accused person*** in the following rules:

- r 4005 (Meaning of ***accused person*** for div 4.1.2—bail applications)
- r 4720 (Meaning of ***accused person*** for div 4.3.3).

appearance date—see rule 4731.

case statement—see rule 4732.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

(a) after the person has been convicted or found guilty; or

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(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)

2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, section 13 (Good behaviour orders)

3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

Note An example is part of 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).

4701 Application—pt 4.3

This part applies to a criminal proceeding in the Supreme Court.

Division 4.3.2 Supreme Court criminal proceedings—representation

4705 Meaning of *criminal proceeding*—div 4.3.2

(SCR o 80 r 9)

In this division:

criminal proceeding does not include an application in relation to bail.

Note See also dict, def ***criminal proceeding***.

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4706 Supreme Court criminal proceedings—notice of solicitor acting

(SCR o 80 r 10)

(1) If a solicitor begins acting for an accused person in a criminal matter after the matter becomes a criminal proceeding in the court, the solicitor must, as soon as practicable, but not later than 14 days after the day the solicitor begins acting—

(a) file a notice that the solicitor is acting for the accused person; and

Note See approved form 4.4 (Supreme Court criminal proceeding—notice of solicitor acting) AF2006-378.

(b) serve a copy of the notice on—

(i) the director of public prosecutions; and

(ii) any solicitor who was acting for the accused person immediately before the notice was filed.

(2) A notice under subrule (1) must contain an address for service.

(3) If a solicitor acts for 2 or more accused people in the same proceeding and at the same time, the solicitor may file a single notice under subrule (1) that lists all the people the solicitor acts for in the proceeding.

(4) If a solicitor files a notice under subrule (1) in relation to an accused person, the solicitor is taken to act for the accused person until—

(a) another solicitor files a notice under subrule (1) in relation to the accused person; or

(b) the solicitor is given leave to withdraw under rule 4708, and complies with rule 4708 (5).

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4707 Supreme Court criminal proceedings—change of solicitor

(SCR o 8 r 2; MC(CJ)R s 486 (1) and (2) and s 487; NSW r 7.26; Qld r 987)

(1) An accused person may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the person.

(2) If an accused person appoints another solicitor, the newly appointed solicitor must—

(a) file a notice of the change of solicitor; and

(b) serve a stamped copy of the notice on—

(i) the director of public prosecutions; and

(ii) any solicitor who was acting for the accused person immediately before the notice was filed.

Note See approved form 4.5 (Supreme Court criminal proceeding—notice of change of solicitor) AF2006-379.

(3) The notice must state the accused person's address for service.

(4) The accused person's former solicitor remains the solicitor on the record until the newly appointed solicitor complies with subrule (2).

4708 Supreme Court criminal proceedings—removal of solicitor by court

(SCR o 8 r 5; Qld r 988)

(1) This rule applies if a solicitor for an accused person on the record in a proceeding loses the capacity to act as a solicitor or cannot be found, but a notice of change of solicitor or notice that the solicitor is no longer acting is not filed.

(2) An accused person may apply to the court for the removal of the solicitor's name from the record.

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

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(3) On application under subrule (2), the court may order that the solicitor's name be removed from the record.

4709 Supreme Court criminal proceedings—solicitor removed from roll etc

(Qld r 989)

(1) This rule applies if a solicitor's name is removed from the local roll under the *Legal Profession Act 2006* or a solicitor's local practising certificate under that Act is cancelled or suspended.

(2) If a receiver is appointed under the *Legal Profession Act 2006* for the solicitor's practice, a copy of all processes and other documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.

(3) If a receiver is not appointed, a copy of all processes and other documents to be served on an accused person in a proceeding must be served on the accused person's home or business address until another solicitor is appointed.

4710 Supreme Court criminal proceedings—solicitor's instructions to act for accused person ended

(SCR o 80 r 11)

(1) This rule applies to a solicitor if the solicitor's instructions to act for an accused person in a criminal proceeding are ended before the proceeding is finally disposed of in the court.

Note Rule 5537 (Appeals to Court of Appeal—solicitor's instructions to act for convicted person ended) applies to a solicitor if the solicitor's instructions to act for a convicted person who is a party to an application or appeal in the Court of Appeal are ended.

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(2) The solicitor must—

(a) file a notice stating that the solicitor is no longer acting for the accused person; and

(b) serve a stamped copy of the notice on each party to the proceeding (including the accused person).

Note See approved form 4.6 (Supreme Court criminal proceeding—notice that solicitor no longer acting) AF2006-380.

(3) The solicitor must file and serve the notice as soon as practicable, but not later than 14 days after the day the solicitor's instructions are ended.

(4) In this rule:

accused person includes a person who has been convicted of an offence and is awaiting sentence for the offence in the court.

Note See also r 4700, def ***accused person***.

court does not include the Court of Appeal.

4711 Supreme Court criminal proceedings—withdrawal of solicitor

(SCR o 80 r 12)

(1) A solicitor may withdraw from acting for an accused person only with the court's leave.

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

(2) If the solicitor wants to withdraw from acting for the accused person during the person's trial or sentence hearing, the application may be made orally to the court.

(3) The application must—

(a) state the solicitor making the application; and

(b) state briefly the order sought.

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(4) A stamped copy of the application must be served—

(a) on the accused person—

(i) personally; or

(ii) by registered letter addressed to the person's last-known address; or

(iii) if the court orders another way of service—as ordered; and

(b) on the director of public prosecutions.

(5) If the court gives the solicitor leave to withdraw, the solicitor must—

(a) file a notice of withdrawal; and

(b) serve a stamped copy of the notice on the accused person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a stamped copy of the notice on the director of public prosecutions.

Note See approved form 4.7 (Supreme Court criminal proceeding—notice of withdrawal of solicitor) AF2006-381.

4712 Supreme Court criminal proceedings—handing over depositions

(SCR o 80 r 13)

If a solicitor ceases to act for an accused person, the solicitor must, as soon as practicable after ceasing to act, give the depositions (if any) the solicitor has received under the *Magistrates Court Act 1930*, section 108 (Accused person may obtain copies of depositions etc) to—

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(a) if the solicitor has received a notice under rule 4706 (Supreme court criminal proceeding—notice of solicitor acting) from another solicitor—the other solicitor; or

(b) if the solicitor has not received a notice under rule 4706—the accused person.

Division 4.3.3 Supreme Court criminal proceedings—bail

4720 Meaning of *accused person*—div 4.3.3

(SCR o 80 r 14)

In this division:

accused person—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—means a person who is an accused person for that division; and

Note ***Accused person*** is defined for that division in the *Bail Act 1992*, dict.

(b) for any other application in relation to bail—includes a convicted person.

Note See also r 4700, def ***accused person***.

4721 Supreme Court bail application in relation to accused person

(SCR o 80 r 15)

(1) An application in relation to bail by an accused person must comply with this division.

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

Note 2 See approved form 4.8 (Supreme Court application in relation to bail) AF2006-382.

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(2) The application must—

(a) state the accused person's name; and

(b) state briefly the order (or orders) sought; and

(c) state briefly particulars of the grounds relied on in support of the order (or orders) sought.

(3) The application must be supported by an affidavit stating—

(a) the charges (if any) outstanding against the accused person; and

(b) if the accused person has been committed for sentence or trial to the court—that fact, and the date the person was committed; and

(c) if the accused person has been convicted or found guilty of an offence relevant to the application—that fact, the offence and the date the person was convicted or found guilty; and

(d) if the accused person has been sentenced for an offence relevant to the application—that fact, the sentence and the date the person was sentenced; and

(e) if bail has previously been refused for an offence relevant to the application—the reasons bail was refused; and

(f) the accused person's date of birth; and

(g) whether the accused person has a criminal record; and

(h) if the accused person is in custody—the day the person was placed in custody; and

(i) the day the matter is next listed before a court; and

(j) the informant's name; and

(k) if the *Bail Act 1992*, section 9C (Bail for murder), section 9D (Bail for serious offence committed while charge for another

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pending or outstanding) or section 9E (Bail for person sentenced to imprisonment) applies in relation to the application—the special or exceptional circumstances that exist favouring the grant of bail; and

(l) if a court has made a decision in relation to an application for bail by the accused person and the application is a further application for bail—

(i) whether the accused person was represented by a lawyer at the hearing of the person's first application to a court for bail in relation to the offence with which the person is charged; or

(ii) any significant change in circumstances relevant to the granting of bail since the most recent application to a court for bail; or

(iii) any fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to a court for bail; and

Note See the *Bail Act 1992*, s 19 (General provisions relating to court bail).

(m) if the application is for review of a decision in relation to bail—

(i) any significant change in circumstances relevant to the granting of bail; or

(ii) the availability of fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to the court for bail; and

Note See the *Bail Act 1992*, s 43 (Power of Supreme Court to review).

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(n) the conditions (if any) on which bail is sought.

Note See approved form 4.9 (Supreme Court application in relation to bail by accused person—form of affidavit) AF2006-383.

(4) The accused person must serve a stamped copy of the application and supporting affidavit on the director of public prosecutions.

4722 Supreme Court bail application by informant

(SCR o 80 r 16)

(1) An application in relation to bail by an informant must comply with this division.

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

Note 2 See approved form 4.8 (Supreme Court application in relation to bail) AF2006-382.

(2) The application must—

(a) state the accused person's name; and

(b) state briefly the order (or orders) sought; and

(c) state briefly particulars of the grounds relied on in support of the order (or orders) sought.

(3) The application must be supported by an affidavit.

(4) The informant must serve a stamped copy of the application and supporting affidavit on the accused person.

Division 4.3.4 Supreme Court criminal proceedings—pre-trial procedure

4730 Application—div 4.3.4

(SCR o 80 r 17)

This division applies if an accused person is committed to the Supreme Court for trial or sentence.

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4731 Supreme Court criminal proceedings—appearance of accused person

(SCR o 80 r 18)

The accused person must appear before the court on the date (the ***appearance date***) set as a condition of bail or by the court or Magistrates Court.

4732 Supreme Court criminal proceedings—appearance when committed for sentence

(SCR o 80 r 19)

If the accused person is committed for sentence, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) if the accused person pleaded guilty in the Magistrates Court—confirm the accused person's plea of guilty; and

(c) direct the director of public prosecutions to file in the court a statement of the facts (the ***case statement***) on which the prosecution relies; and

(d) direct the director of public prosecutions to give a copy of the case statement to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and

(e) ask the parties if the matter is urgent; and

(f) set a date for sentence; and

(g) make orders in relation to pre-sentence reports; and

(h) ask if any variation of bail is sought; and

(i) deal with any application to suppress the accused person's name; and

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(j) give any other directions that the court considers appropriate.

4733 Supreme Court criminal proceedings—appearance when committed for trial

(SCR o 80 r 20)

If the accused person is committed for trial, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) ask the accused person whether the person has decided to have the trial by judge alone; and

Note 1 See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in criminal proceedings).

Note 2 See approved form 4.11 (Supreme Court criminal proceeding—election for trial by judge alone) AF2006-504.

(c) direct the director of public prosecutions to file in the court—

(i) a draft indictment; and

(ii) the case statement; and

(iii) a list of proposed prosecution witnesses; and

(d) direct the director of public prosecutions to give a copy of the draft indictment, case statement and list of proposed prosecution witnesses to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and

(e) direct the parties to complete and file in the court a pre-trial questionnaire by the date set by the court; and

Note See approved form 4.10 (Supreme Court criminal proceeding—pre-trial questionnaire) AF2006-384.

(f) ask the parties if the matter is urgent; and

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(g) ask about any unusual features of the matter; and

(h) ask about the length of the trial; and

(i) ask if any variation of bail is sought; and

(j) deal with any application to suppress the accused person's name; and

(k) give any other directions that the court considers appropriate.

4734 Supreme Court criminal proceedings—pre-trial questionnaire

(SCR o 80 r 21)

If the court directs the parties to complete a pre-trial questionnaire—

(a) the director of public prosecutions must—

(i) complete the column of the questionnaire headed 'DPP'; and

(ii) give the completed questionnaire to the accused person or, if the accused person is represented by a solicitor, the solicitor—

(A) at least 7 days before the day the questionnaire must be filed in the court; or

(B) if the court sets another date—by that date; and

(b) the accused person or the person's lawyer must—

(i) complete the column of the questionnaire headed 'Accused'; and

(ii) file the completed questionnaire in the court by the date set by the court.

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4735 Supreme Court criminal proceedings—pre-arraignment conference

(SCR o 80 r 22)

(1) After the pre-trial questionnaire is completed by the accused person or the person's solicitor, and filed in the court, the registrar must—

(a) set a date and time for a pre-arraignment conference; and

(b) tell the parties the date and time for the conference.

(2) At the pre-arraignment conference, the registrar may—

(a) give directions about matters raised in the pre-trial questionnaire, including a direction that the matter be listed before a judge; and

(b) ask the parties about the length of the trial; and

(c) consider whether it is appropriate for the matter to be dealt with as a reserve trial and, if so, give appropriate directions; and

(d) set a date, at least 14 days after the day of the pre-arraignment conference, for arraignment of the accused person before the court; and

(e) adjourn the conference to another date.

(3) The registrar may refer a matter to a judge, if a party does not comply with directions made by the registrar or the court.

4736 Supreme Court criminal proceedings—arraignment

(SCR o 80 r 23)

(1) On the arraignment of the accused person, the director of public prosecutions may present an indictment in relation to the person to the court.

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(2) If an indictment is presented by the director of public prosecutions, the accused person must enter a plea.

Note The *Crimes Act 1900*, s 282 provides that, if a person refuses to plead, the court may order a plea of not guilty to be entered on behalf of the person. The plea has the same effect as if the person had pleaded not guilty.

(3) If the accused person enters a plea of guilty, the court must set a date for sentence.

(4) If the accused person enters a plea of not guilty, the court must—

(a) set a date for trial; and

(b) set a date for the pre-trial directions hearing; and

(c) order the accused person to appear before the court on the date set for the pre-trial directions hearing.

4737 Supreme Court criminal proceedings—pre-trial directions hearing

(SCR o 80 r 24)

At the pre-trial directions hearing, the court may—

(a) confirm the trial length; and

(b) hear and decide any preliminary or other matters.

Division 4.3.5 Supreme Court criminal proceedings—pre-trial applications

4750 Supreme Court criminal proceedings—application to set aside or stay proceeding

(SCR o 80 r 25)

(1) An accused person may apply to set aside or stay any criminal proceeding against the person.

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

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(2) The application must be made and heard before the accused person is arraigned.

(3) If the application is dismissed, the accused person may make a further application under subrule (1) in relation to the same or similar charges only if—

(a) there has been a significant change of circumstances; and

(b) the application is limited to the change of circumstances.

4751 Supreme Court criminal proceedings—application for separate trials

(SCR o 80 r 26)

An accused person may apply for—

(a) separate trials of different charges alleged against the person in the same indictment; and

(b) a separate trial from that of someone else committed for trial and charged in the same indictment.

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

4752 Supreme Court criminal proceedings—other pre-trial applications

(SCR o 80 r 27)

An application made in the course of a criminal proceeding must be made in writing if—

(a) the application—

(i) is made before the prosecution's case opens or witnesses are called; and

(ii) raises any question about the admissibility of evidence, or any other question of law affecting the conduct of the trial, or

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(b) the application would postpone or delay a trial that has been listed for hearing if it were granted; or

(c) the application cannot reasonably be made without notice to other parties; or

(d) the application is directed by a judge to be in writing.

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

4753 Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752

(SCR o 80 r 28)

(1) This rule applies to an application under any of the following rules:

- rule 4750 (Supreme Court criminal proceedings—application to set aside or stay proceeding)
- rule 4751 (Supreme Court criminal proceedings—application for separate trials)
- rule 4752 (Supreme Court criminal proceedings—other pre-trial applications).

(2) The application must—

(a) state the party making the application; and

(b) state briefly the order (or orders) sought; and

(c) state briefly particulars of the grounds relied on that are sufficient for any other party to decide whether to call evidence to resolve the issues raised; and

(d) state briefly any questions of law; and

(e) be supported by an affidavit filed with the application stating—

(i) any evidence necessary to establish the grounds of the application; and

(ii) any evidence that the applicant wants the court to receive.

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(3) A stamped copy of the application and any supporting affidavits must be served on all other parties as soon as possible after the notice is filed but at least 14 days before the date set for the trial to which the application relates.

(4) This rule is subject to rule 4750 (2) (Supreme Court criminal proceedings—applications to set aside or stay proceedings).

(5) If the trial date has been set, the trial date may be set as the return date for the application and the application may be heard by the court immediately before the trial starts.

Division 4.3.6 Supreme Court criminal proceedings—other provisions

4780 Supreme Court criminal proceedings—arraignment dates

(SCR o 80 r 29)

The registrar must publish a list of arraignment dates for each year.

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