



Australian Capital Territory

# **Magistrates Court (Civil Jurisdiction) Act 1982**

**A1982-54**

**Republication No 12**

**Effective: 20 April 2004 – 29 April 2004**

Republication date: 20 April 2004

Last amendment made by A2004-18

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Magistrates Court (Civil Jurisdiction) Act 1982* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 20 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 20 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

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Australian Capital Territory

# **Magistrates Court (Civil Jurisdiction) Act 1982**

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An Act relating to the civil jurisdiction of the Magistrates Court

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R12  
20/04/04

Magistrates Court (Civil Jurisdiction) Act 1982  
Effective: 20/04/04-29/04/04

page 1

## Part 1 Preliminary

### 1 Short title

This Act may be cited as *the Magistrates Court (Civil Jurisdiction) Act 1982*.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***bailiff*** means a bailiff of the court.

***chief solicitor*** means the person for the time being occupying, or performing the duties of, the office of Chief Solicitor in the public service.

***copy***, in relation to a document to be served in proceedings, means—

- (a) if the document has been filed—a true copy sealed or stamped with the seal of the court; and
- (b) in any other case—a true copy.

***corporation*** includes a body of persons that may by law sue or be sued, whether in its own name or in the name of an officer or other person.

***costs***, in relation to proceedings, means costs between party and party of and incidental to the proceedings.

***court*** means the Magistrates Court.

***cross-claim*** means a claim (whether by way of counterclaim, cross-action, set-off or otherwise) pleaded in a notice of grounds of defence filed by a defendant in proceedings.



***defendant*** means the person against whom proceedings have been instituted.

***examiner*** means a person appointed by the court to conduct an examination under section 202 under an order under section 202 (1).

***file***, in relation to a document in proceedings, means lodge in the office of the court for inclusion in the record of the court.

***insurer*** means a person who gives a bond referred to in section 85.

***officer***, in relation to a corporation, includes a director and a person having (whether alone or with others) powers of management, direction or control of the corporation.

***originating process*** means—

- (a) a claim; or
- (b) an application referred to in section 22.

***person named***, in relation to a summons issued under section 187, means the person to whom the summons is addressed.

***person under disability*** means a person who has not attained full age or a person who is of unsound mind or incapable.

***plaintiff*** means the person by whom proceedings have been instituted.

***pleading*** means a claim, notice of grounds of defence, reply or third or subsequent party notice filed in proceedings.

***proceedings*** means proceedings in the court.

***registrar*** means the registrar or a deputy registrar of the court.

***Small Claims Court*** means the Magistrates Court when exercising jurisdiction under part 22.

***summons for production*** means an order in writing requiring the person named to attend as directed by the order and to produce a document or thing for the purpose of evidence.

***summons to give evidence*** means an order in writing requiring the person named to attend as directed by the order for the purpose of giving evidence.

- (2) In this Act—
- (a) a reference to the plaintiff in proceedings is, for proceedings in which there are 2 or more plaintiffs, a reference to any or all of those plaintiffs, as the case requires; and
  - (b) a reference to the defendant in proceedings is, for proceedings in which there are 2 or more defendants, a reference to any or all of those defendants, as the case requires.
- (3) In this Act—
- (a) a reference to the plaintiff in proceedings is, in relation to proceedings instituted by filing an application referred to in section 22, a reference to the applicant in those proceedings; and
  - (b) a reference to the defendant in proceedings is, in relation to proceedings referred to in paragraph (a), a reference to the respondent in those proceedings.
- (4) In this Act, a reference to the legal practitioner for a party to proceedings includes, in relation to a party whose legal practitioner has another legal practitioner acting as his or her agent for the purpose of the proceedings, a reference to that other legal practitioner.

#### **4 Application**

Subject to section 202, this Act applies in relation to all proceedings instituted in the court after the commencement of this Act, other than—

- (a) proceedings under the *Protection Orders Act 2001*; and
- (b) proceedings under the *Workers Compensation Act 1951*; and

- (c) proceedings on an information in respect of the alleged commission of an offence against a law in force in the ACT.

## Part 2 Jurisdiction

### 5 Personal actions at law—amount or value

- (1) Subject to this Act, the court has jurisdiction to hear and determine any personal action at law if the amount claimed does not exceed \$50 000, including such an action if the amount claimed is the amount due on a balance of account, after an admitted set-off or otherwise.
- (2) If the amount claimed in a personal action at law includes interest, being interest in respect of which the court may make an order under section 230, that interest shall be disregarded for the purposes of determining whether or not the court has jurisdiction to hear and determine the action.
- (3) Without limiting subsection (1), a reference in that subsection to a personal action at law includes a reference to an action relating to the detention of goods, and in relation to such an action, the reference in that subsection to the amount claimed is a reference to the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods.
- (4) Nothing in subsection (1) limits the jurisdiction of the court if, under any other law in force in the ACT, money may be recovered by action in the court irrespective of the amount.
- (5) The jurisdiction referred to in subsection (1) is in addition to any jurisdiction that the court has under any other law in force in the ACT.

### 6 Power of court to grant relief

- (1) In any proceedings that the court has jurisdiction to hear and determine—

- (a) the court may grant the relief, redress or remedy that the Supreme Court has power to grant in an action of a like nature in that court, and for that purpose the court may make the orders that the Supreme Court has power to make in the like circumstances; and
  - (b) the court shall give effect to any ground of defence or cross-claim, whether equitable or legal, in the same way and to the same extent as the Supreme Court would do in the like circumstances.
- (2) For the purpose of the exercise by the court of its power under subsection (1) in any proceedings—
- (a) a magistrate constituting the court shall, in addition to any other powers conferred on him or her under this Act, have all the powers and authority of a judge of the Supreme Court in an action of a like nature in that court; and
  - (b) the registrar, bailiff or other appropriate officer of the court shall, in relation to those proceedings, discharge any duties that a corresponding officer of the Supreme Court would discharge in relation to such an action in accordance with the practice and procedure of that court.
- (3) In discharging a duty referred to in subsection (2), the registrar, a bailiff or other officer of the court, as the case requires, shall comply with this Act and any order of the court.

## **7 Rules of equity to prevail**

In any proceedings, if there is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail.

## **8 Nuisance**

- (1) Subject to this Act—

- (a) the court has the same jurisdiction as the Supreme Court to hear and determine a civil action for nuisance; and
  - (b) in proceedings relating to such a cause of action, the court may grant the same relief as the Supreme Court may grant in proceedings of a like nature instituted in the Supreme Court.
- (2) A person shall not contravene an order made by the court in proceedings referred to in subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **9 Disputed debts**

- (1) The court may, on application, declare—
- (a) that a person does not owe a specified debt alleged to be owed by the person; or
  - (b) the amount of a specified debt alleged to be owed by a person.
- (2) A person is not entitled to make an application unless a written demand for payment of the debt has been made by the respondent.
- (3) This section applies only in relation to a debt or alleged debt that does not exceed the amount specified in section 5 (1).
- (4) Section 22 (3), (4), (5), (6), (7) and (9) apply in relation to applications made under this section.

## **10 Cause of action arising, or defendant situated, outside ACT**

The court has jurisdiction to hear and determine proceedings—

- (a) notwithstanding that part of the cause of action to which the proceedings relate arose outside the ACT, if a material part of that cause of action arose within the ACT; and

- (b) notwithstanding that the whole of the cause of action to which the proceedings relate arose outside the ACT, if the defendant was resident within the ACT when the claim was served on him or her; and
- (c) notwithstanding that the defendant is not within the ACT, if—
  - (i) a material part of the cause of action to which the proceedings relate arose within the ACT; and
  - (ii) the defendant was within Australia or an external Territory when the claim was served on him or her.

## **11 Proceedings affecting title to land**

- (1) Subject to this section, the court does not have jurisdiction to hear and determine proceedings in which the title to land is genuinely in question.
- (2) The jurisdiction of the court to hear and determine proceedings is not affected only because the title to land incidentally comes in question in the proceedings.
- (3) In proceedings referred to in subsection (2), a judgment is not evidence of title to land between the parties to the proceedings or their privies for any purpose whatsoever.

## **12A Disputes under the Residential Tenancies Act**

The Magistrates Court has no jurisdiction in relation to a dispute to which the *Residential Tenancies Act 1997* applies if the amount in dispute is \$10 000 or less.

## **12B Complaints under Utilities Act, pt 12 (Complaints)**

The Magistrates Court has no jurisdiction with respect to a matter to the extent to which it is the subject of—

- (a) a complaint under the *Utilities Act 2000*, part 12 (Complaints);  
or

**Part 2**                      Jurisdiction

Section 12B

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(b) a direction or declaration of the council under that part.



## Part 3 Institution of proceedings

### 13 Lodgment and filing of originating process

- (1) Originating process shall be lodged with the registrar in duplicate together with the number of copies equal to the number of defendants to be served.
- (2) If the registrar is satisfied that originating process lodged in accordance with subsection (1) complies with this Act and any fee payable under the *Magistrates Court Act 1930*, section 248B has been paid, the registrar shall file the original of that process.

### 14 Numbering of proceedings

If proceedings are instituted, the registrar shall cause a distinguishing number to be allotted to the proceedings and shall endorse that number on the original of the originating process filed by him or her and on each copy of that process sealed by him or her.

### 15 Contents of originating process

Originating process shall specify—

- (a) the full name and the full address of the residence or place of business of the plaintiff; and
- (b) the full name, the full address of the residence or place of business, and the occupation, of the defendant so far as those particulars are known to the plaintiff; and
- (c) if the defendant is a company—the address of the registered office of the company; and
- (d) if the full name of the defendant is not, but the sex of the defendant is, known to the plaintiff—the sex of the defendant; and

- (e) the address for service of the plaintiff; and
- (f) if the plaintiff has a legal practitioner acting for him or her in the proceedings—the name, address and telephone number of the legal practitioner; and
- (g) if the plaintiff's legal practitioner has another legal practitioner acting as his or her agent for the purpose of the proceedings—the name, address and telephone number of that other legal practitioner.

**16 Signing of originating process**

Originating process shall be signed by the plaintiff, by his or her legal practitioner or by his or her agent authorised in writing for the purpose.

**17 Proceedings by claim**

Subject to section 22 and part 17, proceedings shall be instituted by filing a claim for issue by the registrar.

**18 Form of claim**

- (1) A claim shall be—
  - (a) for proceedings to recover a debt or liquidated damages—a special claim or an ordinary claim; or
  - (b) in any other case—an ordinary claim.
- (2) A reference in subsection (1) (a) to proceedings to recover a debt or liquidated damages includes—
  - (a) a reference to proceedings to recover a debt or liquidated damages in which the plaintiff claims interest, whether under section 230 or otherwise; and
  - (b) a reference to proceedings to recover damages if the amount claimed can be ascertained by reference to a receipt or statement of account.

- (3) An ordinary claim shall be in accordance with form 2.
- (4) A special claim shall be in accordance with form 3.
- (5) In addition to the particulars required under section 15 to be specified in a claim, a claim shall specify—
  - (a) each cause of action in relation to which the proceedings are instituted; and
  - (b) the amount of money or the other relief claimed in respect of each such cause of action; and
  - (c) the prescribed costs; and
  - (d) if the plaintiff institutes the proceedings in a representative capacity, or the proceedings are instituted against the defendant in a representative capacity—that capacity; and
  - (e) if the plaintiff institutes the proceedings as assignee of a debt or other thing in action—the fact that he or she is such an assignee and the name, address and occupation of the assignor; and
  - (f) if the proceedings are in respect of the detention of goods—a description and the value of the goods; and
  - (g) if the plaintiff claims interest other than under section 230—particulars of the rate or rates at which, the amount or amounts on which and the period or periods for which, interest is claimed; and
  - (h) if the plaintiff claims interest under section 230:
    - (i) if the claim is for a debt or liquidated damages—a statement that interest is claimed, to be calculated in accordance with section 231 (2) and:
      - (A) particulars of the period or periods for which, the rate or rates at which, and the amount or amounts on which, interest is claimed; and

(B) the amount of interest calculated to have accrued to the date of filing; or

(ii) in any other case—a statement that interest is claimed.

(6) A claim of a kind referred to in subsection (2) (b) shall be supported by an affidavit verifying the receipt or statement of account.

## **19 More than 1 cause of action**

(1) A claim may specify more than 1 cause of action if those causes of action are by and against the same parties, but such a claim shall not be for a total amount in excess of the maximum amount for which the court has jurisdiction under this Act (whether the total amount is calculated on a balance of account, after an admitted set-off, on an abandonment or otherwise), and this subsection applies irrespective of any different capacities in which a party sues or is sued.

(2) If a claim specifies 2 or more causes of action, those causes of action shall, as far as practicable, be stated separately and distinctly.

(3) If any joinder of causes of action may complicate or delay the hearing of proceedings or is otherwise inconvenient, the court may order separate hearings or make any other order the court thinks just.

## **20 Division of cause of action**

(1) A cause of action shall not be divided for the purpose of instituting 2 or more proceedings in relation to that cause of action.

(2) If—

(a) proceedings have been instituted for the recovery of an amount that is less than the amount for which the plaintiff has a cause of action against the defendant (other than proceedings in which the amount by which the secondmentioned amount exceeds the firstmentioned amount is abandoned under section 21); and

(b) final judgment has been given or entered in respect of the claim;

the defendant is entitled to have judgment entered for him or her in any other proceedings instituted in any court in relation to that cause of action.

- (3) Notwithstanding subsections (1) and (2) but otherwise subject to this Act, if, in relation to a cause of action that a person has against another person, that other person has given 2 or more bills of exchange, promissory notes, bonds or other securities, the firstmentioned person may institute proceedings against that other person in respect of each of those bills of exchange, promissory notes, bonds or other securities as if each of them constituted a separate cause of action.

## **21 Abandonment of excess**

- (1) A person who has a cause of action against another person for an amount exceeding \$50 000 may institute proceedings in relation to that cause of action in which he or she abandons the excess over \$50 000 by stating the abandonment in his or her claim.
- (2) In proceedings referred to in subsection (1)—
- (a) the plaintiff may not recover an amount exceeding \$50 000; and
  - (b) final judgment in the proceedings shall operate in full discharge of all demands in relation to the cause of action.
- (3) If final judgment is given or entered in proceedings referred to in subsection (1), the entry of the judgment in the records of the court shall record the abandonment.

**22 Proceedings by application**

- (1) This section has effect in relation to a matter arising under a law in force in the ACT (other than this Act) subject to the provisions of that law.
- (2) If, by any law in force in the ACT (other than this Act), jurisdiction is conferred on the court in respect of a matter arising under that law (other than a matter relating solely to the recovery of money), proceedings in respect of that matter shall be instituted by filing an application.
- (3) An application shall be in accordance with form 4.
- (4) In addition to the particulars required under section 15 to be specified in an application, an application shall—
  - (a) specify the place, date and time for the hearing of the application fixed by the registrar at the time of lodgment; and
  - (b) state concisely the nature of the order sought by the applicant or particulars of the decision appealed against, as the case may be; and
  - (c) state concisely the grounds on which the order is sought, or the grounds of the appeal, as the case may be, or refer to the affidavit in which those grounds are set out; and
  - (d) if it is not intended to serve the application on any person—include a statement to that effect.
- (5) An applicant shall, unless the court otherwise orders, serve a copy of the application, together with a copy of any supporting affidavit, on each respondent to the application not later than 14 days before the date fixed for the hearing of the application.
- (6) Subject to subsection (5), a party to an application who intends to rely on an affidavit at the hearing of the application shall file the affidavit, and shall serve a copy of the affidavit on each other party

to the proceedings (except a party on whom service of a copy of the application was not required under an order under subsection (5))—

- (a) in sufficient time before the hearing to enable that other party to make and file, and serve a copy of, an affidavit in reply; or
  - (b) within the time the court orders.
- (7) A respondent to an application shall—
- (a) in the first affidavit filed by him or her, specify an address for service; or
  - (b) if he or she does not file an affidavit—file, and serve on the applicant a copy of, a notice of intention to appear in accordance with form 5.
- (8) On hearing an application, the court may make or refuse to make the order sought by the applicant, and if the court makes an order sought by the applicant, it may make the order—
- (a) absolute in the first instance; or
  - (b) to become absolute at a specified time unless before that time, on cause being shown, the court otherwise orders;
- and the court may make the other orders and give the directions that it thinks just.
- (9) Each party to proceedings on an application shall, unless the court otherwise orders, bear his or her own costs in the proceedings, and if the court makes an order for the payment of costs in such proceedings, the court shall direct the scale on which those costs are to be paid by any party.

## Part 4 Service

### 23 Service of documents generally

Subject to this Act, a document in proceedings may be served—

- (a) by delivering a copy of the document to the party to be served personally; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the party to be served with a person apparently resident or employed at that place and apparently over the age of 16 years.

### 24 Service of originating process by post

- (1) Subject to subsections (3) and (4), on the plaintiff in proceedings completing an application for postal service in accordance with the form in form 2 or 3, as the case requires, the registrar may serve originating process by sending a copy of the process by post addressed to the defendant at the address of the defendant specified in the process.
- (2) If originating process is served in accordance with subsection (1), the registrar shall complete a certificate of postal service of the process in accordance with the form in form 2 or 3, as the case requires.
- (3) Originating process shall not be served in accordance with subsection (1) unless the address of the defendant specified in the process is an address within the ACT.
- (4) In relation to an application referred to in section 22, this section has effect subject to the provisions of the law under which the matter to which the application relates arose.



**25 Substituted service**

If it appears to the court that it is not reasonably practicable to serve a document in proceedings in accordance with section 23 or 24, the court may make an order for substituted or other service of the document (whether by notice by advertisement or otherwise) as the court thinks just.

**26 Service on legal practitioner**

- (1) Originating process in proceedings may be served on the legal practitioner acting for the defendant endorsing on a copy of the process a statement that he or she accepts service of the process on behalf of the defendant.
- (2) If a party to proceedings has a legal practitioner on the record acting for him or her in the proceedings, a document in the proceedings may be served on that party—
  - (a) by delivering a copy of the document to the legal practitioner personally; or
  - (b) by leaving a copy of the document at the office of the legal practitioner; or
  - (c) by sending a copy of the document by post addressed to the legal practitioner at his or her office; or
  - (d) if the legal practitioner has an exchange box at the Canberra Document Exchange—by leaving a copy of the document, in an envelope addressed to the legal practitioner, in that box.

**27 Service at address for service**

- (1) If the party to proceedings has an address for service, a document in proceedings may be served on that party—
  - (a) by leaving a copy of the document at that address; or

(b) by sending a copy of the document by post addressed to that party at that address.

- (2) If a document is served by the registrar by post in accordance with subsection (1), the registrar shall complete a certificate of postal service in accordance with form 6.

## **28 Address for service**

- (1) A party to proceedings shall, in the first document filed by him or her, specify an address for service.
- (2) Subject to subsection (3), the address for service of a party to proceedings shall be the address of a place within the ACT where documents in the proceedings may, during ordinary business hours, be left for him or her or to which documents in the proceedings may be posted for him or her.
- (3) If a party to proceedings has a legal practitioner on the record acting for him or her in the proceedings, being a legal practitioner who has an office within the ACT, the address for service of that party is the office of that legal practitioner.
- (4) Subject to this section, a party to proceedings may change his or her address for service by filing a notice of change of address for service in accordance with form 7 and serving a copy of that notice on each other party to the proceedings.

## **29 Time of service**

- (1) If a document in proceedings is served in the way referred to in section 23 (b), 26 (2) (b) or 27 (1) (a), service shall be deemed to have been effected on the date when the copy was left in accordance with that paragraph.
- (2) If a document in proceedings is served by post in accordance with this part, service shall be deemed to have been effected 2 days after the date of posting unless the contrary is proved.

- (3) If originating process in proceedings is served in accordance with section 26 (1), service shall be deemed to have been effected on the date when the endorsement is made.
- (4) If a document in proceedings is served in the way referred to in section 26 (2) (d), service shall be deemed to have been effected on the day after the date when the document was left in accordance with that paragraph.

### **30 Proof of service of documents**

Service of a document in proceedings may be proved by the oath of the person who served the document, by affidavit, by production of the completed certificate of postal service or otherwise.

### **31 Doubtful service**

- (1) If—
  - (a) a document in proceedings has been served in a way other than that referred to in section 23 (a) or 26 (2) (a); and
  - (b) the court is satisfied that—
    - (i) the document did not come to the knowledge of the party served within a reasonable time; or
    - (ii) doubt exists whether the document came to the knowledge of the party served within a reasonable time;the court, on application by the registrar or a party to the proceedings or on its own initiative, shall not allow any fresh step in the proceedings to be taken against the party served, and the court shall—
  - (c) strike out or adjourn the proceedings; or
  - (d) order that the document be re-served on that party in the way (if any) specified in the order;

as the court thinks just, and the court may make any other orders and give any directions that it thinks just.

- (2) If the court is satisfied that—
- (a) it has been impracticable for any reason to effect service of any document in proceedings on a party; and
  - (b) reasonable steps have been taken for the purpose of bringing the document to the notice of the party;

the court may, by order, direct that for the purpose of the proceedings service of that document shall be taken to have been effected on that party on a specified date.

**32 No need for production of original document**

When a copy of a document in proceedings is served on a person, it is not necessary for the original of that document to be produced to that person.

**33 Waiver of objection to service**

If a party to proceedings files a document in reply, he or she shall be taken to have waived any objection he or she might otherwise have made as regards service on him or her of the document in reply to which the firstmentioned document was filed unless he or she files, with the firstmentioned document, a notice of objection in accordance with form 8 and forthwith serves a copy of that notice on the party who filed the secondmentioned document.

## Part 5 Cessation and renewal of claim

### 34 Cessation of original claim

A claim ceases to be in force 12 months after the date when it was filed unless, within that period of 12 months, the claim has been served or renewed.

### 35 Renewal of claim

- (1) The plaintiff in proceedings may, at any time while his or her claim remains in force, apply to the court or the registrar for the renewal or further renewal of the claim.
- (2) On an application made under subsection (1), the court or the registrar may, if satisfied that reasonable steps have been taken in an attempt to serve the claim to which the application relates or that there are other circumstances that justify doing so, renew or further renew the claim for any period not exceeding 6 months.

### 36 Cessation of renewed claim

If a claim has been renewed under section 35, the claim ceases to be in force at the end of the period for which it was renewed unless, within that period, it has been served or further renewed.

## **Part 6** Defence, judgment by default, confession or agreement, and special defences

### **Division 6.1** Notice of grounds of defence

#### **37** Filing of notice of grounds of defence

- (1) A defendant in proceedings may, at any time before final judgment is entered in the proceedings, file a notice of grounds of defence.
- (2) A defendant in proceedings shall not, only because of his or her having filed a notice of grounds of defence, be taken to have waived any objection he or she may have on the grounds of want of jurisdiction in the court to hear and determine the proceedings.

#### **38** Form of notice of grounds of defence

- (1) A notice of grounds of defence shall be in accordance with form 9.
- (2) A notice of grounds of defence shall be signed by the defendant, by his or her legal practitioner or by his or her agent authorised in writing for the purpose.

#### **39** Service of notice of grounds of defence

A notice of grounds of defence shall be served on the plaintiff by the registrar.

#### **40** Reliance on defence not disclosed

- (1) A defendant in proceedings is not, except with the consent of the plaintiff or with the leave of the court, entitled, at the hearing of the proceedings, to rely on a ground of defence not specified in a notice of grounds of defence filed by him or her.

- (2) Leave for subsection (1) may be granted on the terms (if any) that the court thinks just.

## **Division 6.2 Judgment in default of defence**

### **41 Interlocutory judgment by default on ordinary claim**

- (1) If, in proceedings instituted by the filing of an ordinary claim—
- (a) a period of 21 days has expired after the date of service of the claim; and
  - (b) the plaintiff has filed an affidavit of service of the claim or a certificate of postal service of the claim has been filed; and
  - (c) the defendant has not filed a notice of grounds of defence; and
  - (d) judgment has not been given or entered in the proceedings;
- the registrar shall, on the application of the plaintiff in accordance with form 10 made within 12 months after the end of the period referred to in paragraph (a), enter interlocutory judgment in accordance with form 11 for the plaintiff against the defendant.
- (2) Subject to subsection (3), where interlocutory judgment has been entered under subsection (1) against a defendant in proceedings—
- (a) the defendant shall be deemed to have admitted liability to the plaintiff in respect of the cause of action to which the proceedings relate; and
  - (b) the proceedings shall be continued in relation to that defendant only for the purpose of the assessment of the amount to be recovered by the plaintiff.
- (3) Interlocutory judgment entered in proceedings under subsection (1)—
- (a) may, on sufficient cause being shown, be set aside by the court at any time before final judgment is entered, on the terms (if any) that the court thinks just; and

- (b) shall be deemed to have been set aside if a notice of grounds of defence is filed by the defendant.
- (4) If interlocutory judgment in proceedings is set aside, or is deemed to have been set aside, under subsection (3)—
- (a) subsection (2) ceases to have effect in relation to the proceedings; and
  - (b) the court may at any time make the orders that it thinks just as to—
    - (i) the continuance of the proceedings; and
    - (ii) the costs incurred by any party by the entering of the judgment, by the judgment having been set aside or being deemed to have been set aside or by any adjournment of the hearing of the proceedings;
- and the court may give the directions as to the subsequent conduct of the proceedings that it thinks just.

## **42 Assessment of recoverable amount following interlocutory judgment**

- (1) Subject to subsection (2), if interlocutory judgment in proceedings has been entered against the defendant under section 41 (1) and a certificate of readiness for hearing has been filed in accordance with section 179 (1), the registrar shall—
- (a) fix a date, time and place for the hearing in accordance with section 179 (2) for the purpose of the assessment of the amount to be recovered by the plaintiff; and
  - (b) notify the plaintiff in accordance with form 12 of the date, time and place so fixed; and
  - (c) not later than 7 days before the date so fixed, send to the defendant, by post addressed to him or her at the best address known to the registrar, notice in accordance with form 13 of



the interlocutory judgment and of the date, time and place so fixed.

- (2) At a hearing referred to in subsection (1) (a) it is not necessary for the plaintiff in the proceedings to prove compliance by the registrar with the requirement of subsection (1) (c).
- (3) If—
  - (a) proceedings have been instituted in relation to more than 1 cause of action or against more than 1 defendant; and
  - (b) interlocutory judgment has been entered under section 41 (1) against the defendant in respect of 1 or more but less than all of those causes of action, or against 1 or more but less than all of those defendants, as the case may be; and
  - (c) the proceedings are continuing with respect to the other causes of action, or against the other defendants, as the case may be;

the hearing for the purpose of the assessment of the amount to be recovered by the plaintiff under the interlocutory judgment shall, unless the court otherwise orders, take place with the hearing of the proceedings with respect to those other causes of action, or against those other defendants, as the case requires.

#### **43 Judgment by default on special claim**

If, in proceedings instituted by the filing of a special claim—

- (a) a period of 21 days has expired after the date of service of the claim; and
- (b) the plaintiff has filed an affidavit of service of the claim or a certificate of postal service of the claim has been filed; and
- (c) the defendant has not filed a notice of grounds of defence; and
- (d) judgment has not been given or entered in the proceedings;

the registrar shall, on the application of the plaintiff in accordance with form 14 made within 12 months after the end of the period referred to in paragraph (a), enter final judgment in accordance with form 15 for the plaintiff against the defendant for the amount then claimed to be owing and costs as prescribed.

## **Division 6.3                      Judgment by confession**

### **44                      Judgment by confession**

- (1) At any time before final judgment has been entered in proceedings, the defendant may file a statement in accordance with form 16 confessing to the whole or any part of the amount claimed by the plaintiff.
- (2) A statement referred to in subsection (1) shall be signed by the defendant or on his or her behalf by his or her legal practitioner, and such a statement signed by the defendant has no force or effect unless the execution of the statement is witnessed by the registrar, a legal practitioner or a justice of the peace.
- (3) If a statement under subsection (1) is filed in proceedings, the registrar shall, as soon as practicable, serve on the plaintiff notice in accordance with form 17 of the filing of the statement and of the amount to which the defendant has confessed.
- (4) If, in proceedings in which the plaintiff does not claim damages for personal injuries, the defendant files a statement under subsection (1) in which he or she confesses to the whole of the amount claimed by the plaintiff, the registrar shall, as soon as practicable after giving the notice referred to in subsection (3), enter judgment for the plaintiff against the defendant for the amount claimed.

- (5) If, in proceedings in which the plaintiff has claimed damages for personal injuries—
- (a) the defendant has filed a statement under subsection (1) in which he or she confesses to the whole of the amount claimed by the plaintiff; and
  - (b) the plaintiff has not, within 14 days after the date when notice of the filing of the statement was served on him or her under subsection (3)—
    - (i) applied to the court for leave to amend his or her claim by increasing the amount of damages claimed; or
    - (ii) applied for leave to have the proceedings removed into the Supreme Court;
- the registrar shall enter judgment for the plaintiff against the defendant for the amount claimed.
- (6) If, in a statement under subsection (1) filed in proceedings, the defendant confesses to a part only of the amount claimed by the plaintiff and the plaintiff does not, within 14 days after the date when notice of the filing of the statement was served on him or her under subsection (3), file a notice in accordance with form 18 refusing to accept the amount specified in the statement in full satisfaction of his or her claim, the registrar shall enter judgment for the plaintiff against the defendant for the amount specified in the statement.
- (7) As soon as practicable after a notice refusing to accept an amount is filed by a plaintiff under subsection (6), the registrar shall serve a copy of the notice on the defendant.
- (8) If judgment is entered for a plaintiff against a defendant under this section, there shall be added to the judgment debt—
- (a) if the judgment is entered within 21 days after the date of service of the claim—an amount equal to the costs of the plaintiff in the preparation, issuing and service of the claim; or

- (b) in any other case—an amount equal to—
  - (i) the costs of the plaintiff in the preparation, issuing and service of the claim; or
  - (ii) the costs reasonably incurred by the plaintiff up to the date when judgment is entered and allowed on taxation of the plaintiff's bill of costs;

whichever the plaintiff requires.

- (9) A judgment entered in proceedings under this section shall operate in full discharge of any other liability of the defendant in relation to the cause or causes of action with respect to which the statement was filed under subsection (1).
- (10) In this section, a reference to the plaintiff in proceedings is, for proceedings in which there are 2 or more plaintiffs, a reference to all of those plaintiffs.

## **Division 6.4                      Judgment by agreement**

### **45                      Judgment by agreement**

- (1) At any time before final judgment has been given or entered in proceedings—
  - (a) if a party has been joined otherwise than as a plaintiff or defendant—
    - (i) all the parties; or
    - (ii) the plaintiff and the defendant; or
  - (b) if a party has not been so joined—the plaintiff and the defendant;

may enter into an agreement in accordance with form 19 as to the judgment to be entered in the proceedings as between the parties to the agreement and as to the terms and conditions (if any) on which the judgment is to be satisfied.

- (2) An agreement under subsection (1) shall be signed by each party to the agreement or on his or her behalf by his or her legal practitioner, and such an agreement signed by a party has no force or effect unless the execution of the agreement by that party is witnessed by the registrar, a legal practitioner or a justice of the peace.
- (3) If an agreement under subsection (1) is filed before final judgment is given or entered in proceedings, the registrar shall enter judgment in the proceedings in accordance with the agreement.
- (4) If—
- (a) the registrar enters judgment in proceedings under subsection (3); and
  - (b) a judgment debt arises because of the judgment; and
  - (c) the agreement to which the judgment relates specifies the instalments by which and the times within which the judgment debt or part of that debt is to be paid;
- the registrar shall order that the judgment debt or that part of the judgment debt be paid by those instalments and within those times, and if the registrar makes an order under this subsection, section 292 applies in relation to that order as if it were an order of the court made under that section.
- (5) If judgment is entered for a plaintiff against a defendant under this section, there shall be added to the judgment debt—
- (a) if the judgment is entered within 21 days after the date of service of the claim—an amount equal to the costs of the plaintiff in the preparation, issuing and service of the claim; or
  - (b) in any case—an amount equal to—
    - (i) the costs of the plaintiff in the preparation, issuing and service of the claim; or

(ii) the costs reasonably incurred by the plaintiff up to the date when judgment is entered and allowed on taxation of the plaintiff's bill of costs;

whichever the plaintiff requires.

- (6) If judgment has been entered in proceedings under subsection (3), the court may, on the application of any party to the proceedings who was not a party to the agreement and on sufficient cause being shown, set aside the agreement on the terms the court thinks just.
- (7) Subject to subsection (6), a judgment entered in proceedings under subsection (3) shall, as between the parties to the agreement to which the judgment relates, operate in full discharge of any other liability of any of those parties in relation to the cause or causes of action with respect to which those parties entered into the agreement.

## **Division 6.5                      Special defences**

### **46                      Defence of tender before action**

A defendant in proceedings is not entitled to reply on a defence of tender before action unless he or she has paid into court the amount alleged to have been tendered.

### **47                      Defence of set-off**

A defendant in proceedings may, in his or her notice of grounds of defence, include, as a defence by way of set-off to the whole or part of the plaintiff's claim, an amount (whether ascertained or not) that he or she alleges is due to him or her by the plaintiff, whether or not the defendant also pleads a cross-claim in respect of that amount.

### **48                      Cross-claim**

- (1) A defendant in proceedings may, in his or her notice of grounds of defence, plead a cross-claim founded on any cause of action in respect of which he or she might have instituted proceedings in the

court against the plaintiff, being a cross-claim for an amount that does not exceed the maximum amount for which the court has jurisdiction under this Act, whether the amount of the cross-claim is calculated on a balance of account, after an admitted set-off or otherwise.

- (2) A notice of grounds of defence in which a cross-claim is pleaded shall include the particulars in respect of the cause of action on which the cross-claim is founded that would be required to be included in a claim in respect of that cause of action.
- (3) A defendant in proceedings may plead more than 1 cause of action against the plaintiff by way of cross-claim, but a cross-claim shall not be for a total amount in excess of the maximum amount for which the court has jurisdiction under this Act (whether the total amount is calculated on a balance of account, after an admitted set-off, on an abandonment or otherwise).

#### **49 Abandonment of excess of cross-claim**

- (1) A defendant in proceedings who has a cause of action against the plaintiff for an amount exceeding \$50 000 may plead a cross-claim founded on that cause of action in which he or she abandons the excess over \$50 000 by stating the abandonment in his or her notice for grounds of defence.
- (2) In proceedings on a cross-claim referred to in subsection (1)—
  - (a) the defendant may not recover an amount exceeding \$50 000; and
  - (b) final judgment in those proceedings shall operate in full discharge of all demands in relation to the cause of action.
- (3) If final judgment is given or entered in proceedings on a cross-claim referred to in subsection (1), the entry of the judgment in the records of the court shall record the abandonment.

**50 Proceedings on cross-claim**

- (1) Subject to this Act, proceedings on a cross-claim shall be conducted, heard and determined, as far as practicable, in the same way as proceedings instituted by the filing of a claim.
- (2) Without limiting subsection (1), this Act applies to a cross-claim and to proceedings on a cross-claim as if—
  - (a) the notice of grounds of defence pleading the cross-claim were a claim; and
  - (b) the defendant pleading the cross-claim were a plaintiff in proceedings instituted to recover the amount claimed on the cross-claim; and
  - (c) the plaintiff against whom the cross-claim is pleaded were a defendant in such proceedings.
- (3) Withdrawal, abandonment or dismissal of the whole or part of a claim or discontinuance of proceedings on the whole or part of a claim does not prevent the continuance of proceedings on a cross-claim, and the withdrawal, abandonment or dismissal of the whole or part of a cross-claim or discontinuance of proceedings on the whole or part of a cross-claim does not prevent the continuance of proceedings on the claim in relation to which the cross-claim was pleaded.

**51 Trial of cross-claim**

The court may, if it is of the opinion that the trial of a claim and cross-claim together would embarrass or delay the hearing of proceedings or be otherwise inconvenient, order that proceedings on the claim and proceedings on the cross-claim be heard and determined separately or make any other order it thinks just.



## Part 7                      Reply

### 52            **Filing of reply**

If the defendant in proceedings has filed a notice of grounds of defence, the plaintiff may, within 21 days after the date when a copy of that notice was served on him or her, file a reply.

### 53            **Form of reply**

- (1) A reply shall be in accordance with form 20.
- (2) A reply shall be signed by the plaintiff, by his or her legal practitioner or by his or her agent authorised in writing for the purpose.

### 54            **Service of reply**

A reply shall be served on the defendant by the registrar.

### 55            **Defence to cross-claim**

If, in a notice of grounds of defence filed in proceedings, the defendant alleges a cross-claim, the plaintiff may, in a reply filed by him or her, plead a defence to the cross-claim.

## Part 8 Third-party procedure

### 56 Meaning of *third party*

In this part:

*third party* means a person joined as a party to proceedings in accordance with this part.

### 57 Filing of third-party notice

- (1) If a defendant in proceedings claims that he or she is entitled to contribution or indemnity or any other relief or remedy from any other person in relation to the cause of action to which the proceedings relate or any judgment that may be given or entered in favour of the plaintiff in the proceedings, the defendant may—
  - (a) at the time he or she files his or her notice of grounds of defence; or
  - (b) if a notice of grounds of defence is not filed—within 21 days after the date of service of the claim;

join that other person as a party to the proceedings by filing a third party notice in accordance with form 21.

- (2) A third-party notice shall contain the particulars of the defendant's claim against the third party that the defendant would be required to include in a claim if he or she instituted separate proceedings against the third party.

### 58 Service of documents

- (1) As soon as practicable after a third-party notice has been filed in proceedings, the registrar shall—
  - (a) serve a copy of the notice on the plaintiff; and

- (b) return to the defendant the other copies of the notice that were lodged at the time of filing.
- (2) When copies of a third party notice are returned to the defendant in proceedings under subsection (1), the defendant shall—
  - (a) serve on the third party a copy of the third-party notice and of each other pleading filed in the proceedings; and
  - (b) serve on each other party to the proceedings (other than the plaintiff) a copy of the third-party notice.
- (3) As soon as practicable after a defendant in proceedings has served a third-party notice on a third party under subsection (2), the defendant shall file an affidavit of service of the notice and inform each other party to the proceedings (other than the third party), in writing, of the date of that service.

## **59 Stay of proceedings**

- (1) Subject to subsection (2), if a defendant in proceedings who has filed a notice of grounds of defence files a third-party notice, the proceedings are stayed until—
  - (a) the third party has filed a notice of grounds of defence; or
  - (b) a period of 21 days has expired after the date on which a copy of the third party notice was served on the third party;whichever first occurs.
- (2) If proceedings are stayed under subsection (1), the court may, on the application of the plaintiff, remove that stay of proceedings if it is satisfied that a copy of the third-party notice was not served on the third party, or an affidavit of that service was not filed, within a reasonable time.

**60 Rights and liabilities of third party**

- (1) A third party in proceedings shall, as from the time when a copy of the third-party notice was served on him or her, be a party to the proceedings and, subject to this Act, he or she shall have the same rights, and be subject to the same liabilities, in the proceedings as he or she would have had and been subject to if the defendant had instituted separate proceedings against him or her.
- (2) Without limiting subsection (1), a third party in proceedings shall plead in his or her notice of grounds of defence any ground of defence in which he or she disputes the plaintiff's claim against the defendant or the defendant's claim against the third party.
- (3) If a person on whom a copy of a third-party notice has been served fails to file a notice of grounds of defence within 21 days after the date of service, he or she shall be taken to have admitted liability to the defendant in respect of the subject of, and for the amount of, the defendant's claims against him or her specified in the third-party notice.

**61 Procedure on hearing**

On hearing proceedings in which a third party has been joined—

- (a) the court may direct what part the third party shall take at the hearing; and
- (b) the court may modify its procedures as necessary; and
- (c) the court may, as between the defendant and the third party—
  - (i) grant any relief or remedy that might properly have been granted if the defendant's claim against the third party had been the subject of separate proceedings; and
  - (ii) give the judgment that the court thinks just.

**62 Enforcement**

- (1) Except with the leave of the court, the defendant in proceedings shall not enforce any judgment in his or her favour against a third party until any judgment given in favour of the plaintiff in the proceedings against the defendant has been satisfied.
- (2) Leave under subsection (1) may be granted on the terms (if any) that the court thinks just.

**63 Subsequent joinder of parties**

A third party in proceedings may join another person as a fourth party in the proceedings in accordance with this Act, and subsequent parties may be joined in succession in the like circumstances, each by the party previous to him or her in order of joinder, and this part applies in relation to each party so joined as if—

- (a) he or she were a third party so joined; and
- (b) the party who joined him or her was the defendant; and
- (c) the party who joined the party referred to in paragraph (b) was the plaintiff.

**64 Separate trials**

The court may, if it is of the opinion that the trial of proceedings between a plaintiff and defendant together with proceedings between the defendant and a third party would embarrass or delay the hearing of the firstmentioned proceedings or be otherwise inconvenient, order that those proceedings be heard and determined separately or make any other order that it thinks just.

**65 Codefendants**

- (1) If a defendant in proceedings claims that he or she is entitled to contribution or indemnity or any other relief or remedy from another defendant in the proceedings in relation to the cause of action to which the proceedings relate or any judgment that may be given or

entered in favour of the plaintiff in the proceedings, the firstmentioned defendant may file, and serve on that other defendant a copy of, a notice in accordance with form 22.

- (2) A notice under subsection (1) shall contain the particulars of the claim of the defendant who filed the notice against the other defendant that the firstmentioned defendant would be required to include in a claim if he or she instituted separate proceedings against the other defendant.
- (3) If a defendant in proceedings has filed, and served a copy of, a notice under subsection (1), this part applies in relation to the claim particulars of which are contained in the notice, and in relation to proceedings in respect of that claim, as if—
  - (a) the notice were a third-party notice filed and served under this part; and
  - (b) the defendant on whom the copy of the notice was served were a third party joined under this part.
- (4) Nothing in this section shall operate to prejudice any rights that the plaintiff in proceedings may have against any defendant in the proceedings other than the defendant who filed a notice under subsection (1).

## **66 Costs in proceedings if third party joined**

- (1) In proceedings in which a third party has been joined under this part, the court may—
  - (a) decide all questions of costs as between the third party and other parties to the proceedings; and
  - (b) order any 1 or more of the parties to pay the costs of any other party or parties; and
  - (c) make any other orders as to costs that it thinks just.

- (2) Subject to any order that the court makes under subsection (1), costs in proceedings in which a third party has been joined shall—
- (a) as between a party and the third party joined by him or her, follow the event of the issues between those parties; and
  - (b) be taxed on the scale appropriate to any amount separately recovered or unsuccessfully claimed between those parties or, if there is no such amount, the amount recovered or unsuccessfully claimed by the plaintiff against the defendant; and
  - (c) be recoverable by a party against another party only to the extent of the costs of the issues between those parties and not to the extent of any other costs payable by the parties.

## Part 9 Discontinuance and withdrawal

### 67 Discontinuance

- (1) A party to proceedings may, at any time before the hearing of the proceedings is completed, discontinue the proceedings as regards the whole or any part of a claim by him or her by filing a notice of discontinuance in accordance with form 23.
- (2) A notice of discontinuance filed under subsection (1) shall set out the extent of the discontinuance and shall, if the discontinuance is with the consent of another party to the proceedings, have that consent endorsed on it.
- (3) A party to proceedings who has filed a notice of discontinuance under subsection (1) shall, as soon as practicable, serve a copy of the notice on each other party.

### 68 Withdrawal

- (1) Subject to subsection (2), a party to proceedings may, at any time before the hearing of the proceedings is completed, withdraw any matter contained in a notice of grounds of defence or subsequent pleading filed by him or her in the proceedings by filing a notice of withdrawal in accordance with form 24.
- (2) Subsection (1) does not permit the withdrawal, without the consent of another party or the leave of the court, of an admission or other matter that operates for the benefit of that other party.
- (3) A notice of withdrawal filed under subsection (1) shall set out the extent of the withdrawal and shall, if the withdrawal is with the consent of another party to the proceedings, have that consent endorsed on it.



- (4) A party to proceedings who has filed a notice of withdrawal under subsection (1) shall, as soon as practicable, serve a copy of the notice on each other party.

## **69 Costs**

- (1) If a party to proceedings discontinues the proceedings against another party under this part as regards the whole or any part of a claim, the firstmentioned party shall, unless—

- (a) that other party consented to the discontinuance; or
- (b) the court otherwise orders;

pay that other party's costs in the proceedings occasioned by the discontinuance and reasonably incurred up to the date when notice of the discontinuance was served on that other party.

- (2) A party to proceedings who is, under subsection (1), entitled to his or her costs referred to in that subsection may have those costs taxed without an order of the court, and if those costs are so taxed are not paid within 4 days, the payment of those costs may be enforced as if the court had made an order for payment of those costs.

## **70 Effect of discontinuance**

- (1) Subject to the terms of any consent to the discontinuance of proceedings under this part, the discontinuance—
- (a) does not prevent further proceedings being instituted in relation to the same, or substantially the same, cause of action; and
  - (b) is not a defence in any such further proceedings.

- (2) If, in relation to the same, or substantially the same, cause of action as that in relation to which proceedings have been discontinued against a party, further proceedings are instituted against that party, the court may, on the application of that party, order that those further proceedings be stayed until any costs in the earlier proceedings to which that party is entitled under section 69 (1) have been paid.

## Part 10 Payment into court

### 71 How money paid into court

For this Act, money is paid into court by—

- (a) paying the money to the registrar or lodging a bond with the registrar in accordance with section 85; and
- (b) filing with the registrar a notice of payment into court.

### 72 Payment by defendant

- (1) A defendant in proceedings may, from time to time—
  - (a) pay money into court in answer to any 1 or more causes of action to which the plaintiff's claim relates, and in respect of any interest that the defendant thinks may be ordered under section 230 in respect of the cause or causes of action, as the case may be, up to and including the date when the money is paid into court; and
  - (b) pay money into court in addition to money previously so paid under this section.
- (2) If money is paid into court under this section it shall be presumed that it includes interest that may be ordered to be paid under section 230 in respect of 1 or more causes of action to which the plaintiff's claim relates, up to and including the date when the money is paid into court.

### 73 Form of notice of payment

- (1) A notice of payment into court shall be in accordance with form 25.

- (2) If a claim relates to 2 or more causes of action and the defendant in the proceedings pays money into court, the notice of payment into court filed by him or her shall—
- (a) specify the cause or causes of action in answer to which the money is so paid; and
  - (b) if the defendant allots part of the money to any cause or causes of action—specify the amounts so allotted and the cause or causes of action to which that amount is allotted.

**74 Service of notice of payment into court**

A defendant in proceedings who files a notice of payment into court shall, as soon as practicable, serve a copy of the notice on each other party to the proceedings.

**75 Abandonment of cross-claim**

If a defendant in proceedings—

- (a) alleges a cross-claim against the plaintiff in respect of any cause of action; and
- (b) has paid money into court; and
- (c) has, in so paying that money, taken into account his or her cause of action against the plaintiff to which the cross-claim relates with a view to its abandonment if the plaintiff accepts the money;

the defendant shall, in his or her notice of payment into court, specify that cause of action.

**76 No admission of liability**

Payment of money into court shall not be taken to be an admission of liability.

**77 Acceptance of amount paid into court**

- (1) Subject to this section, a plaintiff in proceedings may, in accordance with this section, accept money paid into court in answer to 1 or more of the causes of action to which his or her claim relates by filing a notice of acceptance in accordance with form 26.
- (2) If a notice of payment into court or the last notice of payment into court is filed before the hearing of the proceedings commences, the plaintiff may accept the money so paid within 14 days after service on him or her of the notice or that last notice, as the case may be, but before that commencement.
- (3) If—
  - (a) a notice of payment into court is filed after the hearing of the proceedings has commenced; or
  - (b) the defendant in proceedings, by notice served by him or her on the plaintiff after the hearing of the proceedings has commenced, confirms, in accordance with form 27, a notice of payment into court previously filed;the plaintiff may, subject to subsection (6), accept the money so paid within 2 days after service on him or her of the notice of payment into court or the notice of confirmation by announcement to the court during the hearing or by filing a notice of acceptance.
- (4) A defendant in proceedings who serves a notice of confirmation under subsection (3) shall file the notice forthwith.
- (5) A plaintiff who accepts money by announcement to the court under subsection (3) shall file a notice of acceptance forthwith.
- (6) A plaintiff in proceedings shall not accept money in a case referred to in subsection (3) after the magistrate constituting the court has given his or her decision or has begun to give reasons for his or her decision.

- (7) If a claim relates to more than 1 cause of action and the plaintiff accepts money paid into court in answer to 1 or more but not all of those causes of action, he or she may, by filing a notice (which may be combined with his or her notice of acceptance), abandon all the causes of action to which his or her claim relates other than the cause or causes of action to which the acceptance relates.
- (8) If—
- (a) a plaintiff has instituted proceedings against 2 or more defendants in relation to a cause of action that he or she had against them jointly; and
  - (b) he or she accepts money paid into court by 1 or more but not all of those defendants in answer to that cause of action;
- he or she may, by filing a notice (which may be combined with his or her notice of acceptance), abandon that cause of action as against the other defendants or all of those other defendants.
- (9) A plaintiff in proceedings who accepts money paid into court is, subject to sections 80 and 81, entitled to receive payment of the money without any order of the court.
- (10) Money paid into court that a plaintiff in proceedings is entitled to receive under this part shall be paid to him or her or, if he or she has lodged a written authorisation with the registrar, to his or her legal practitioner or other person specified in the authorisation.

## **78 Effect of acceptance of money paid into court**

- (1) If a plaintiff in proceedings accepts money paid into court in satisfaction of a cause of action as against any defendant, proceedings shall be stayed in relation to—
- (a) that cause of action as against that defendant; and
  - (b) any alternative cause of action that the plaintiff has against that or any other defendant; and

- (c) any cause of action abandoned under section 77; and
  - (d) if the defendant, in paying the money into court, had taken into account a cause of action to which a cross-claim relates—that cause of action as against the plaintiff.
- (2) If a defendant pays money into court in answer to a cause of action and the plaintiff accepts the money in satisfaction of that cause of action against that defendant, the liability of another person (whether a party to the proceedings or not) jointly with that defendant on the cause of action shall be satisfied in the amount of the money accepted but shall not be discharged on the acceptance except to the extent of that satisfaction.

## **79 Withdrawal of money paid into court**

- (1) If money paid into court by a defendant in proceedings is not accepted in accordance with section 77, the defendant may, with the leave of the court, withdraw the whole or any part of the money so paid or any bond filed by him or her.
- (2) A withdrawal under subsection (1) shall be made by filing a notice of withdrawal of money paid into court in accordance with form 28.
- (3) On filing a notice of withdrawal of money paid into court, the defendant in proceedings is entitled to receive the money to which the notice relates or delivery of the bond, as the case may be.

## **80 Order for payment out after acceptance**

- (1) If a plaintiff in proceedings accepts money paid into court in satisfaction of a cause of action, the money shall not be paid out except by leave of the court in the following circumstances:
- (a) if the plaintiff has instituted proceedings in relation to the cause of action against 2 or more defendants and any of those defendants has not joined in paying the money into court and did not consent to the payment out;

- (b) if the plaintiff has also instituted proceedings in relation to an alternative cause of action against a defendant who did not join in paying the money into court and did not consent to the payment out;
  - (c) if the plaintiff accepted the money after the hearing of proceedings commenced;
  - (d) if the plaintiff represents other persons in the proceedings;
  - (e) if the plaintiff is a person under disability.
- (2) On an application for leave under subsection (1), the court shall, so far as practicable, deal with the question of all the costs in the proceedings and shall make an order accordingly.

**81 Payment of money under defence of tender**

If the plaintiff in proceedings files a notice of acceptance in accordance with section 77 in respect of money paid into court in connection with a defence of tender before action—

- (a) the money shall not be paid out in except in accordance with an order of the court; and
- (b) the plaintiff is not entitled to receive any amount in respect of his or her costs in the proceedings except in accordance with an order of the court; and
- (c) if the court makes an order that the plaintiff pay the defendant's costs in the proceedings, it may order that those costs be paid to the defendant by the registrar out of the money paid into court.

**82 Nondisclosure of payment into court**

- (1) Subject to subsection (2), the fact that money has been paid into court in proceedings—



- (a) shall not be disclosed in an affidavit filed in the proceedings; and
  - (b) shall not be disclosed to the court at the hearing of the proceedings until all questions relating to liability or the amount of any debt or damages have been decided.
- (2) Subsection (1) does not apply—
- (a) if the money has been paid into court in connection with a defence of tender before action; or
  - (b) if the plaintiff accepts the money in accordance with section 77; or
  - (c) if the disclosure of the payment is necessary for the purpose of an application under this part.

### **83 Costs if money paid into court**

- (1) If money has been paid into court in proceedings, the court shall, in exercising its discretion with regard to the making of any order for costs in the proceedings, take into account—
- (a) the time or times when the money was so paid; and
  - (b) the amount or amounts so paid; and
  - (c) the acceptance or nonacceptance by the plaintiff of the money so paid and the date of any such acceptance;
- and may, if it thinks just, order that any costs allowed in the proceedings be a first charge on the amount so paid.
- (2) If, before the hearing of proceedings has commenced, the plaintiff—
- (a) accepts money paid into court by the defendant in answer to a cause of action; and
  - (b) abandons that cause of action as against all other defendants (if any); and

- (c) abandons all other causes of action to which the proceedings relate (if any);

the plaintiff may, unless the court otherwise orders, after that money has been paid out, tax his or her costs of the proceedings in respect of his or her claim against the defendant who paid the money into court incurred before service of the notice of payment into court and, if those costs are not paid within 4 days after those costs have been taxed, the registrar shall cause judgment to be entered for the plaintiff against the defendant for the amount of those costs as so taxed.

#### **84 Money paid into court remaining at judgment**

- (1) If any money paid into court in proceedings remains in court at the time judgment is given in the proceedings, the court—
- (a) may, if the money was paid into court by the lodging of a bond under section 85, make an order that the insurer pay to the registrar, in satisfaction in whole or in part of the judgment, the amount of money for which the bond was given or part of that money; and
- (b) shall give directions whether any money paid to the registrar by the defendant, or paid or ordered to be paid to the registrar by the insurer, shall be paid out to any party or parties and, if so, in what amount or respective amounts, or retained in court, and on what terms.
- (2) An order made under subsection (1) (a) may be enforced as if it were a judgment for the amount in respect of which the order was made given in favour of the plaintiff against the insurer.

#### **85 Lodgment of bond**

- (1) Except if a defendant in proceedings relies on a defence of tender before action, subject to this section, he or she may lodge with the registrar a bond in accordance with form 29, being a bond given by—

- (a) the Territory; or
  - (b) the Commonwealth; or
  - (c) an authorised insurer under the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance); or
  - (d) the nominal defendant for that part; or
  - (e) an approved insurer under the *Workers Compensation Act 1951*; or
  - (f) a corporation approved by the registrar.
- (2) A bond lodged under subsection (1) shall—
- (a) for a bond given by the Territory—be signed by the chief solicitor or a person authorised under the *Government Solicitor Act 1989*, section 5 (5) to act in the name of the government solicitor; or
  - (b) for a bond given by the Commonwealth—be signed by the Australian Government Solicitor; or
  - (c) for a bond given by a body corporate—be signed by a manager or officer of that body corporate authorised in writing under the seal of the body corporate for the purpose; or
  - (d) in any other case—be under the seal of the insurer.
- (3) An authorisation given for subsection (2)—
- (a) may be a general authorisation or a special authorisation; and
  - (b) shall be in accordance with form 30; and
  - (c) shall, unless it has already been lodged with the registrar, be so lodged together with the bond to which it relates.
- (4) An authorisation given for subsection (2) has effect until notice of revocation in writing is lodged with the registrar.

- (5) If a bond has been lodged with the registrar under subsection (1), this part applies as if an amount equal to the amount for which the bond is given has been paid into court, and a reference in this part to money paid into court includes, in relation to proceedings in which a bond has been lodged under this section, a reference to the amount secured by the bond.
- (6) An insurer may at any time pay to the registrar the amount of money secured by a bond lodged under this section, and if money is paid to the registrar in accordance with this subsection—
- (a) the insurer shall have no further liability on the bond; and
  - (b) the money so paid shall, unless the court otherwise orders, be dealt with as if the defendant in the proceedings had paid it into court.
- (7) If a defendant in proceedings lodges a bond under this section and, while the bond remains in court, the plaintiff files and serves a notice of acceptance of the money secured by the bond, the insurer who gave the bond shall, within 7 days after service of the notice of acceptance, pay to the registrar the amount of money so secured.
- (8) If an insurer does not pay to the registrar money that is required to be paid under subsection (7) the defendant in the proceedings is not entitled to any advantage to which he or she would, but for this subsection, be entitled because of having paid the money secured into court, and—
- (a) the plaintiff may withdraw his or her acceptance of the money; or
  - (b) the court may, on the application of the plaintiff, order that the money be paid to the plaintiff.
- (9) An order made by the court under subsection (8) may be enforced as if it were a judgment for the amount in respect of which the order was made given in favour of the plaintiff against the insurer.

- (10) Payment of money by an insurer under this section or in satisfaction, in whole or in part, of liability under any order shall operate, to the extent only of the amount of the payment, in satisfaction, in whole or in part, of any liability of the defendant in the proceedings.
- (11) An insurer who is required under this section or by order of the court to pay money to the registrar may pay the money to or at the direction of the plaintiff, and if the plaintiff accepts money so paid, all proceedings to enforce the security shall be stayed.

## Part 11 Persons under disability

### 86 Capacity as regards proceedings

- (1) Subject to section 496, a person under disability is not entitled to institute proceedings or continue proceedings as a plaintiff except by a next friend.
- (2) A person under disability is not entitled to defend proceedings except by a guardian *ad litem*, and judgment shall not be entered in proceedings against a person under disability unless a guardian *ad litem* has been appointed for that person in the proceedings.
- (3) Subject to this Act, if a person under disability is a party to proceedings, anything that would, if he or she were not a person under a disability, be required or authorised to be done by him or her in the proceedings shall or may be done by his or her next friend or guardian *ad litem*, as the case may be.

### 87 Liability for costs

- (1) A person who is a next friend of a person under disability in proceedings shall be liable for any costs for which the plaintiff, if he or she were not a person under disability, would have been liable, and an order for costs against the plaintiff or the next friend may be enforced against the next friend.
- (2) A guardian *ad litem* or a person under disability in proceedings is not liable for any costs in the proceedings not occasioned by his or her own negligence or misconduct.

### 88 Entitlement to be next friend or guardian *ad litem*

- (1) Subject to this Act, it is not necessary for an appointment of a next friend or guardian *ad litem* of a person under disability in proceedings to be made by order of the court.

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- (2) Subject to subsection (3), any individual may be a next friend or guardian *ad litem* of a person under disability in proceedings.
  - (3) A person is not entitled to be a next friend or guardian *ad litem* of a person under disability in proceedings—
    - (a) if he or she is a person under disability; or
    - (b) if he or she has an interest in the proceedings adverse to the interest of the person under disability; or
    - (c) if he or she does not consent.
  - (4) If a committee or manager has been appointed in respect of a person under disability, a person other than that committee or manager shall not, without the leave of the court, be appointed as the guardian *ad litem* of the person under disability in proceedings.
  - (5) A body politic or corporate is not entitled to be a next friend or guardian *ad litem* of a person under disability in proceedings.
  - (6) A person shall not take any step in proceedings as a next friend or guardian *ad litem* of a person under disability unless he or she has been appointed under this Act.
  - (7) If a person has been or is a next friend or guardian *ad litem* of a person under disability in proceedings, no other person may act as the next friend or guardian *ad litem* of that person under disability in those proceedings except on appointment by the court.

## **89 Appointment of next friend**

- (1) A person shall be appointed as the next friend of a person under disability in proceedings by filing an undertaking in accordance with form 31 to be responsible for any costs that the person under disability might otherwise be required to pay in the proceedings.
- (2) An undertaking referred to in subsection (1) shall be witnessed by the registrar, a legal practitioner or a justice of the peace.

- (3) If it appears to the registrar that the person seeking to institute proceedings is a person under disability, the registrar shall not permit originating process to be filed until an undertaking referred to in subsection (1) has been filed.
- (4) If it appears to the court in the course of proceedings that—
- (a) the person who instituted the proceedings is a person under disability; or
  - (b) that the next friend of the plaintiff in the proceedings is for any reason no longer able to act as next friend;
- the court may, on the filing of an undertaking referred to in subsection (1) by a person, make an order appointing that person as next friend of the person under disability in the proceedings.
- (5) An order under subsection (4) may, if the court so directs, be made without notice of the application for the order being given to any other party to the proceedings.

## **90 Appointment of guardian *ad litem***

- (1) If originating process has been served on a person under disability, a person shall be appointed as guardian *ad litem* of the person under disability by the filing, and service on the opposite party, of an affidavit in accordance with form 32 by the legal practitioner for the person under disability or some other person cognisant of the facts to the effect that the proposed guardian *ad litem*—
- (a) consents to act as guardian; and
  - (b) is a proper person to be so appointed; and
  - (c) has no interest in the proceedings adverse to the interest of the person under disability.
- (2) An affidavit referred to in subsection (1) shall have subscribed on it or annexed to it the consent in writing of the proposed guardian *ad litem*.



- (3) If—
- (a) the defendant in proceedings is a person under disability; and
  - (b) no notice of grounds of defence has been filed;
- subject to subsection (4), the plaintiff shall not take any step in the proceedings until a guardian *ad litem* of the defendant in the proceedings has been appointed.
- (4) If—
- (a) the defendant in proceedings is a person under disability for whom a guardian *ad litem* has not been appointed; and
  - (b) the time for filing a notice of grounds of defence has expired; and
  - (c) no notice of grounds of defence has been filed;
- then—
- (d) the plaintiff may cause a person to be appointed under subsection (1) as guardian *ad litem* of the defendant in the proceedings; or
  - (e) if the plaintiff has no knowledge of a proper person to be so appointed—the court may, on the application of the plaintiff, appoint the registrar as guardian *ad litem* of the defendant in the proceedings.
- (5) Unless the court otherwise directs, notice of an application referred to in subsection (4) shall be served by the plaintiff in the proceedings on the defendant.

## 91 Record of appointee

If a person is appointed as next friend or guardian *ad litem* of a person under disability in proceedings, the name, address and description of the person so appointed shall be entered into and

shall, for the purpose of any subsequent step taken in the proceedings, form part of the record of the proceedings.

**92 Removal of next friend or guardian *ad litem***

- (1) The court may, on the application of a party to proceedings or of any other person, or on its own initiative—
  - (a) remove a next friend or guardian *ad litem* of a person under disability in the proceedings; and
  - (b) order that the proceedings be stayed until another person has been appointed as next friend or guardian *ad litem* in place of the person so removed.
- (2) An applicant for an order under subsection (1) shall, unless the court otherwise directs, serve notice of the application on the person whose removal is sought and on the person under disability for whom he or she had been appointed as next friend or guardian *ad litem*.

**93 Admission on pleadings**

Section 111 (1) does not apply in relation to a party to proceedings who is a person under disability.

**94 Judgment in proceedings if no guardian *ad litem* appointed**

- (1) If judgment has been given or entered, or an order for the payment of money has been made, in proceedings against a defendant who was, at the date of the judgment or order, a person under disability without a guardian *ad litem* in the proceedings, the court may, on application by the registrar or a party to the proceedings or on its own initiative, set aside the judgment or order and order that the proceedings be continued on the terms that it thinks just, and if the court makes such an order, it may give directions for the subsequent conduct of the proceedings.

- (2) A judgment given or entered in proceedings against a defendant who, at the date of the judgment or order, was a person under disability without a guardian *ad litem* in the proceedings shall not be enforced without the leave of the court.
- (3) If a bailiff or other person charged with the service or execution of a writ or other process to enforce a judgment given or entered or order made by the court against a defendant in proceedings ascertains, or has reason to believe, that the defendant was, at the date of the judgment or order, a person under disability for whom a guardian *ad litem* had not been appointed, he or she shall forthwith report the matter to the registrar.
- (4) On receiving a report under subsection (3), the registrar shall forthwith apply to the court for directions.

## **95      Compromise before action**

- (1) If a person under disability has a cause of action against another person, or a person has a cause of action against a person under disability, being a cause of action in relation to which proceedings might be instituted and, before proceedings are instituted, agreement is made by or on behalf of the person under disability for a compromise or settlement in relation to the cause of action, the court may approve or disapprove the agreement.
- (2) An agreement approved by the court under subsection (1) is as binding on a person under disability by or on whose behalf it was made as if that person were not a person under disability and, if the agreement was made by another person on his or her behalf, that other person shall be deemed to have been his or her agent for the purpose of making the agreement.
- (3) An agreement disapproved by the court under subsection (1) is not binding on the person under disability by or on whose behalf it was made.

- (4) A person may apply to the court for approval of an agreement referred to in subsection (1).
- (5) The court may approve an agreement referred to in subsection (1) on such terms as it thinks just.
- (6) Without limiting subsection (5), the court may, as a term of its approval of an agreement referred to in subsection (1), require that any money or property payable or applicable to or for the benefit of a person under disability under the agreement be dealt with as though it became so payable or applicable in the settlement or proceedings or otherwise as the court thinks just for the benefit of the person under disability, and the court may make the orders that it thinks just for giving effect to such a requirement.

**96 Approval of settlement involving person under disability**

In proceedings for the recovery of money by or on behalf of a person under disability (whether alone or with another person), a settlement or compromise shall not be entered into, and money paid into court shall not be accepted, without the approval of the court.

**97 Money recovered by person under disability**

- (1) This section applies to money ordered or agreed to be paid in proceedings referred to in section 96, other than—
  - (a) money due to a person who has not attained full age as salary, wages or otherwise in respect of his or her employment; and
  - (b) money paid to the public trustee under the *Public Trustee Act 1985*, section 25.
- (2) The court may, at any time and on the application of the registrar or on its own initiative, by order, direct how money to which this section applies shall be dealt with and, in particular, but without limiting the generality of the foregoing, the court may, by order, direct—

- (a) the payment of all or part of the money to the person under disability, or to the next friend of that person, in respect of expenses incurred or amounts paid by, for or on behalf of the person under disability for his or her maintenance or benefit, or to his or her legal practitioner in respect of costs; and
  - (b) the investment of all or part of the money on behalf of the person under disability in a specified way; and
  - (c) the investment of all or part of the interest received from an investment referred to in this section on behalf of the person under disability in a specified way; and
  - (d) the variation of an investment referred to in this section; and
  - (e) the sale of securities in which all or part of the money is invested at a specified time and on specified conditions; and
  - (f) the payment of all or part of the money, or the transfer of a security or an investment referred to in this section, to a person entitled to it.
- (3) On receiving a request from a parent, guardian or next friend of a person who has not attained full age, the registrar shall apply to the court for directions under subsection (2) as to the payment, out of money to which this section applies that has been invested or remains in court, of an amount for the maintenance or benefit of the person under disability, and the registrar shall transmit to the court, together with the application, his or her recommendations.
- (4) A request under subsection (3) shall—
- (a) be in writing; and
  - (b) specify the amount sought to be paid; and
  - (c) be accompanied by an affidavit, or, with the consent of the registrar, a statutory declaration, verifying the amount sought to be paid and stating the reason for the request.

- (5) Unless the court otherwise orders, it is not necessary for a person to appear before the court in connection with an application by the registrar for an order under subsection (2).
- (6) If the court has not made an order under subsection (2) for the investment or payment of any money to which this section applies that was paid into court, the registrar shall, on behalf of the person under disability, invest that money in securities of the Commonwealth or by deposit in a saving bank, and he or she shall invest in like way any interest received from an investment referred to in this subsection.
- (7) Nothing in this section affects the lien of a solicitor for costs.

**98 Service on person under disability**

- (1) Service of a document in proceedings on a person under disability shall be effected in accordance with this section.
- (2) If the person under disability has a legal practitioner, a next friend or guardian *ad litem* in proceedings, a document in the proceedings may be served on the legal practitioner, next friend or guardian *ad litem*.
- (3) A document in proceedings may be served on any person, including a person under disability, approved, whether before or after the service, by the court or the registrar for that purpose under this section.
- (4) If a person under disability is such a person because he or she has not attained full age and he or she has no next friend or guardian *ad litem* in proceedings, a document in the proceedings may be served—
  - (a) if he or she is 16 years of age or older—on him or her; or
  - (b) on a parent of his or her or on a guardian of his or her person or of his or her estate; or

- (c) if he or she has no parent and has no guardian of his or her person or of his or her estate—on a person with whom he or she resides or in whose care he or she is.
- (5) If the person under disability is such a person because he or she is of unsound mind or incapable and he or she has no next friend or guardian *ad litem*, in proceedings, a document in the proceedings may be served—
- (a) if he or she has a committee or manager—on the committee or manager;
  - (b) if he or she has no committee or manager—on a person with whom he or she resides or in whose care he or she is.
- (6) A document served under this section shall be served in the way required by this Act for service of such a document on any other person.

## **Part 12 Pleadings and particulars**

### **Division 12.1 Pleadings generally**

#### **99 Paragraphs in pleadings**

If a pleading alleges or otherwise refers to several matters—

- (a) the pleading shall be divided into paragraphs; and
- (b) each matter shall, so far as is convenient, be dealt with in a separate paragraph; and
- (c) the paragraphs shall be numbered consecutively.

#### **100 Facts in evidence**

Subject to this Act, a pleading shall contain only a statement in a summary form of the material facts on which the party who filed the pleading relies, but need not specify the evidence by which those facts are to be proved.

#### **101 Brevity**

A pleading shall be as brief and concise as the nature of the case permits.

#### **102 Documents and spoken words**

If any document is, or spoken words are, referred to in a pleading—

- (a) the effect of the document or of the spoken words shall, so far as is material, be stated; and
- (b) the precise terms of the document or words shall not be stated except so far as those terms are material.



**103 Presumed facts**

A party to proceedings is not required to plead a fact if—

- (a) a fact is presumed by law to be true; or
- (b) the burden of disproving the fact would lie on the opposite party;

except so far as may be necessary to meet a specific denial of that fact by the opposite party in his or her pleading.

**104 Conditions precedent**

If it is a condition precedent necessary for the case of a party to proceedings that a thing has been done or an event has happened, a statement that the thing has been done or that the event has happened shall be included in his or her pleading.

**105 Money claims**

- (1) This section applies to proceedings if the plaintiff's claim alleges money payable by the defendant to the plaintiff for—
  - (a) goods sold and delivered by the plaintiff to the defendant; or
  - (b) goods bargained and sold by the plaintiff to the defendant; or
  - (c) work done and materials provided by the plaintiff for the defendant at the defendant's request; or
  - (d) money lent by the plaintiff to the defendant; or
  - (e) money paid by the plaintiff for the defendant at the defendant's request; or
  - (f) money had and received by the defendant for the use of the plaintiff; or
  - (g) interest on money due from the defendant to the plaintiff and forborne at interest by the plaintiff to the defendant at the defendant's request; or

- (h) money found to be due from the defendant to the plaintiff on accounts stated between them.
- (2) Subject to this section, in proceedings to which this section applies, it shall be sufficient to plead facts in the way described in subsection (1).
- (3) The defendant in proceedings to which this section applies may, within 21 days after service on him or her of the claim, file, and serve on the plaintiff, a notice in accordance with form 33 that the defendant requires the plaintiff to plead the facts on which he or she relies in accordance with the provisions of this part other than this section.
- (4) If a defendant files and serves a copy of a notice under subsection (3)—
- (a) the plaintiff shall, within 21 days after service of the notice on him or her, amend his or her claim so as to plead the facts on which he or she relies in accordance with the provisions of this part other than this section; and
- (b) the plaintiff is not entitled to have judgment entered for him or her in the proceedings until the end of 21 days after service on the defendant of the amended claim or of notice of the amendments of the claim.
- (5) A plaintiff is not debarred from amending a claim under section 127 only because of the fact that he or she has amended a claim under this section.
- (6) This section does not affect the operation of division 12.2.

## **106 Matters for specific pleading**

In a notice of grounds of defence or subsequent pleading, a party to proceedings shall plead specifically any performance, release, statute of limitation, fraud, any fact showing illegality, or any other matter—

- (a) that the party alleges makes any claim, defence or other case of the opposite party not maintainable; or
- (b) that, if not pleaded specifically, may take the opposite party by surprise; or
- (c) that raises a matter of fact not arising out of previous pleadings.

**107 Contributory negligence**

A party to proceedings who relies on contributory negligence or voluntary assumption of risk shall plead that contributory negligence or voluntary assumption of risk.

**108 New matter**

A party to proceedings may plead any matter notwithstanding that the matter has arisen after the commencement of the proceedings.

**109 Departure**

- (1) Subject to subsection (2), a party to proceedings shall not, in any pleading, make an allegation of fact, or raise any ground or claim, inconsistent with a previous pleading filed by him or her.
- (2) Subsection (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

**110 Points of law**

A party to proceedings may, in a pleading, raise any point of law.

**111 Admissions and traverse**

- (1) Subject to subsection (3), an allegation of fact made by a party to proceedings in his or her pleading shall stand admitted by an opposite party unless it is traversed by that opposite party in his or her pleading or an implied joinder of issue under section 112 operates as a denial of it.

- (2) A traverse may be made either by a denial or by a statement of nonadmission, and either expressly or by necessary implication, and either generally or as regards any particular allegation.
- (3) If a pleading makes an allegation of the suffering of damage or of an amount of damages, a pleading in reply to that pleading shall be taken to traverse the allegation unless the allegation is specifically admitted.

### **112 Joinder of issue**

- (1) No express joinder of issue shall be required in any proceedings.
- (2) If no reply is filed, there shall be an implied joinder of issue on any ground of defence specified in a notice of grounds of defence filed in proceedings.
- (3) An implied joinder of issue operates as a denial of every allegation of fact made in the relevant pleading except to the extent that the allegation is expressly admitted.

### **113 Striking out of inadequate etc pleading**

- (1) If a pleading—
  - (a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading; or
  - (b) has a tendency to cause prejudice, embarrassment or delay in the proceedings; or
  - (c) is otherwise an abuse of the process of the court;the court may, at any stage of the proceedings, on the terms it thinks just, order that the whole or any part of the pleading be struck out.
- (2) The court may receive evidence on the hearing of an application for an order under subsection (1).

- (3) If the court makes an order under subsection (1) in proceedings, it may make any other orders it thinks just, including, without limiting the generality of the foregoing, any of the following orders:
- (a) an order as to subsequent steps in the proceedings being taken as if the matter contained in the pleading, or in that part of the pleading, that was struck out had not been pleaded;
  - (b) an order granting time to any party to file amended documents;
  - (c) if the pleading that was struck out was a notice of grounds of defence—an order granting leave for judgment to be entered for the plaintiff;
  - (d) an order as to costs in the proceedings.

**114 General issue abolished**

A party to proceedings shall not plead the general issue.

**Division 12.2 Particulars**

**115 Sufficient particulars**

A party to proceedings shall, in a pleading filed by him or her, give the particulars of his or her claim, grounds of defence or any other matter pleaded by him or her that are necessary to enable the opposite party to identify the case he or she is required by the pleading to meet.

**116 Fraud etc**

A party to proceedings shall, in a pleading filed by him or her, give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which he or she relies.

**117 Condition of mind**

- (1) A party to proceedings who pleads any condition of mind shall, in a pleading filed by him or her, give particulars of the facts on which he or she relies.
- (2) In subsection (1):  
*condition of mind* includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

**118 Negligence and breach of statutory duty**

- (1) In proceedings in relation to a claim for damages in tort, a party who pleads negligence (whether contributory or otherwise) or breach of statutory duty shall give particulars of the matter pleaded.
- (2) The particulars required by subsection (1) to be pleaded shall be a statement of the facts on which the party relies as constituting the negligent act or omission or the breach of statutory duty alleged in the pleading.
- (3) If a party relies on more than 1 negligent act or omission or breach of statutory duty, the particulars required by subsection (1) shall, so far as is practicable, state separately each negligent act or omission or breach of statutory duty relied on.

**119 Out-of-pocket expenses etc**

If a party to proceedings claims damages and seeks to include as part of his or her claim money that he or she has paid, is liable to pay or has failed to receive, in consequence of the act or omission of the opposite party to which the claim relates, he or she shall give the best particulars he or she can of that money.

**120 Amount claimed for property damage**

If a party to proceedings claims damages in respect of the death of or injury to any person caused by or arising out of the use of a motor

vehicle as well as damages in respect of any other matter, he or she shall give the best particulars he or she can give, including the amount that he or she claims for damages, in respect of that other matter.

### **121 How particulars in pleadings given**

- (1) If any provision of this part requires particulars to be given of any pleading, the particulars shall be set out in the pleading or, if that is inconvenient, shall be set out in a separate document referred to in the pleading, and in such a case that document shall be filed and a copy served with the pleading.
- (2) Notwithstanding subsection (1), if the necessary particulars of debt, expenses or damages exceed 3 pages and have, before the date when the pleading is filed, been given to the party on whom the pleading is required to be served and the pleading specifies the date when the particulars were given, it is not necessary for the particulars to be filed or served unless the court otherwise orders.

### **122 Further and better particulars**

- (1) Subject to subsection (2), a party to proceedings may, by written notice served on another party, require that other party to give—
  - (a) further and better particulars of any claim, ground of defence or other matter stated in a pleading of that other party filed in the proceedings; or
  - (b) a statement of the nature of the case on which that other party relies.
- (2) A party to proceedings is not entitled to require further and better particulars under subsection (1) if a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.
- (3) If a party to proceedings fails to give further and better particulars, or a statement, required under subsection (1) within 14 days after

the date when the notice under that subsection was served on him or her, the court may, on the application of the party who served the notice, order that the further and better particulars or the statement, as the case may be, be given to the lastmentioned party.

- (4) If the court makes an order under this section, it may, if it thinks just, direct that if the order is not complied with within a specified time, any proceedings instituted or any pleading filed by the party in default be struck out or that any such proceedings be stayed until the order is complied with.
- (5) The court shall not make an order under this section before the filing of a notice of grounds of defence in any proceedings unless, in the opinion of the court—
  - (a) it is necessary or desirable that the order be made to enable the defendant to plead; or
  - (b) there are other circumstances that justify the making of the order.



## **Part 13**                      **Interlocutory matters**

### **Division 13.1**              **Interlocutory application**

#### **123**              **Interlocutory applications**

- (1) An application to the court in proceedings shall be made by motion and may be supported by affidavit.
- (2) Subject to subsection (4), an applicant shall not move the court for the order sought unless he or she has—
  - (a) filed a notice of motion in accordance with form 36; and
  - (b) served a copy of the notice of motion on each interested party.
- (3) If a copy of a notice of motion is required to be served, it shall, unless the court otherwise orders, be served not later than 3 days before the date fixed for the hearing of the motion.
- (4) An applicant may move the court without having filed, or served a copy of, a notice of motion if—
  - (a) the preparation or filing of the notice, or the service, would cause undue delay or other mischief to the applicant; or
  - (b) each interested party consents to the order sought by the applicant; or
  - (c) under this Act or by the practice of the court, the motion may properly be made without the filing, or service, of a notice of motion; or
  - (d) the court by order dispenses with the requirements of subsection (2).
- (5) A notice of motion shall—
  - (a) specify the place, date and time fixed for the hearing of the motion; and

- (b) if the court has made an order under subsection (4) dispensing with the requirements of subsection (2) in relation to the notice of motion, bear a note of the order made; and
  - (c) state concisely the nature of the order sought by the applicant; and
  - (d) state concisely the grounds on which the order is sought, or refer to the affidavit in which those grounds are set out; and
  - (e) specify each party who would be affected by the order sought.
- (6) A person who intends to rely on an affidavit at the hearing of a motion shall file the affidavit, and shall serve a copy of the affidavit on each interested party (except a party on whom service of a copy of the notice of motion was not required under this section)—
- (a) in sufficient time to enable that other party to make and file, and serve a copy of, an affidavit in reply; or
  - (b) within the time the court orders.
- (7) A motion may be heard ex parte.

## **124 Hearing of motion**

- (1) On the hearing of a motion, the court may, on the terms it thinks just, make or refuse to make the order sought by the applicant, and it may make the other orders, and give the directions, that it thinks just.
- (2) A motion shall include, so far as is practicable, as many applications as, having regard to the nature of the proceedings, can conveniently be dealt with at the one time.
- (3) On the hearing of a motion, any respondent is entitled to make any application in relation to the proceedings.

- (4) If, on the hearing of a motion, a respondent makes an application under subsection (3), the court may—
- (a) on the terms it thinks just, make or refuse to make the order sought by the respondent, and make the other orders, and give the directions, that it thinks just; or
  - (b) adjourn the hearing of the application and direct the notice of the application to be given to any interested party that it thinks just.

## **125 Costs on application**

- (1) Subject to this Act, the costs of any application to the court in proceedings shall, unless the court otherwise orders, follow the event of the proceedings.
- (2) Costs of an application to the court in proceedings made *ex parte* shall not be allowed except by order of the court.
- (3) If the court makes an order for the payment of the costs of an application to the court in proceedings, those costs shall not, unless the court otherwise orders, be taxed until the proceedings are determined.
- (4) If the court makes an order under subsection (3) for the taxation of costs referred to in this section before the proceedings are determined, it shall give directions as to the scale on which those costs are to be taxed.
- (5) This section applies in relation to the costs of an application to the court in proceedings whether or not costs are claimed in the notice of motion.

## Division 13.2 Amendment

### 126 General power of amendment

- (1) The court may, at any stage of proceedings, on application by a party or of its own motion, order that any document filed in the proceedings be amended, or give leave to any party to amend any document filed by him or her in the proceedings, in the way the court thinks just.
- (2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, of correcting any defect or error in the proceedings or of avoiding multiplicity of proceedings.
- (3) If, in a document filed in proceedings, there has been a mistake in the name of a party to proceedings, subsection (1) applies in relation to the person intended to be made a party as if he or she were a party.
- (4) This section does not apply in relation to the amendment of a judgment, order or certificate.

### 127 Amendment of pleading without leave

- (1) A party to proceedings may, without the leave of the court, amend any pleading of his or her once at any time before the pleadings are closed.
- (2) A party to proceedings may further amend any pleading of his or her without the leave of the court before the pleadings are closed if he or she obtains the consent of all other parties.

### 128 Consequential amendment of defence or reply

- (1) If a plaintiff in proceedings amends his or her claim under section 127—

- (a) if the defendant has filed his or her notice of grounds of defence, he or she may amend that notice; and
  - (b) the time for filing his or her notice of grounds of defence or amended notice of grounds of defence, as the case may be, shall be 21 days after service on him or her of the amended claim or a notice specifying the amendment.
- (2) If a defendant in proceedings amends his or her notice on grounds of defence under section 127—
- (a) if the plaintiff has filed a reply, he or she may amend his or her reply; and
  - (b) the time for filing his or her reply or amended reply, as the case may be, shall be 21 days after service on him or her of the amended notice of grounds of defence or a notice specifying the amendment.
- (3) The right to amend under this section is in addition to the right to amend under section 127.
- (4) If—
- (a) a party (the *first party*) files a pleading (the *first pleading*); and
  - (b) an opposite party files a pleading (the *second pleading*) in answer (whether by way of defence, reply or otherwise) to the first pleading; and
  - (c) the first party amends the first pleading; and
  - (d) the opposite party does not amend the second pleading within the prescribed time;
- then—
- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and

- (f) section 112 (2) shall not apply but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

### **129 Disallowance of amendment**

- (1) If a party to proceedings amends his or her pleading under section 127, the court, on application by an opposite party, may, by order, disallow the amendment.
- (2) If a party, having once amended his or her pleading, further amends that pleading without the leave of the court and without obtaining the consent of another party, the court, on application by that other party, may, by order, disallow the amendment.
- (3) An application under subsection (1) or (2) shall be filed and served within 14 days after the date of service on the applicant of the amended pleading or a notice specifying the amendment.
- (4) If, on the hearing of an application under subsection (1), the court is satisfied that, if an application for leave to make the relevant amendment had been made on the date when the amendment was made, the court would not have given leave to make the whole or a part of the amendment, the court shall disallow the amendment or that part, as the case may be.

### **130 Duration of leave**

Subject to this Act, if the court makes an order under this Act giving a party to proceedings leave to amend a document filed in the proceedings, if the party does not amend the document in accordance with the order within the time specified for that purpose in the order or, if no time is so specified, within 14 days after the date when the order was made, the order shall cease to have effect.

### **131 Direction for mode of amendment**

If the court orders, or gives leave for, the making of an amendment of a document filed in proceedings, the court may give the

directions that it thinks just about the mode of amendment and service of the amended document or of notice of the amendment.

### **132 Simple mode of amendment**

- (1) If the amendments authorised under this Act to be made to a document in proceedings are not so numerous or lengthy or otherwise of such a nature as to render the document difficult or inconvenient to read, the amendments may be made by writing the alterations in the document.
- (2) A document filed in proceedings amended in accordance with subsection (1) shall be endorsed with a statement specifying the date of the amendment and—
  - (a) if the amendment was made under an order of the court—the date of the order; or
  - (b) if the amendment was not so made—a reference to the section authorising the amendment.
- (3) An endorsement referred to in subsection (2) shall—
  - (a) if the amendment was made under an order of the court—be made by the registrar and sealed with the seal of the court; or
  - (b) if the amendment was not so made—be made and initialled by the party making the amendment.

### **133 Mode of amendment of fresh document**

Subject to section 132, amendments authorised under this Act to a document filed in proceedings shall be made by filing a fresh document, amended as so authorised and bearing a statement specifying the matters referred to in section 132 (2).

### **134 Service after amendment**

If a document filed in proceedings has been served and is later amended, the party making the amendment shall, as soon as

practicable, serve on the parties on whom the document was served a copy of—

- (a) if the amendment is made under section 132—a notice specifying the amendment and the matters referred to in section 132 (2); or
- (b) if the amendment is made under section 133—the fresh document filed.

### **135 Statutes of limitation**

- (1) Subject to this part, if any relevant period of limitation has expired after proceedings were instituted and, after that expiration, the plaintiff applies for leave to amend his or her claim by making an amendment referred to in subsection (2), (3), (4) or (5), the court may, in accordance with the relevant subsection, make an order giving leave accordingly notwithstanding that the period has expired.
- (2) If notice of a motion for leave to make an amendment is filed within 14 days after the date of filing the claim, leave may be given under subsection (1) irrespective of the nature of the amendment.
- (3) If, in a claim, there is a mistake in the name of a party and the court is satisfied that the mistake is not misleading or such as to cause doubt as to the identity of the person referred to, leave may be given under subsection (1) to correct the mistake, whether or not the effect of the amendment would be to substitute a new party.
- (4) If, on the date of filing of his or her claim, the plaintiff was entitled to sue in any capacity, leave may be given under subsection (1) to make an amendment having the effect that he or she sues in that capacity.
- (5) If a claim specifies a cause of action arising out of any facts, leave may be given under subsection (1) to make an amendment having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts.



- (6) This section does not limit the powers of the court under section 126.

**136 Amendment of judgment, order or certificate to correct error**

- (1) If there is a clerical mistake or an error arising from an accidental slip or omission in a judgment or order of the court, or in a certificate issued out of the court, the court may, on the application of any party to proceedings or on its own initiative, at any time amend the judgment, order or certificate to correct the mistake or error.
- (2) Sections 132 and 133 do not apply in relation to an amendment made under subsection (1).

**137 Costs in relation to amendment**

If a party to proceedings amends a document with or without the leave of the court, he or she shall, unless the court otherwise orders, pay the costs of any other party of or occasioned by the amendment.

**Division 13.3 Summary judgment**

**138 Summary judgment for plaintiff**

- (1) If, in relation to any relief sought by the plaintiff—
- (a) there is evidence of the facts on which the claim for that relief is based; and
- (b) there is evidence given by or on behalf of the plaintiff that, to the belief of the person giving the evidence, the defendant has no defence to that claim for relief or has no defence except as regards the amount of any damages claimed;

subject to this Act, the court may, on the application of the plaintiff, give the judgment for the plaintiff on that claim for relief that the court thinks just.

- (2) Without limiting subsection (1), the power of the court under that subsection extends to giving judgment for the plaintiff in proceedings for damages to be assessed.
- (3) In this section, a reference to *damages* includes, in relation to proceedings for the detention of goods, a reference to the value of the goods.

### **139 Summary stay or dismissal**

- (1) If, in any proceedings, it appears to the court, in relation to the proceedings generally or in relation to any claim for relief in the proceedings, that—
  - (a) no reasonable cause of action is disclosed; or
  - (b) the proceedings are—
    - (i) frivolous or vexatious; or
    - (ii) an abuse of the process of the court;

the court may, on the application of the defendant or on its own initiative, order that the proceedings be stayed or dismissed either generally or in relation to that claim for relief.

- (2) The court may receive evidence on the hearing of an application for an order under subsection (1).

### **140 Residue of proceedings**

If—

- (a) the court has given judgment for the plaintiff in proceedings under section 138; or
- (b) proceedings have been dismissed or stayed under an order under section 139;

and the proceedings are not wholly disposed of by the judgment or dismissal, or are not wholly stayed, the proceedings may be

continued to the extent to which those proceedings have not been so disposed of or stayed.

**141 Dismissal for want of prosecution**

- (1) If—
- (a) the plaintiff in proceedings does not, within a reasonable time, take any step necessary to have the proceedings heard; or
  - (b) the plaintiff in proceedings unreasonably takes any step to avoid the proceedings being heard;

the court may, on the application of the defendant, order, on the terms it thinks just, that the proceedings be dismissed for want of prosecution or may make such other order as it thinks just.

- (2) If proceedings are dismissed under subsection (1), sections 69 and 70 apply as if those proceedings had been discontinued under part 9.

**Division 13.4 Parties**

**142 Joinder of parties generally**

Persons may be joined as plaintiffs or defendants in proceedings—

- (a) where, if separate proceedings were instituted by or against each of them, as the case may be, a common question of law or of fact would arise in all the proceedings; or
- (b) if all rights to relief claimed in the proceedings (whether they are joint, several or in the alternative) are in respect of or arise out of the same transaction or series of transactions; or
- (c) if the court gives leave so to do.

**143 Joint right**

If, in proceedings, the plaintiff claims relief to which any other person is entitled jointly with him or her, then, unless the court otherwise orders—

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

**144 Common liability**

- (1) If, in proceedings, relief is claimed against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant in the proceedings.
- (2) If persons may be jointly, but not severally, liable and relief is claimed against some but not all of those persons in proceedings, the court may stay the proceedings until the other persons so liable are joined as defendants.

**145 Inconvenient joinder of parties**

If any joinder of parties may complicate or delay the hearing of proceedings or is otherwise inconvenient, the court may order separate hearings or make any other order the court thinks just.

**146 Misjoinder and nonjoinder of parties**

Proceedings shall not be defeated because of the misjoinder of a party or the nonjoinder of any person as a party, and the court may determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

**147 Joinder of parties by order**

- (1) If a person who is not a party to proceedings—
  - (a) ought to have been joined as a party; or
  - (b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined;

the court, on application by him or her or by any party or on its own initiative, may order that he or she be joined as a party, and may make orders for the further conduct of the proceedings.

- (2) A person shall not be joined as a plaintiff in proceedings without his or her consent.

**148 Removal of parties**

If a party to proceedings—

- (a) has been improperly or unnecessarily joined; or  
(b) has ceased to be a proper or necessary party;

the court may, on application by any party or of its own motion, order that the firstmentioned party cease to be a party, and make orders for the further conduct of the proceedings.

**149 Death, transmission etc**

- (1) If a party to proceedings dies or becomes bankrupt and a cause of action to which the proceedings relate survives, the proceedings shall not abate because of the death or bankruptcy.
- (2) If the interest or liability of a party to proceedings passes by assignment, transmission, devolution or otherwise to another person, the court may, on application by a party, by the person to whom the interest or liability has passed or on its own initiative, make an order for the joining, removal or rearrangement of parties, and may make orders for the further conduct of the proceedings.

**150 Further conduct of proceedings**

- (1) Without limiting the powers of the court under sections 147 to 149, orders under any of those sections for the further conduct of proceedings may include orders relating to—
- (a) service of any order of the court and other documents filed in the proceedings; and

- (b) amendment; and
  - (c) the filing of a notice of grounds of defence by a joined defendant; and
  - (d) substitution of a party for another party or former party.
- (2) If, in proceedings, the court orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the orders shall, unless the court otherwise orders, have effect in relation to the substituted party as those things had effect in relation to the other or former party, but the filing of a notice of grounds of defence by the other or former party does not dispense with the filing of a notice of grounds of defence by the substituted party.
- (3) Subject to subsection (2), if a person is joined as a party to proceedings under an order under section 147 or 149, the date of commencement of the proceedings shall, so far as his or her interests are concerned, be—
- (a) if originating process, amended so as to join him or her as a party, was filed—the date of filing; or
  - (b) if such process was not filed—the date when the order was made.

## **151 Failure to proceed after death of party**

- (1) If—
- (a) a party to proceedings dies and a cause of action to which the proceedings relate survives his or her death; and
  - (b) an order under section 149 for the joining of a party in substitution for the deceased party is not made within 3 months after the death;

the court may, on application by a party or by a person to whom liability on the cause of action has passed on the death, order that,

unless, within a specified time after service of the order in accordance with subsection (2), a party is joined in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability on the cause of action, as the case may be, has passed on the death.

- (2) On making an order under subsection (1), the court shall give the directions that it thinks just for service of the order on persons (whether parties or not) interested in continuing the proceedings.

## **152 Representatives re concurrent interests**

- (1) If numerous persons have the same interest in any proceedings, the proceedings may be instituted and, unless the court otherwise orders, continued by or against any 1 or more of those persons as representing all or as representing all except any 1 or more of those persons.
- (2) At any stage of proceedings under this section, the court may, on the application of the plaintiff, appoint any 1 or more of the defendants or other persons whom the defendants represent in the proceedings to represent all, or all except 1 or more, of those persons in the proceedings.
- (3) If the court appoints a person under subsection (2) who is not a defendant in the proceedings, the court shall make an order under section 147 joining him or her as a defendant.
- (4) A judgment entered or an order made in proceedings under this section shall be binding on all the persons whom the plaintiffs or the defendants, as the case may be, represent in the proceedings, but shall not be enforced against any person not a party to the proceedings except with the leave of the court.
- (5) An application for leave under subsection (4) shall be served personally on the person against whom it is sought to enforce the judgment or order.

- (6) Notwithstanding that a judgment or order to which an application under subsection (5) relates is binding on the person against whom the application is made, that person may dispute his or her liability to have the judgment or order enforced against him or her on the ground that because of facts and matters relevant to his or her case he or she is entitled to be exempted from the liability.
- (7) This section does not apply in relation to proceedings about property subject to a trust or included in a deceased estate.

### **153 Deceased person**

- (1) If, in proceedings, it appears to the court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceedings and that he or she has no personal representative, the court may, on the application of a party—
  - (a) order that the proceedings continue in the absence of a person representing the estate of the deceased person; or
  - (b) by order, appoint, with his or her consent, a person to represent that estate for the purpose of the proceedings.
- (2) An order under subsection (1), and any judgment or order subsequently given, entered or made in the proceedings, shall bind the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased been a party to the proceedings.
- (3) Before making an order under this section, the court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

### **154 Executors and administrators**

- (1) If—
  - (a) an order for—



- (i) the recovery or payment of money with or without costs;  
or
  - (ii) costs to be paid on a conviction; or
  - (iii) costs alone, including costs ordered to be paid by an informant;  
has been made; and
- (b) the party entitled to enforce the order dies;  
a person who is the executor or administrator of the party may, on filing an affidavit verifying that the person is the executor or administrator, enforce the order to the same extent, by the like means and in the same circumstances as the party might have done if living.
- (2) A person who is an executor or administrator may sue or be sued in any proceedings in the same way as if the person were a party suing or being sued in his or her own right.

## **Division 13.5      Consolidation**

### **155      Consolidation**

If, in relation to 2 or more proceedings, it appears to the court that—

- (a) a common question of law or fact arises; or
- (b) the relief sought in each of those proceedings is in respect of, or arises out of, the same transaction or series of transactions;  
or
- (c) for some other reason it is desirable to make an order under this section;

the court may, on its own initiative or on the application of a party to any of those proceedings and on the terms it thinks just, order that—

- (d) those proceedings be consolidated; or
- (e) those proceedings be heard together or consecutively; or
- (f) any of those proceedings be stayed until any other of those proceedings have been determined.

## **Division 13.6 Admissions**

### **156 Voluntary admissions**

- (1) A party to proceedings may, by notice in accordance with form 36 served on another party, admit, in favour of the other party, the facts specified in the notice.
- (2) An admission made under subsection (1) in proceedings shall have effect only for the purpose of those proceedings.
- (3) A party to proceedings may, with the leave of the court, withdraw an admission made by him or her under subsection (1).

### **157 Notice to admit facts**

- (1) A party to proceedings may, by notice in accordance with form 37 served on another party, require him or her to admit, for the purpose of the proceedings only, the facts or documents specified in the notice.
- (2) If a party on whom a notice referred to in subsection (1) has been served does not, within 21 days after the date when the notice was served on him or her, serve on the party who served the notice in accordance with form 38 disputing the fact or document specified in the firstmentioned notice, that fact or document shall, for the purpose of the proceedings, be taken to have been admitted by the party on whom the firstmentioned notice was served in favour of the other party.
- (3) A party may, with the leave of the court, withdraw an admission taken to have been made by him or her under subsection (2).

**158 Admission of documents discovered**

- (1) If an affidavit of discovery is served on a party under this part and inspection of any document specified in the affidavit is permitted to that party under this part, then, subject to subsection (3), the prescribed admissions by that party in favour of the party serving that affidavit shall have effect unless the court otherwise orders.
- (2) For subsection (1), the prescribed admissions are—
  - (a) if the document is described in the affidavit as an original document—that it is an original document and was printed, written, signed or executed as it purports to have been; or
  - (b) if the document is described in the affidavit as a copy—that it is a true copy.
- (3) If a party to proceedings—
  - (a) has, by his or her pleading, denied the authenticity of a document; or
  - (b) within 14 days after the time prescribed under this part for inspection of a document, serves on the party giving inspection a notice that he or she disputes the authenticity of the document;subsection (1) does not operate as an admission by the firstmentioned party with regard to that document.
- (4) If a party to proceedings serves an affidavit of discovery on another party, those parties shall be in the position that they would be in if that other party had, on the date of service of the affidavit, served on the firstmentioned party a notice to produce at the hearing of the proceedings such of the documents specified in the affidavit as are in the possession, custody or power of the firstmentioned party.

**159 Judgment on admissions**

- (1) If admissions are made by a party to proceedings, whether by his or her pleading or otherwise, the court may, on the application of any other party, give or direct the entry of any judgment or make any order to which the applicant is, in the opinion of the court, entitled on the admissions.
- (2) The court may exercise its powers under subsection (1) notwithstanding that other questions in the proceedings have not been determined.

**160 Restricted effect of admissions**

An admission referred to in this division made for the purpose of any proceedings shall not be used—

- (a) against the party who made the admissions in any other proceedings; or
- (b) in favour of any person other than the party in whose favour the admission was made.

**161 Costs**

- (1) If a party to proceedings serves a notice on another party disputing a fact or a document and that fact or the authenticity of that document is proved in the proceedings, the firstmentioned party shall, unless the court otherwise orders, pay the other party's costs of so proving.
- (2) On the taxation of a bill of costs in proceedings, the taxing officer shall not allow the costs of proving any fact or the authenticity of any document—
  - (a) that is admitted, unless the costs were, in the opinion of the taxing officer, reasonably incurred before the admission was made; or
  - (b) that was not but, in the opinion of the taxing officer, might reasonably have been, the subject of a notice under section 157

and that, for a factor, could not reasonably have been the subject of a notice under section 156.

## **Division 13.7 Interrogatories**

### **162 Interrogatories**

- (1) Subject to subsection (2), a party to proceedings may, once without the leave of the court, file and serve on another party interrogatories relating to any matter in question in the proceedings between those parties, and the court may, by order, give the firstmentioned party leave to file and serve further interrogatories on that other party.
- (2) A party to proceedings is not entitled to file and serve interrogatories on another party—
  - (a) before the pleadings between those parties are closed; or
  - (b) after a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.
- (3) Interrogatories shall be in accordance with form 39.
- (4) Subject to this section, a party on whom interrogatories are served in accordance with this section shall, within 21 days after the date of service, file an affidavit containing his or her answers to the interrogatories and serve a copy of that affidavit on—
  - (a) the party who served the interrogatories; and
  - (b) if the firstmentioned party is a defendant—each other defendant (if any) in the proceedings who has filed a notice of grounds of defence.
- (5) An affidavit in answer to interrogatories shall be in accordance with form 40.
- (6) A party on whom interrogatories are served may, in his or her affidavit, object to answering any of the interrogatories on the ground that they are irrelevant, unnecessary, unreasonable,

scandalous, vexatious, oppressive or not made in good faith, or on any other ground.

(7) If—

- (a) a party to proceedings fails to comply with subsection (4); or
- (b) answers contained in an affidavit filed and served by him or her under that subsection are insufficient;

the party who served the interrogatories may apply to the court for an order that answers, or further and better answers, as the case requires, be given.

(8) On hearing an application under subsection (7), the court may order that answers, or further and better answers, as the case requires, be given in the way, whether by means of oral examination or otherwise, and within the time that is specified in the order.

(9) If—

- (a) the court has made an order under subsection (8); and
- (b) the person against whom the order was made fails to attend for oral examination at the time and place specified in the order, fails to give answers or further and better answers at the examination or fails to give answers, or further and better answers, as the case requires, in the way and within the time specified in the order;

the court may, on the application of the party who served the interrogatories, make the orders it thinks just, including—

- (c) if that lastmentioned party is the defendant—an order that the proceedings be stayed or dismissed wholly or in part as regards any relief claimed by the plaintiff in the proceedings; or
- (d) if that lastmentioned party is the plaintiff—an order that the defence be struck out and judgment be entered for the plaintiff accordingly.

- (10) The cost of interrogatories and of answering interrogatories shall be borne by the party serving the interrogatories unless the court otherwise orders.
- (11) Subject to subsection (12), a party to proceedings who has served interrogatories is, subject to this section, entitled to use in evidence in the proceedings any of the answers, or any part of an answer, without so using any other answers or the whole of the answer, as the case may be.
- (12) The court may examine all the answers given and if, in the opinion of the court, any answer or part of the answer is so connected with another answer or part of an answer, the court may refuse to admit in evidence the firstmentioned answer or part of an answer unless the party who served the interrogatories also tenders in evidence that other answer or part of an answer, as the case may be.

## **Division 13.8            Discovery and inspection**

### **163            Notice for discovery**

- (1) Subject to subsection (2), if there has been an implied joinder of issue between the parties to proceedings, any of those parties may, unless the court otherwise orders, by notice for discovery in accordance with form 41 filed and served on any other of those parties, require the party served to give discovery of documents.
- (2) A party to proceedings is not entitled to require discovery under subsection (1) after a certificate of readiness for hearing has been filed unless the certificate has been withdrawn or struck out.

### **164            Discovery on notice**

- (1) A party to proceedings who is required to give discovery of documents under section 163 shall do so within the time, not less than 21 days after service of the notice for discovery on him or her, that may be specified in the notice.

- (2) Subject to section 165, a party shall give discovery by filing and serving on the party who filed the notice for discovery an affidavit of discovery in accordance with form 42 relating to any matter in question between him or her and the party who filed the notice for discovery.

**165 Limitation of discovery on notice**

- (1) The court may, before or after any party to proceedings has been required under section 163 to give discovery, order that discovery under section 164 by a party shall not be required or shall be limited to the documents or classes of documents, or to any of the matters in question in the proceedings, that may be specified in the order.
- (2) The court shall, on application by a party to proceedings, make the orders under subsection (1) that are necessary to prevent unnecessary discovery.

**166 Codefendants**

If a plaintiff in proceedings claims relief against 2 or more defendants and requires any defendant to give discovery under section 164, that defendant shall serve his or her affidavit also on each other defendant who has filed a notice of grounds of defence.

**167 Order for general discovery**

The court may, at any stage of proceedings, order any party to file and serve on any other party an affidavit of discovery.

**168 Contents of affidavit of discovery**

- (1) Subject to subsection (2), an affidavit of discovery shall enumerate the documents which are or have been in the possession, custody or power of the party to proceedings making the affidavit in a convenient sequence and as concisely as possible.
- (2) An affidavit of discovery shall describe each document that is or has been in the possession, custody or power of the party to proceedings



making the affidavit or, for a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

- (3) If a party to proceedings making an affidavit of discovery claims that any document in his or her possession, custody or power is privileged from production, he or she shall, in the affidavit, sufficiently state the grounds of the privilege.
- (4) An affidavit of discovery shall distinguish those documents that are in the possession, custody or power of the party to proceedings making the affidavit from those that have been but are no longer in his or her possession, custody or power.
- (5) An affidavit of discovery shall, as to any document that has been but is not then in the possession, custody or power of the party to proceedings making the affidavit, state when he or she parted with possession, custody or power of the document and what has become of it.
- (6) An affidavit of discovery shall specify a time, within 7 days after service of the affidavit, when, and a place where, the documents in the affidavit may be inspected.

## **169 Absence of privilege**

- (1) Except with the leave of the court, a party to proceedings may not claim privilege from production of any document on the ground that it relates solely to and does not tend to prejudice his or her own case and does not relate to or tend to support the case of an opposite party.
- (2) Leave under subsection (1) shall not be granted except for special cause.
- (3) Any application to the court for leave under subsection (1) may be made without serving notice of the motion.

- (4) The court may, at any stage of proceedings, order a party to produce a document to any other party notwithstanding that leave under subsection (1) has been granted and privilege claimed in respect of that document.

**170 Order for particular discovery**

If, at any stage of proceedings, it appears to the court from the evidence, from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for believing that a document or class of documents relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the court may order that party to file, and serve on any other party, an affidavit stating whether that document or any document of that class is or has been in his or her possession, custody or power and, if it has been but is not then in his or her possession, custody or power, when he or she parted with possession, custody or power of the document and what has become of it.

**171 Document referred to in pleading or affidavit**

- (1) If a pleading or affidavit filed by a party to proceedings refers to a document, any other party may, by notice to produce in accordance with form 43 served on him or her, require him or her to produce the document for inspection.
- (2) If a notice to produce a document is served on a party under subsection (1), he or she shall, within 4 days after that service, serve on the party requiring production a notice in accordance with form 44—
- (a) specifying a time, within 7 days after service of the notice under this subsection, when, and a place where, the document may be inspected; or
  - (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or

- (c) stating that the document is not in his or her possession, custody or power and stating, to the best of his or her knowledge, information and belief, where the document is and in whose possession, custody or power it is.

## **172 Order for production**

- (1) If—
  - (a) it appears from an affidavit of discovery filed by a party to proceedings that any document is in his or her possession, custody or power; or
  - (b) a pleading or affidavit filed by a party to proceedings refers to any document; or
  - (c) it appears to the court from the evidence, from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for believing that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party;the court may, subject to any question of privilege that may arise, order the party—
  - (d) to produce the document for inspection by any other party at a time and place specified in the order; or
  - (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.
- (2) An affidavit made under an order under subsection (1) (e) shall, unless the court otherwise orders, state whether there are in the document copied any erasures, interlineations or alterations and, if so, specify them.

**173 Power to take copies**

A party to proceedings to whom a document is produced for inspection under this Act may make copies of the document.

**174 Production to court**

- (1) The court may, at any state of proceedings, order any party to produce to the court any document in his or her possession, custody or power relating to any matter in question in the proceedings.
- (2) On production of a document to the court under an order under subsection (1), the court may deal with the document in the way the court thinks just.

**175 Inspection to decide objection**

If an application is made for an order under section 172 for the production of any document for inspection by another party to proceedings, or for an order under section 174 for the production of any document to the court, and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the court may inspect the document for the purpose of deciding the validity of the claim or objection.

**176 Order only if necessary**

The court shall not make an order for the filing or service of any affidavit of discovery or other document or for the production of any document unless satisfied that the order is necessary.

**177 Default**

If a party to proceedings does not file or serve an affidavit of discovery or other document or does not produce any document as required under this Act, the court may make the order that it thinks just, including—

- (a) an order that the party in default pay the costs of any other party occasioned by the default; or
- (b) if the party in default is a plaintiff—an order that the proceedings be stayed or dismissed wholly or in part as regards any relief claimed by him or her in the proceedings; or
- (c) if the party in default is a defendant—an order that his or her defence be struck out and judgment be entered for the plaintiff accordingly.

**178 Public interest**

This division does not affect any rule of law that authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

## **Part 14**                      **Hearing**

### **Division 14.1**              **Setting down for hearing**

#### **179**              **Certificate of readiness for hearing**

- (1) Subject to this Act, proceedings shall not be set down for hearing unless a certificate of readiness for hearing in accordance with form 45, signed by—
  - (a) if the defendant has not filed a notice of grounds of defence—the plaintiff; or
  - (b) in any other case—all parties to the proceedings;has been filed.
- (2) If a certificate referred to in subsection (1) has been filed, the registrar shall—
  - (a) fix a date, time and place for the hearing of the proceedings; or
  - (b) list the matter in the next available call-over and as soon as practicable after that call-over fix a date, time and place for the hearing of the proceedings;and he or she shall serve on each party to the proceedings a notice in accordance with form 46 of the date, time and place so fixed.
- (3) A date fixed under subsection (2) as the date for the hearing of proceedings shall be a date not less than 10 days after the date when a certificate of readiness for hearing in relation to the proceedings was filed.
- (4) If a party to proceedings refuses or fails to sign a certificate of readiness for hearing within 14 days after he or she has, by written notice served on him or her, been requested to do so by any other party, the lastmentioned party may apply to the court for an order that the matter be set down for hearing.

- (5) If—
- (a) a party to proceedings who has been requested by any other party to sign a certificate of readiness for hearing does so; and
  - (b) that other party refuses or fails to file the certificate within 10 days after it was so signed;
- the firstmentioned party may apply to the court for an order that the matter be set down for hearing.
- (6) On hearing an application under subsection (4) or (5), the court may, if it is satisfied that a party to proceedings did not have a good and sufficient reason for refusing or failing to sign or file, as the case may be, a certificate of readiness for hearing, order that the matter be set down for hearing.
- (7) If, in relation to proceedings, the court has made an order under subsection (6) that the matter be set down for hearing, the registrar shall, unless the court otherwise orders—
- (a) fix a date, time and place for the hearing of the proceedings; and
  - (b) serve on each party a notice in accordance with form 46 of the date, time and place so fixed.
- (8) The date fixed under subsection (7) as the date for the hearing of proceedings shall, unless the court otherwise orders, be a date not less than 10 days after the date when the order under subsection (6) was made.
- (9) If a party to proceedings has been notified under subsection (2) or (7) of the date, time and place fixed for the hearing of the proceedings, he or she may lodge with the registrar a request in writing for another date or time to be so fixed, accompanied by each other party's consent in writing to the request.
- (10) On receiving a request and the accompanying consents under subsection (9), the registrar—

- (a) may, after consultation with the parties to the proceedings, fix another date or time for the hearing of the proceedings in substitution for the date or time fixed under subsection (2) or (7), as the case may be; and
  - (b) shall, if he or she does so, serve on each party a notice in accordance with form 46 of the date or time fixed under this subsection.
- (11) A date fixed under subsection (10) as the date for the hearing of proceedings shall, unless it was specified in a request under subsection (9) or was agreed to during consultation with the registrar, be a date not less than 10 days after the date when the request was lodged with the registrar.

### **180 Application for expedited hearing**

- (1) Notwithstanding the provisions of section 179, a party to proceedings may apply to the court for an order that the matter be set down for hearing forthwith, or for an expedited hearing, as the case requires.
- (2) On an application under subsection (1), the court may, if it is satisfied that there are circumstances that justify it in doing so, by order, fix a date, time and place for the hearing of the proceedings.
- (3) If the court has made an order under subsection (2) in relation to proceedings, the registrar shall serve on each party to the proceedings a notice in accordance with form 46 of the date, time and place fixed under the order for the hearing of the proceedings.

## **Division 14.2 Procedure on hearing**

### **181 Hearings to be in public except in special circumstances**

- (1) Subject to subsection (2) and except in relation to a matter that may be dealt with in chambers, the hearing of a proceeding before the court shall be in public.



- (2) If the magistrate presiding at a hearing is of the opinion that it is desirable in the public interest or in the interests of justice to do so, the magistrate may, by order—
- (a) direct that the hearing or part of the hearing shall take place in private and give directions as to the persons who may be present; and
  - (b) give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or in private, or of matters contained in documents lodged with the court or received in evidence by the court for the purposes of the proceeding; and
  - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given at the hearing, or of a matter contained in a document lodged with the court or received in evidence by the court for the purposes of the proceeding.
- (3) A person who, without reasonable excuse, contravenes an order under subsection (2) commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

## **182 Court's direction in relation to conduct of hearing**

At the hearing of proceedings, the court may give directions with regard to the conduct of the hearing and, in particular, but without limiting the generality of the foregoing, with regard to the order in which the parties to the proceedings may adduce evidence or address the court.

**183 Order of presentation of cases**

- (1) The provisions of this section have effect in relation to the hearing of proceedings—
  - (a) subject to any directions given by the court under section 182 in relation to those proceedings; and
  - (b) in relation to proceedings in which there is more than 1 plaintiff or defendant, proceedings on a cross-claim, proceedings in respect of more than 1 cause of action or proceedings in which a third party is joined—subject to such modifications as the nature of the case may require.
- (2) The order in which the respective cases of the plaintiff and defendant in proceedings shall be presented at the hearing of those proceedings shall be as provided by subsections (3) to (8).
- (3) If the burden of proof on any issue lies on the plaintiff, he or she shall begin.
- (4) If the burden of proof on all the issues lies on the defendant, he or she shall begin.
- (5) The beginning party may make an address opening his or her case and may then adduce his or her evidence.
- (6) If, at the conclusion of the evidence for the beginning party, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.
- (7) If, under subsection (6), the opposite party elects not to adduce evidence, the beginning party may make an address closing his or her case and then the opposite party may make an address stating his or her case.
- (8) If, under subsection (6), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his or her evidence, and after adducing his or her evidence

he or she may make an address closing his or her case, and then the beginning party may make an address closing his or her case.

**184 Procedure if both parties appear**

If each party to proceedings appears in accordance with section 482 on the date and at the time and place fixed for the hearing of the proceedings, the court shall proceed to hear and determine the proceedings.

**185 Procedure in absence of party**

If, at the time fixed for the hearing of proceedings, any party to the proceedings fails to appear, either personally or by his or her representative, the court may—

- (a) order that the proceedings be again set down for hearing or that the other steps be taken before the hearing proceeds that the court directs; or
- (b) adjourn the proceedings; or
- (c) if the party is the plaintiff or, for proceedings on a cross-claim, the defendant, dismiss the claim or the cross-claim, as the case requires; or
- (d) proceed with the hearing *ex parte* generally or as regards any relief claimed in the proceedings.

**186 Procedure if neither party appears**

If each party to proceedings fails to appear, either personally or by his or her representative, on the date and at the time and place fixed for the hearing of the proceedings, the court may order that the proceedings be struck out, and if the court so orders, it shall not make any order as to costs.

## Division 14.3 Summons to witness

### **U** 187 Issue of summons

- (1) In any proceedings, the court may issue a summons to give evidence, a summons for production, or a summons that is both a summons to give evidence and a summons for production for the attendance of the person named before the court or before any magistrate or examiner.
- (2) On request by a party to proceedings, the registrar shall, subject to any order or directions of the court, issue a summons to give evidence, a summons for production, or a summons that is both a summons to give evidence and a summons for production for the attendance of the person named before the court or before any magistrate or examiner.
- (3) A summons to give evidence, a summons for production and a summons that is both a summons to give evidence and a summons for production shall be in accordance with forms 47, 48 and 49 respectively.
- (4) Subject to subsection (5), a party to proceedings requesting the issue of a summons under this section shall produce the summons to the registrar in triplicate and shall file 1 of the copies so produced.
- (5) If a party to proceedings requests the issue of several summonses under this section to give evidence in similar terms but addressed to different persons, he or she is required to produce only 1 original and to file only 1 copy, but that original and copy shall each contain the name of each person to whom any of the summonses is addressed.
- (6) A summons issued under this section shall be served on the person named by—
  - (a) delivering a copy of the summons to him or her personally; or

(b) leaving a copy of the summons at his or her last-known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years; within a reasonable time before the date specified in the summons.

(7) If—

- (a) a summons issued under this section has been served in accordance with subsection (6) on the person named; and
- (b) an amount in respect of expenses that the person would incur in complying with the summons on any day when his or her attendance is required (being an amount equal to the amount that would be payable in respect of that person if the party on whose request the summons was issued were entitled to claim witnesses' expenses in respect of that person as costs in the proceedings) has been paid or tendered to him or her at the time of service of the summons or within a reasonable time before that day; and
- (c) the person refuses or fails, without reasonable excuse, to comply with the requirement of the summons;

that person commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (8) If the court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1) in relation to a person who is required to give evidence under a summons issued under this section, the person satisfies the requirements of the summons by appearing and giving evidence in accordance with the direction.
- (9) If a person contravenes subsection (7), the court may—
  - (a) issue a warrant for the apprehension of the person and for him or her to be brought before the court to give evidence or to produce documents, as the case requires; and

- (b) order the person to pay any costs in the proceedings occasioned by the contravention.
- (10) Notwithstanding anything contained in this section, a person is not required to produce a document or thing under a summons for production issued under this section if—
- (a) the document or thing is not specified or otherwise sufficiently described in the summons; or
  - (b) he or she would not be required to produce that document or thing on a subpoena duces tecum in the Supreme Court.

**188 Production by non-party**

- (1) If a person named in a summons for production of any document or thing, being a summons requiring attendance before the court or a magistrate, is not a party to the proceedings, that person may, unless the court otherwise orders, produce the document or thing to the registrar not later than the day before the first date when his or her attendance is required, instead of attending and producing the document or thing as required by the summons.
- (2) If a document or thing is produced to the registrar under subsection (1), the registrar shall—
  - (a) give a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the nature of the case requires or as the court directs.
- (3) This section does not apply in relation to so much of a summons as requires the person named to attend to give evidence in any proceedings.

**189 Setting aside of summons**

- (1) The court may, on the application of the person named, set aside a summons issued under section 187 wholly or in part.

- (2) An application under subsection (1) shall be filed and a copy served on the party to the proceedings on whose request the summons was issued.

**190 Production on notice**

If a party to proceedings serves on another party a notice in accordance with form 50 requiring the other party to produce at the hearing of the proceedings or before the registrar or an examiner a document or thing for the purpose of evidence and that document or thing is in the possession, custody or power of that other party, that other party shall, unless the court otherwise orders, produce the document or thing in accordance with the notice notwithstanding that he or she has not been served with a summons for production in relation to that document or thing.

**Division 14.4 Adjournment, stay or postponement of proceedings**

**191 Adjournment of proceedings**

The court may, at any time, adjourn the hearing or the further hearing of proceedings in the way and on the terms that the court thinks just.

**192 Stay of proceedings**

The court may, at any time, order that the proceedings be stayed on the terms the court thinks just.

**193 Postponement of hearing by registrar**

If, on the date and at the time and place fixed for the hearing or further hearing of proceedings, a magistrate is not available to exercise the jurisdiction of the court, the registrar may, and shall at the request of a party to the proceedings made after a period of 1 hour has elapsed since that time without a magistrate becoming so

available, postpone the hearing or further hearing to a date, time and place fixed by him or her.

## **Division 14.5 Case stated for Supreme Court**

### **194 Case stated**

- (1) At the request of a party to proceedings, the court may state, in the form of a special case, for the opinion of the Supreme Court any question of law that arises in the proceedings.
- (2) Jurisdiction is vested in the Supreme Court to hear and determine a case stated under this section.



## **Part 15 Evidence**

### **Division 15.1 Evidence generally**

#### **195 Oral evidence**

Subject to this part, the evidence of any witness in proceedings shall be given orally before the court.

#### **196 Evidence by affidavit**

- (1) The court may, in its discretion and on the terms it thinks just, order that any evidence in proceedings may be given by affidavit.
- (2) Evidence in proceedings may, with the consent of all parties to the proceedings, be given by affidavit.
- (3) Evidence in proceedings may be given by affidavit on an assessment of the amount to be recovered by a plaintiff after interlocutory judgment has been entered—
  - (a) as regards the identity of any motor vehicle, the damage sustained by a motor vehicle in a collision and the reasonable cost of repairing that damage; and
  - (b) as regards the other items of special damage that the Chief Magistrate from time to time directs.

#### **197 Examination on oath**

- (1) Subject to subsection (2), each person appearing as a witness in proceedings shall be examined on oath.
- (2) Subsection (1) does not apply if a person appears as a witness in proceedings only for the purpose of producing documents.

- (3) For this section, the court may administer, or cause to be administered, to a person any lawful form of oath that binds that person.

**198 Proof of court documents**

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

**199 Medical evidence**

- (1) This section does not apply in relation to proceedings against a medical practitioner in which damages are claimed in respect of alleged professional negligence on the part of that medical practitioner.
- (2) This section has effect in relation to proceedings subject to—
- (a) any order of the court; and
  - (b) any agreement made between the parties to the proceedings.
- (3) At the hearing of proceedings, oral evidence of a medical practitioner as to the past, present or probable future physical or mental condition of a person is not admissible on any contested issue unless the party seeking to adduce that evidence has, not later than 14 days before the time fixed for the hearing, served on each other party to the proceedings a copy of a report in writing from that

medical practitioner containing the substance of the matters sought to be adduced in evidence.

- (4) Subject to subsection (7), a report in writing made by a medical expert is admissible in evidence at the hearing of proceedings as regards—
- (a) his or her opinion on any matter within the field of his or her expertise; and
  - (b) any fact that is known to him or her as a result of his or her own observation or of his or her knowledge or experience in that field;

if the party to the proceedings seeking to use the report in evidence has, not later than 14 days before the time fixed for the hearing, served a copy of the report on each other party to the proceedings.

- (5) A party to proceedings on whom a copy of a report has been served in accordance with subsection (4) may, by written notice served on the party who served that copy, require the attendance of the medical expert who made the report at the hearing of the proceedings for the purpose of cross-examination by the firstmentioned party.
- (6) A notice referred to in subsection (5) shall be served not later than 5 days before the time fixed for the hearing of the proceedings.
- (7) If—
- (a) a notice referred to in subsection (5) in relation to a medical expert has been served in accordance with this section; and
  - (b) that expert does not attend as required by the notice;
- the report of that expert is not admissible in evidence at the hearing of the proceedings.
- (8) If—

(a) a medical expert attends before the court at the hearing of proceedings under a notice referred to in subsection (5); and

(b) the party who served the notice cross-examines that expert;

the party who tendered the relevant report may re-examine that expert.

(9) This section has effect notwithstanding any other law in force in the ACT.

## **200 Privilege**

(1) If—

(a) the court, by summons or otherwise, orders any person to produce any document or thing for the purpose of proceedings; and

(b) any person makes and substantiates sufficient lawful objection to production on grounds of privilege;

the court shall not compel production of that document or thing except production to the court for the purpose of ruling on the objection.

(2) If a question is put to a person in the course of examination in proceedings and any person makes or substantiates sufficient lawful objection on grounds of privilege to the question being answered, the court shall not compel an answer to the question.

(3) Subsection (1) applies if an order is made for production to, and subsection (2) applies if a question is put to a person in the course of examination before, the court or any magistrate or examiner, whether on the hearing of proceedings or on any other occasion.

(4) This section does not affect any rule of law that authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the

document or thing or the answering of the question would be injurious to the public interest.

## **201 Dispensing with rules of evidence**

- (1) At any stage of proceedings, the court may dispense with compliance with the rules of evidence—
  - (a) for proving any matter which is not bona fide in dispute; or
  - (b) if such compliance might occasion or involve unnecessary or unreasonable expense or delay.
- (2) Without limiting subsection (1), the power of the court under that subsection includes a power to dispense with compliance with the rules of evidence relating to proof of handwriting or of documents or proof of the identity of parties or of authority.

## **Division 15.2 Examinations de bene esse**

### **202 Order for examination of witnesses**

- (1) The court may, for the purpose of any proceedings, make an order in accordance with form 51, on the terms the court thinks just, for the examination of any person on oath before a magistrate or any other person the court appoints, whether within or outside the ACT.
- (2) Unless the court otherwise orders, an examiner shall appoint a place and time for the examination, being a time as soon as practicable after the order appointing him or her was made having regard to the convenience of the person to be examined and to any other relevant circumstances.
- (3) An examiner shall give reasonable notice of his or her appointment to the party to proceedings on whose application the order under subsection (1) was made, and that party shall give reasonable notice of that appointment to each other party to the proceedings.

- (4) If the court makes an order under subsection (1) in relation to proceedings, the party on whose application the order was made shall forthwith cause a copy of the order to be served on each other party to the proceedings.
- (5) If an examiner has been appointed in relation to proceedings, the party to the proceedings on whose application the order under subsection (1) was made shall forthwith give the examiner copies of any documents in the proceedings that are necessary to inform the examiner of the questions to which the examination is to relate.
- (6) If the documents filed in proceedings are not sufficient to inform an examiner of the questions to which the examination is to relate, the court shall, in the order under subsection (1) or by a subsequent order, state those questions.
- (7) At an examination taken under this section in relation to proceedings—
  - (a) the examiner may administer to the person being examined any lawful form of oath that binds the person; and
  - (b) subject to this section, the practice and procedure of the court in relation to the hearing of proceedings applies so far as is applicable; and
  - (c) the examiner may adjourn the examination from time to time and from place to place; and
  - (d) each party, and his or her solicitor and barrister, may attend; and
  - (e) unless the court otherwise orders, each party has the same rights with respect to the examination, cross-examination and re-examination of the person being examined as that party would have had if that person had given evidence at the hearing of the proceedings; and
  - (f) the examiner may ask the person being examined any questions as to the meaning of any answer given by the person

- or any other matter arising in the course of the examination;  
and
- (g) the deposition of the person examined shall be taken down by the examiner or by a shorthand writer or some other person in the presence of the examiner; and
  - (h) the deposition shall contain, so far as practicable, the statement of the person examined; and
  - (i) the examiner may direct that the words of any question and the answer to the question be set out in the deposition, but otherwise, and subject to paragraph (h) and subsection (10) (b), the deposition need not set out every question and answer; and
  - (j) if a party to the proceedings so requests, the deposition of the person examined, or the shorthand notes of his or her examination, shall be read to him or her and the examiner shall ask him or her to sign his or her deposition or those notes; and
  - (k) the examiner shall authenticate the deposition of the person examined by his or her signature and shall make on, or attach to, the deposition a note, signed by him or her, of the time occupied in the examination and the fees received by him or her in respect of the examination.
- (8) An examiner shall, as soon as practicable after the examination has been completed, forward to the registrar any depositions taken at the examination and, unless the court otherwise orders, any exhibits that were before him or her.
- (9) On receiving depositions from an examiner under subsection (8), the registrar shall file the depositions in the proceedings, and on receiving any exhibits from an examiner under that subsection, the registrar shall deal with those exhibits in the way the court directs.
- (10) If, at an examination taken under this section, a party to proceedings or the person being examined objects to any question asked of that person or to the production of any document or thing by that person,

or that person objects to answering any question asked of him or her—

- (a) the examiner shall state to the parties present at the examination his or her opinion about the validity of the ground for the objection, but he or she shall not decide on that validity; and
  - (b) the question, the ground for objection, the answer (if any) and the opinion of the examiner shall be set out in the deposition of the person being examined or in a statement attached to the deposition; and
  - (c) the court shall, on application by any party or at the hearing of the proceedings, decide on the validity of the ground for the objection; and
  - (d) if the court decides that there were no valid grounds for the objection—the court may order the objector to pay any costs of any party in the proceedings occasioned by the objection.
- (11) Evidence given by a person in an examination taken under this section in relation to proceedings is admissible, subject to all just exceptions, at the hearing of the proceedings unless the court is satisfied that the person who gave the evidence is then within a convenient distance of the court and is able to attend before the court to give evidence.
- (12) An examiner may, with the consent in writing of each party to the proceedings, take the examination of another person in addition to the person for whose examination he or she was appointed, and if an examiner does so—
- (a) he or she shall annex to the deposition of that other person the consent of each party; and
  - (b) the provisions of this section apply in relation to the examination of that other person in like way as they apply to



the examination of the person for whose examination he or she was appointed.

- (13) A person attending before an examiner to be examined under this section is entitled to be paid the same amount to meet his or her reasonable expenses in so attending as he or she would have been entitled to be paid if his or her attendance had been before the court to give evidence in the proceedings.
- (14) An examiner may make a report to the court about the examination and, in particular, the conduct or absence of any person.
- (15) On receiving a report under subsection (14), the court may make any order it thinks just.
- (16) This section applies in relation to proceedings in the court under any law in force in the ACT.

## **Division 15.3          Affidavits**

### **203          Time for swearing affidavits**

- (1) An affidavit for use in proceedings may be sworn before or after the proceedings are instituted.
- (2) An affidavit supporting the issue of process to enforce a judgment shall not be used for the purpose for which it is filed if it is filed more than 14 days after the date when it is sworn.
- (3) An affidavit shall not, without reasonable excuse, be used as evidence of the service of a document in the ACT if it is sworn more than 14 days after the date of service.

### **204          Form of affidavit**

- (1) An affidavit for use in proceedings shall be in accordance with form 52.
- (2) An affidavit for use in proceedings shall be—

- (a) in the first person; and
- (b) divided into paragraphs numbered consecutively; and
- (c) confined, as far as practicable, to 1 subject matter in each paragraph; and
- (d) signed on each page by the deponent and the person before whom it is sworn.

**205 Irregularity in affidavit**

- (1) An affidavit for use in proceedings may, unless the court or the registrar otherwise orders, be filed notwithstanding any irregularity in form.
- (2) An affidavit may, with the leave of the court, be used in proceedings notwithstanding any irregularity in form.

**206 Filing and service of affidavit**

- (1) Subject to section 123, a party to proceedings who intends to adduce evidence by affidavit shall—
  - (a) file the affidavit with the registrar; and
  - (b) serve a copy of the affidavit on each other party to the proceedings;not later than 10 days before the time fixed for the hearing of the proceedings.
- (2) If subsection (1) is not complied with in relation to an affidavit, that affidavit shall not be used in the proceedings except with the leave of the court.

**207 Cross-examination of deponent**

- (1) A party to proceedings on whom a copy of an affidavit has been served in accordance with section 206 (1) may, by written notice served on the party who filed the affidavit, require the attendance of

the deponent at the hearing of the proceedings for the purpose of cross-examination by the firstmentioned party.

- (2) A notice referred to in subsection (1) (other than a notice relating to an affidavit in interlocutory proceedings) shall be served not later than 5 days before the time fixed for the hearing of the proceedings.
- (3) If—
  - (a) a notice referred to in subsection (1) relating to an affidavit in proceedings has been served in accordance with this section; and
  - (b) the deponent does not attend as required by the notice;the affidavit shall not be used in the proceedings except with the leave of the court.
- (4) If—
  - (a) a deponent attends before the court at the hearing of proceedings under a notice referred to in subsection (1) that has been served in accordance with this section; and
  - (b) the party who served the notice cross-examines the deponent;the party using the relevant affidavit may re-examine the deponent.

## **208 Contents of affidavits**

- (1) Subject to subsection (2), an affidavit for use in proceedings shall be confined to facts within the knowledge of the deponent.
- (2) If an affidavit for use in interlocutory proceedings contains a statement of information and belief with the source of that information and the grounds of that belief, the statement shall not be inadmissible on the ground that it is hearsay.
- (3) A party to proceedings who uses an affidavit that unnecessarily contains a matter of hearsay, argumentative matter or copies of or extracts from documents is not entitled to his or her costs in the

proceedings in relation to that affidavit, or the part of the affidavit that contains that matter or those copies or extracts, as the case may be.

**209 Deponents for affidavits answering interrogatories or of discovery**

- (1) Subject to this section, an affidavit under section 162 of a party to proceedings containing answers to interrogatories, or an affidavit of discovery under section 164 (2) of a party to proceedings may be made by—
  - (a) the party; or
  - (b) if the party is a person under disability—his or her next friend or guardian *ad litem*; or
  - (c) if the party is a body corporate—a member or officer of the body corporate; or
  - (d) if the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer of the body or other person—a member or officer of the body; or
  - (e) if the party is the Territory or Commonwealth or an officer of the Territory or Commonwealth suing or being sued in his or her official capacity—an officer of the Territory or Commonwealth.
- (2) Subject to subsection (3), if a party to proceedings answering interrogatories or giving discovery is a party referred to in subsection (1) (c), (d) or (e), the party shall choose a person to make the affidavit, being a person who is qualified to do so and who has knowledge of the relevant facts.
- (3) If—
  - (a) a party to proceedings answering interrogatories or giving discovery is a party referred to in subsection (1) (c), (d) or (e); and

(b) the affidavit is to be filed and served under an order of the court;

the court may, in the order—

(c) specify the person to make the affidavit; or

(d) specify the persons from whom the party may choose a person to make the affidavit.

### **210 Affidavit by illiterate or blind person**

- (1) If it appears to the person before whom an affidavit for use in proceedings is sworn that the deponent is illiterate or blind, the person shall certify in or below the jurat that the affidavit was read in his or her presence to the deponent and that the deponent appeared to understand the affidavit.
- (2) If an affidavit made by an illiterate or blind deponent does not bear a certificate in accordance with subsection (1), the affidavit shall not be used in proceedings unless the court is satisfied that the affidavit was read over to the deponent and that he or she appeared to understand it.

### **211 Affidavit by person unable to understand English**

- (1) If it appears to the person before whom an affidavit for use in proceedings is sworn that the deponent is unable to understand the affidavit when read to him or her in English, that person shall certify in or below the jurat that an interpreter, whose name and address is stated in the certificate, has sworn before him or her—
  - (a) that he or she has, in the presence of the person taking the affidavit, interpreted to the deponent the contents of the affidavit; and
  - (b) that the deponent appeared to understand it; and
  - (c) that he or she has interpreted to the deponent the oath, affirmation or declaration in the affidavit; and

- (d) that the deponent has sworn, affirmed or declared that the contents of the affidavit so interpreted to him or her were true.
- (2) If it appears to the court that the deponent to an affidavit is unable to understand the affidavit when read to him or her in English, the affidavit shall not be used in proceedings unless—
  - (a) the affidavit bears a certificate referred to in subsection (1); or
  - (b) the court is satisfied that the affidavit was interpreted to the deponent and that he or she appeared to understand it.

## **212 Annexures and exhibits to affidavits**

- (1) A document to be used in connection with an affidavit filed in proceedings shall, where convenient, be annexed to the affidavit.
- (2) If annexing a document to an affidavit in proceedings is not convenient, the document may be made an exhibit to the affidavit.
- (3) An exhibit to an affidavit in proceedings shall be identified by a certificate entitled in the same way as the affidavit and made by the person before whom the affidavit is sworn.

## **213 Alterations in affidavits**

- (1) If there is an interlineation, erasure or other alteration in the jurat or body of an affidavit—
  - (a) the affidavit may nevertheless be filed unless the court otherwise orders; and
  - (b) the affidavit may not be used in proceedings without the leave of the court unless the person before whom the affidavit is sworn has initialled the interlineation, erasure or alteration.
- (2) Subsection (1) applies to a document verified by affidavit as if the document were part of the affidavit.

**214 Scandalous or offensive matter**

If an affidavit filed in proceedings contains scandalous, frivolous, vexatious, irrelevant or otherwise oppressive matter, the court may direct that—

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

## Part 16 Judgment

### 215 Powers of court on judgment

- (1) When the court has completed the hearing of proceedings the court shall proceed to determine the proceedings, and may give the judgment, and make the orders, that the court thinks just.
- (2) If, in proceedings for the recovery of money, the court finds in favour of the plaintiff in respect of his or her claim and in favour of the defendant in respect of any defence by way of cross-claim, the court may give judgment for the plaintiff or defendant, as the case may be, for an amount that is found to be due, on balance, from the defendant to the plaintiff or from the plaintiff to the defendant.

### 216 Damages to time of assessment in certain cases

If, in proceedings, damages are to be assessed in respect of—

- (a) any continuing cause of action; or
- (b) repeated breaches of recurring obligations; or
- (c) intermittent breaches of a continuing obligation;

the damages shall include damages for breaches occurring after the commencement of the proceedings and shall be assessed as at the time of assessment.

### 217 Judgment in actions relating to detention of goods

- (1) If, in proceedings relating to the detention of goods, the court finds for the plaintiff, the court may give judgment—
  - (a) for delivery of the goods to the plaintiff; or
  - (b) for payment to the plaintiff of the value of the goods, as assessed by the court;



and for payment to the plaintiff of any consequential damages.

- (2) Relief under subsection (1) is at the discretion of the court but the plaintiff may, before judgment is given, inform the court of the relief that is preferred.
- (3) If the court gives judgment under subsection (1) (a), the court shall specify the period within which the goods are to be delivered.
- (4) A person who fails, without reasonable excuse, to comply with a judgment under subsection (1) (a) commits an offence.

Maximum penalty: 50 penalty units.

- (5) If—
  - (a) a judgment debtor delivers or tenders goods in satisfaction or part satisfaction of a judgment under subsection (1) (a) and the judgment creditor refuses to accept the goods because they are not the goods the subject of the judgment; or
  - (b) a judgment debtor fails to deliver the goods within the period specified in a judgment under subsection (1) (a);

the judgment creditor may enforce the judgment by writ of specific delivery in accordance with form 72.

- (6) The registrar shall not issue a writ of specific delivery unless an affidavit in accordance with form 73 by the judgment creditor has been filed containing and verifying a statement of—
  - (a) such of the matters listed in section 343 (3) as are relevant to the judgment in respect of which the writ is sought; and
  - (b) whether any, and if so which, goods the subject of the judgment have been returned to the judgment creditor; and
  - (c) the address where it is alleged that the goods are situated.

- (7) If—
- (a) a judgment debtor delivers or tenders goods in satisfaction or part satisfaction of a judgment under subsection (1) (a) and the judgment creditor refuses to accept the goods because—
    - (i) they are not the goods the subject of the judgment; or
    - (ii) they are substantially damaged; or
  - (b) a judgment debtor fails to deliver the goods within the period specified in a judgment under subsection (1) (a); or
  - (c) the bailiff executing a writ of specific delivery is unable to seize the goods;

the court may, on application by the judgment creditor in accordance with section 123, set aside the judgment under subsection (1) (a), and give judgment in the terms set out in subsection (1) (b) and for the payment of any consequential damages.

- (8) Nothing in this section is to be taken to prevent a judgment given under subsection (1) (b), or for the payment of consequential damages, from being enforced under part 19.

## **218 Judgment for costs only**

If—

- (a) the defendant in proceedings has satisfied the claim of the plaintiff after proceedings were instituted; and
- (b) the plaintiff would, but for the satisfaction of the claim, have been entitled to have final judgment entered in his or her favour;

the plaintiff is entitled to have final judgment entered for him or her for his or her costs in the proceedings.

**219 Time for compliance**

- (1) A judgment or order that requires a person to do an act shall specify the time within which the person is required to do the act.
- (2) If a judgment or order requires a person to do an act within a specified time, the court may order the person to do the act within another specified time.
- (3) If a judgment or order requires a person to do an act but does not specify a time within which the act is required to be done, the court may order the person to do the act within a specified time.
- (4) This section does not apply to a requirement to pay money.

**220 Judgment final and conclusive**

Subject to this Act and to any other law in force in the ACT, a judgment given or entered in proceedings shall be final and conclusive between the parties to the proceedings.

**221 Setting aside of judgment or order**

- (1) If—
  - (a) judgment is given or entered, or an order made, in proceedings in the absence of a party; or
  - (b) judgment has been entered against the defendant in proceedings under section 43;

the court may, on the application of the party in whose absence the judgment was given or entered or the order made, or the defendant against whom judgment was entered under section 43, as the case may be, and on sufficient cause being shown, order that the judgment or order be set aside on the terms it thinks just, and the court may give instructions for the further conduct of the proceedings.

- (2) If the court makes an order under this section, if may, if it is satisfied that it is just to do so, by order, set aside any enforcement proceedings, writ issued or order made as a consequence of the judgment or order set aside under this section.
- (3) The making of an order under this section does not affect the title to any property sold under a writ before the date of making of the order.
- (4) If—
  - (a) the originating process in proceedings was served by post in accordance with section 24; and
  - (b) after judgment has been given or entered or an order has been made in the proceedings it appears to the court that the process did not come to the knowledge of the defendant within a reasonable time;

the court may, on its own initiative, order that the judgment or order be set aside, and the court may make the other orders it thinks just.

## **222 Setting aside of judgment entered irregularly**

- (1) Subject to subsection (2), the court may, on sufficient cause being shown, order that a judgment or order be set aside if the court is satisfied that the judgment was given or entered, or the order was made, irregularly, illegally or against good faith.
- (2) Subsection (1) does not apply in relation to an irregularity referred to in section 492.
- (3) The court may, by order, on the terms it thinks just, set aside a judgment or order made in proceedings if the parties to the proceedings consent.

## **223 Time of effect of judgment or order**

- (1) A judgment in proceedings shall take effect on the date when it is given or entered.

- (2) An order in proceedings shall take effect on the date when it is made.

**224 Reservation of judgment or decision**

When the hearing of proceedings has been completed, the magistrate constituting the court may reserve his or her judgment or his or her decision on any question of fact or law, and he or she may give his or her judgment or decision in court on a date to be fixed.

**225 Minute of judgment**

If the court gives judgment in proceedings or makes an order (whether final or interlocutory) in proceedings, a minute of the judgment or order shall be made and signed by the magistrate constituting the court.

**226 Formal order for judgment**

If judgment in proceedings has been given or entered or an order has been made by the court in proceedings, the registrar shall—

- (a) by direction of the court; or
- (b) upon receiving an application for a certificate, or certified copy, of the judgment or order;

arrange for the judgment or order of the court, as the case may be, to be formally drawn up and filed in the court.

**227 Evidence of judgment**

In any proceedings before a court, a certificate, or certified copy, of a judgment or order of the court under this Act is evidence of the judgment or order.

**228 Joint liability**

- (1) Subject to this Act, if a plaintiff in proceedings has a cause of action to which the proceedings relate against 2 or more persons having

joint liability in respect of that cause of action, it shall be sufficient if any 1 or more of those persons is or are served with originating process, and judgment in the proceedings may be given or entered and enforced against the defendant or defendants so served notwithstanding that other persons jointly liable were not served, were not parties to the proceedings or are not within the ACT.

- (2) If—
- (a) judgment in proceedings is given or entered against a party or parties to the proceedings; and
  - (b) another person is, or other persons are, jointly liable with that party or those parties in respect of the cause of action in respect of which the judgment is given or entered;
- then—
- (c) that liability of that other person or those other persons is not discharged by the judgment or by any step taken to enforce the judgment; and
  - (d) that party or those parties and that other person or those other persons are, as between that party or those parties on the one hand and that other person or those other persons on the other hand, liable severally but not jointly; and
  - (e) if there are 2 or more such other persons—they are, as between themselves, jointly liable; and
  - (f) if the judgment is satisfied wholly or in part—the liability of that other person or those other persons is discharged to the extent of the amount paid or recovered under the judgment.
- (3) Subsection (2) does not affect the right of a person to contribution or indemnity in respect of the satisfaction by him or her, wholly or in part, of a liability that he or she has jointly or severally, or jointly and severally, with another person or other persons.

**229 Setting off of judgments**

- (1) If the judgment debtor in respect of proceedings (the *first proceedings*) has judgment given or entered in his or her favour in other proceedings (the *second proceedings*) against the judgment creditor in the first proceedings, the court may, on the application of the judgment debtor, order that the judgment against him or her in the first proceedings be set off against the judgment in the second proceedings.
- (2) If an order is made under subsection (1)—
  - (a) if the amount of the judgment debt in the first proceedings is equal to or less than the amount of the judgment debt in the second proceedings—the judgment in the first proceedings shall be deemed to be satisfied and the amount of the judgment debt in the second proceedings shall be reduced by an amount equal to the amount of the judgment debt in the first proceedings; or
  - (b) if the amount of the judgment debt in the first proceedings is more than the amount of the judgment debt in the second proceedings—the amount of the judgment debt in the first proceedings shall be reduced by an amount equal to the amount of the judgment debt in the second proceedings and the judgment in the second proceedings shall be deemed to be satisfied.

**230 Interest up to judgment**

- (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the court shall, on application, unless good cause is shown to the contrary—
  - (a) order that there shall be included in the amount for which judgment is given or entered interest at the rate it thinks fit on the whole or any part of that amount for the whole or any part

of the period between the date when the cause of action arose and the date when judgment takes effect; or

- (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the amount for which judgment is given or entered a lump sum instead of any such interest.

(2) If—

- (a) proceedings have been instituted for the recovery of a debt or liquidated damages; and
- (b) payment of the whole or a part of the debt or damages is made during the proceedings and prior to or without judgment being given or entered in respect of the debt or damages;

the court may, on application, order that interest be paid at the rate it thinks fit on the whole or any part of the money paid for the whole or any part of the period between the date when the cause of action arose and the date of the payment.

(3) This section does not—

- (a) authorise the giving of interest on interest or of a sum instead of such interest; or
- (b) apply in relation to any debt on which interest is payable as of right whether because of agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

(4) If the amount for which judgment is given (the *relevant amount*) includes, or if the court in its discretion determines that the relevant amount includes, any amount for—

- (a) compensation in respect of liabilities incurred that do not carry interest as against the person claiming interest or claiming a sum instead of interest; or



(b) compensation for loss or damage to be incurred or suffered after the date when judgment is given; or

(c) exemplary or punitive damages;

interest, or a sum instead of interest, shall not be given under subsection (1) in respect of any such amount or in respect of so much of the relevant amount as in the opinion of the court represents any such amount.

### **231 Judgment by default, confession or agreement—interest**

- (1) If interest has been claimed under section 230 in proceedings in respect of which judgment is entered under section 43, 44 or 45, an amount of interest for the period between the date when the cause of action arose and the date when judgment was entered shall, for whichever of those sections is applicable, be deemed to be part of the amount claimed in respect of the cause of action and may be included in the amount for which judgment is entered.
- (2) Such an amount of interest shall be calculated at the rate per centum per annum in respect of the period or part of a period that is prescribed.

### **232 Judgment for interest only**

If—

- (a) the defendant in proceedings has satisfied the claim of the plaintiff after proceedings were instituted; and
- (b) the plaintiff would, but for the satisfaction of the claim, have been entitled to have final judgment entered in his or her favour;

the plaintiff is entitled to have final judgment given or entered in his or her favour for interest in accordance with an order under section 230, or calculated in accordance with section 231 (2), as the case requires.

**233 Amendment of claim for interest**

If a plaintiff in proceedings for the recovery of a debt or liquidated damages has claimed interest to be calculated in accordance with section 231 (2), nothing in that section shall be taken to prevent the plaintiff from applying to the court for leave to amend his or her claim to claim interest otherwise than in accordance with that section.

**234 Interest on judgments**

- (1) Subject to this section, unless the court otherwise orders, interest is payable on so much of the amount of a judgment debt as remains from time to time unpaid.
- (2) Interest payable under this section in respect of a judgment debt shall—
  - (a) be calculated as from the date when the judgment took effect or from such later date (if any) as the court directs; and
  - (b) for any period before the commencement of part 19—be calculated at the rate fixed under the *Supreme Court Rules* for the *Supreme Court Act 1933*, section 70; and
  - (c) for any period after the commencement of that part—be calculated at the rate per centum per annum in respect of the period that is prescribed for section 231 (2); and
  - (d) form part of the judgment debt.
- (3) Subsection (2) does not operate so as to require the payment of interest upon interest.

**235 Limitation periods**

- (1) A judgment creditor is not entitled, except with the leave of the court, to make an application for section 295 (1), 317 (1) or 343 (1) after the end of 12 years from the date when the judgment was given or entered.

- (2) The court shall not grant leave unless a certified copy of the judgment is produced to the court.

**236 Payment of judgment debts generally**

- (1) A judgment debt is payable immediately.
- (2) If—
- (a) a judgment debt is payable in 1 sum; or
  - (b) an order for the payment of a judgment debt by instalments requires the instalments to be paid to the registrar;
- the sum or each instalment is payable to the registrar.
- (3) If the court or registrar orders payment of a judgment debt by instalments and does not require payment to the registrar, the instalments are payable to the judgment creditor or at the judgment creditor's direction.
- (4) Despite subsection (2), a payment made by or on behalf of a judgment debtor on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, reduce the judgment debt by the amount of the payment.

**237 Payment of part of judgment debt**

- (1) If an instalment order or writ of execution is in force, the judgment debtor shall not, except with the consent of the judgment creditor, pay into court any amount less than the amount required to be paid under the order or writ.
- (2) If the registrar inadvertently receives into court an amount less than the amount so required, he or she shall, on the written request of the judgment creditor, return the amount received to the judgment debtor.

**238 Entry and enforcement of judgment in Supreme Court**

- (1) Subject to subsection (3), if—
  - (a) judgment has been given or entered in proceedings; and
  - (b) a writ of execution issued out of the court in respect of the judgment has been returned unsatisfied in whole or in part;

on application made by or on behalf of the judgment creditor in accordance with form 54, the registrar shall issue to the applicant a certificate, in accordance with form 55, of the judgment and of the amount remaining due and unpaid on the judgment.
- (2) On application made by or on behalf of a judgment creditor in proceedings, the court may, if it thinks just, by order, dispense with the requirement referred to in subsection (1) (b) for the purpose of the operation of subsection (1) in relation to those proceedings, and if the court makes an order under this subsection, subsection (1) has effect in relation to those proceedings accordingly, notwithstanding that a writ of execution has not been issued out of the court in respect of the judgment or that such a writ has not been returned unsatisfied in whole or in part.
- (3) A certificate under subsection (1) shall not be issued after the end of any period during which the judgment may be enforced out of the court.
- (4) If a certificate under subsection (1) has been issued, further proceedings, or a further step in proceedings, shall not be taken by way of enforcement of the judgment.
- (5) If the court makes an order under subsection (2) in proceedings after a writ of execution has been issued out of the court in respect of a judgment in those proceedings, a further step by way of execution of that writ shall not be taken.
- (6) A certificate under subsection (1) may be filed in the Supreme Court, and on such a certificate being so filed, final judgment may

be entered in that court in favour of the judgment creditor for the amount specified in the certificate as unpaid together with—

- (a) interest, calculated in accordance with section 234, on that amount as from the date of the judgment to which the certificate relates until the date of that final judgment; and
  - (b) the costs of obtaining the certificate and the entry of that final judgment.
- (7) On the entry of final judgment under subsection (6), that judgment may be enforced as if it had been a final judgment entered in an action of a like nature in the Supreme Court.

## Part 17 Interpleader

### 239 Meaning of *property* for pt 17

In this part:

*property* means—

- (a) in relation to an application for relief by way of interpleader made by a defendant in proceedings—any debt, money or goods; and
- (b) in relation to such an application made by a bailiff—any money or goods.

### 240 Interpleader by defendant

- (1) If a person who is not a party to proceedings makes a claim against the defendant in the proceedings with respect to any property the subject of the proceedings, the defendant may apply for relief by way of interpleader by filing an application in accordance with form 56.
- (2) An application shall be supported by an affidavit stating that the defendant—
  - (a) claims no interest in the property in dispute other than for charges or costs; and
  - (b) does not collude with the person making the claim in pursuance of which the application is made; and
  - (c) is willing to pay or transfer the property in dispute into court or to give security to the registrar to the value of the property to the satisfaction of the registrar, as the registrar requires.

**241 Interpleader by bailiff**

- (1) If a person other than the judgment debtor makes a claim with respect to any property taken or to be taken in execution by a bailiff under a writ of execution or in respect of the value of, or the proceeds of the sale of, any such property, the bailiff may apply for relief by way of interpleader by filing an application in accordance with form 57.
- (2) If—
  - (a) any property has been seized by a bailiff under a writ of execution; and
  - (b) the property has not been sold under the writ of execution; and
  - (c) a claim in accordance with form 58 with respect to that property by a person other than the judgment debtor, verified by affidavit, is made to the bailiff; and
  - (d) the claimant has—
    - (i) paid to the bailiff an amount equal to the value of the property; or
    - (ii) given to the bailiff security to the value of the property in accordance with form 59;

the property shall be released from execution under the writ of execution and the bailiff shall apply for relief by way of interpleader.
- (3) For subsection (2) (d), the value of property shall be as agreed between the claimant and the bailiff or, in default of agreement, as determined by a person appointed by the registrar for that purpose.
- (4) The costs of a determination under subsection (3)—
  - (a) are payable in the first instance by the claimant; and
  - (b) if the court so orders, may be added to the costs of the execution or of any proceedings on interpleader.

- (5) A bailiff shall forthwith pay to the registrar any amount paid to the bailiff under subsection (2) (d) (i), and the registrar shall pay out that amount in accordance with any order of the court.
- (6) On the determination of an application for relief by way of interpleader, the costs of seizing and selling the property in dispute—
  - (a) may be added to the amount of the costs of the execution; or
  - (b) are payable by the judgment creditor; or
  - (c) are payable by the claimant;as the court, by order, directs.

#### **242 Notice of application for relief**

A defendant in proceedings or a bailiff who files an application for relief by way of interpleader shall serve a copy of that application on the plaintiff or the judgment creditor, as the case requires.

#### **243 Interpleader proceedings**

- (1) On an application for relief by way of interpleader being filed, the registrar shall issue and serve a summons in accordance with form 60 requiring the claimant to state the nature and particulars of his or her claim in accordance with form 61 within 14 days after service of the summons on him or her.
- (2) On the issue of a summons under subsection (1) and, if the application for relief by way of interpleader was made by a defendant, on—
  - (a) the payment or transfer of the property in dispute into court; or
  - (b) the defendant giving to the registrar security to the value of the property to the satisfaction of the registrar;as the registrar requires, all proceedings or actions in the court or in the Supreme Court in respect of that property shall be stayed.



- (3) If a claimant complies with a summons under subsection (1), the registrar shall issue and serve an interpleader summons in accordance with form 62 or 63, as the case requires, requiring the plaintiff or the judgment creditor, as the case requires, and the claimant, to attend before the court, and shall serve notice of the hearing of the summons on the defendant or bailiff, as the case requires.
- (4) On the hearing of proceedings on an interpleader summons issued under subsection (3), the court shall determine the matter and may make the orders—
- (a) between the parties to those proceedings in respect of the competing claims with respect to the property in dispute; and
  - (b) as to costs in those proceedings; and
  - (c) as to the continuance of any other proceedings or actions stayed under subsection (2); and
  - (d) if any amount has been paid, or security given, to a bailiff in respect of that property—as to the payment of that amount, or the enforcement or discharge of that security;
- that the court thinks just.
- (5) If a claimant fails to comply with a summons under subsection (1)—
- (a) any stay of other proceedings or actions in force under subsection (2) is removed; and
  - (b) the claimant is debarred from instituting proceedings in respect of the property in dispute;
- unless the court otherwise orders on satisfactory explanation being given by the claimant within 14 days after the end of the period of 14 days referred to in subsection (1) and if—
- (c) any money or the property in dispute has been paid or transferred into court; or

(d) any security has been given to a bailiff or the registrar in respect of that property;

the court may, subject to subsection (6), make the order as to the payment of that money, or the enforcement or discharge of that security, that the court thinks just.

- (6) An order under subsection (5) as to the payment of money or the enforcement or discharge of a security shall not be made except upon the application of a plaintiff or judgment creditor, as the case requires, or of the registrar.

**244 Service of documents**

A document to be served on a person under this part may be served by post addressed to that person at the best-known address of that person.

**245 Adverse titles**

Relief by way of interpleader may be granted notwithstanding that the titles of the persons making competing claims with respect to the property in dispute or in respect of the value of, or the proceeds of the sale of, that property did not have a common origin and are adverse to and independent of each other.

## **Part 18**                      **Costs**

### **Division 18.1**            **General**

#### **246**            **Costs in discretion of court or to follow event**

Costs in any proceedings, including costs in any interlocutory matter arising in the course of proceedings, shall—

- (a) be paid by or apportioned between the parties in the way the court in its discretion orders; or
- (b) if the court does not make an order referred to in paragraph (a)—except if otherwise provided by this Act, follow the event of the proceedings.

#### **247**            **Time for exercise of court's powers in relation to costs**

The powers of the court with regard to costs in proceedings may be exercised at any stage of the proceedings or after the proceedings have been completed.

#### **248**            **Fixing of costs**

- (1) A magistrate may, if he or she thinks fit, fix the amount of the costs in any proceedings coming before him or her in court or in chambers.
- (2) If a magistrate does not, at the hearing of proceedings, fix the costs in those proceedings, those costs shall, subject to this Act, be taxed by the registrar.

#### **249**            **Agreement about costs**

- (1) If—
  - (a) a party's costs in proceedings, or any part of those costs, are required to be paid by another party; and

- (b) the parties agree on the amount of those costs; and
- (c) evidence of that agreement has been produced to the registrar in the way referred to in subsection (2);

the amount of those costs shall be as so agreed.

- (2) For subsection (1), evidence of an agreement referred to in that subsection as to the amount of costs payable by a party shall be produced by lodging with the registrar, for his or her signature, an order in accordance with form 64 for the payment of the amount of costs on which is endorsed the consent of the party signed by him or her or by his or her legal practitioner.
- (3) If a consent referred to in subsection (2) is signed by a person other than a legal practitioner, the signature of the person shall be witnessed by the registrar, a legal practitioner or a justice of the peace.

## **250            Entitlement to taxation**

Subject to this Act, where, under this Act or under a judgment or other order of the court, the costs of a party in proceedings are to be paid to that party, that party is entitled to those costs taxed in accordance with this part.

## **251            Costs part of judgment debt**

Any costs in proceedings payable by a party against whom judgment has been given or entered shall form part of the judgment debt.

## **252            Court's power about costs if no jurisdiction**

If—

- (a) proceedings purport to have been instituted; and
- (b) the court has no jurisdiction to hear and determine the proceedings;

notwithstanding that lack of jurisdiction, the court has power to make orders as to costs in the proceedings, and any such order may be enforced as if the court had that jurisdiction.

**253 Power of court to vary entitlement to taxed costs**

If, under any judgment or other order of the court, the costs of a party in proceedings are to be paid to that party, the court may order that, as regards the whole or a specified part of those costs, that party shall be entitled to—

- (a) those costs taxed on a scale higher than that which would be otherwise applicable; or
- (b) a specified proportion of the taxed costs; or
- (c) the taxed costs from or up to a specified stage of the proceedings.

**254 Time for payment of costs**

- (1) If the court makes an order for the payment of costs in proceedings, it may order that those costs be paid forthwith or within a specified time, notwithstanding that those proceedings have not been completed.
- (2) If the court makes an order under subsection (1), it shall direct the scale on which the costs are to be taxed.

**255 Taxation if judgment subject to appeal etc**

If costs in proceedings are to be taxed, those costs may, unless the court otherwise orders or the proceedings are stayed, be taxed accordingly notwithstanding that the judgment or order under which the costs are payable is liable to be set aside, varied or discharged on appeal or otherwise.

**256 Noncompliance with Act or order**

If a person fails to comply with this Act, or with any judgment or order of the court, in proceedings, the court may order that he or she pay the costs in the proceedings of any other person occasioned by the failure.

**257 Liability of solicitor for costs**

- (1) If it appears to the court that a solicitor for a party to proceedings is responsible (whether personally or by an employee or agent) for costs in the proceedings having been incurred improperly or without reasonable cause, or having been wasted by undue delay or by any other misconduct or default, the court may, after having given the solicitor a reasonable opportunity to be heard—
  - (a) direct the solicitor to repay to his or her client such of those costs as the client has been ordered to pay to any other party to the proceedings; and
  - (b) direct the solicitor to indemnify any party other than his or her client against such of those costs as are payable by the party indemnified.
- (2) Without limiting the court's power under subsection (1), a solicitor shall be taken to be responsible for a default for the purpose of that subsection if the proceedings cannot conveniently proceed, fail or are adjourned without useful progress having been made, because of the failure of the solicitor—
  - (a) to attend court or chambers in person or by a proper representative; or
  - (b) to file any document; or
  - (c) to deliver any document for the use of the court; or
  - (d) to be prepared with any proper evidence or account; or
  - (e) to take any other necessary step in the proceedings.

- (3) Before making an order under subsection (1) in proceedings, the court may refer the matter to the registrar for enquiry and report.
- (4) The court may order that notice of any proceedings under this section, or of an order under subsection (1), against a solicitor be given to his or her client in a specified way.

## **Division 18.2 Particular items**

### **258 Nature of costs to be allowed or disallowed on taxation**

On a taxation of costs in proceedings—

- (a) the registrar shall allow all costs that were, in his or her opinion, necessary or proper for the attainment of justice in the proceedings or for enforcing or defending the rights of the party whose costs are being taxed; and
- (b) the registrar shall disallow all costs that were, in his or her opinion, incurred as a result of an excess of caution, negligence or mistake or merely at the desire of the party incurring those costs.

### **259 Scale of costs**

- (1) In this section:

*party who instituted the proceedings* means—

- (a) for proceedings on a claim—the plaintiff; or
- (b) for proceedings on a cross-claim—the defendant; or
- (c) for third-party proceedings—the defendant; or
- (d) for fourth or subsequent party proceedings—the party who filed the fourth or subsequent party notice.

*relevant amount*, in relation to proceedings, means—

- (a) in relation to costs between party and party—

- (i) on instituting proceedings—the amount for which the proceedings are instituted; or
  - (ii) subject to subparagraph (iv), if judgment in the proceedings is given or entered for the party who instituted the proceedings—the amount for which the judgment is given or entered; or
  - (iii) if judgment in the proceedings is given against the party who instituted the proceedings or if that party is otherwise required to pay the costs in the proceedings—the amount for which the proceedings were instituted; or
  - (iv) if judgment in the proceedings is entered for an amount that is less than the amount for which the proceedings were instituted, or judgment in the proceedings is given or entered for costs only, for the party who instituted the proceedings—the amount for which the proceedings were instituted less the amount of any payment made or credit accrued in reduction of that amount before the proceedings were instituted; and
- (b) in relation to costs between solicitor and client—unless the court otherwise orders, the amount for which the proceedings were instituted.
- (2) Subject to this Act, solicitors are entitled to charge costs, and on the taxation of costs in proceedings, costs shall be allowed, according to the prescribed scale of costs, and costs shall be determined having regard to the relevant amount in relation to those proceedings.
- (3) Subject to this Act, solicitors are entitled to charge for barrister's fees, and on the taxation of costs in proceedings, barrister's fees shall be allowed, according to the prescribed scale of costs, and barrister's fees shall be determined having regard to the relevant amount in relation to those proceedings.



- (4) For sections 18 (4) (c) and 43, the prescribed costs in proceedings shall be determined having regard to the relevant amount in relation to those proceedings.
- (5) Nothing in this section affects the operation of the *Legal Practitioners Act 1970*, sections 190 and 191.

**260 Scale of costs for proceedings on cross-claim**

Unless the court otherwise orders, in proceedings in which the defendant pleads a cross-claim—

- (a) if judgment is given or entered for the plaintiff or the plaintiff otherwise succeeds on both the claim and the cross-claim, any costs payable to the plaintiff shall, on taxation, be allowed—
  - (i) as regards any such costs incurred before service on the plaintiff of the cross-claim—on the scale applicable to the proceedings on the claim; and
  - (ii) as regards any such costs incurred after that service—on the scale applicable to the proceedings on the claim or the scale applicable to the proceedings on the cross-claim, whichever is the higher; and
- (b) if judgment is given or entered for the defendant or the defendant otherwise succeeds on both the claim and the cross-claim, any costs payable to the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the claim or the scale applicable to the proceedings on the cross-claim, whichever is the higher; and
- (c) if judgment is given or entered for the plaintiff on the claim and for the defendant on the cross-claim—
  - (i) any costs payable to the plaintiff shall, on taxation, be allowed on the scale applicable to the proceedings on the claim; and

- (ii) any costs payable to the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the cross-claim; and
- (d) if judgment is given or entered against the plaintiff on the claim and against the defendant on the cross-claim—
  - (i) any costs payable by the plaintiff shall, on taxation, be allowed on the scale applicable to the proceedings on the claim; and
  - (ii) any costs payable by the defendant shall, on taxation, be allowed on the scale applicable to the proceedings on the cross-claim.

**261 Scale of costs in enforcement proceedings**

If any costs in proceedings relating to the enforcement or the attempted enforcement of a judgment in the proceedings are payable, those costs shall, on taxation, be allowed on the scale that would be applicable if those costs were costs incurred in obtaining the judgment.

**262 Scale of costs in proceedings if there are separate judgments against defendants**

- (1) If, in proceedings in which there are 2 or more defendants, judgment for or including costs in the proceedings has been given separately against each of those defendants, those costs shall, unless the court otherwise orders, be taxed once only, against all of those defendants, on the scale applicable to whichever of those judgments is for the larger or largest amount, and on such a taxation costs in the proceedings properly incurred against any defendant shall be allowed against all of those defendants.
- (2) Payment of any costs taxed in accordance with subsection (1) may be enforced by the plaintiff against any 1 or more of the defendants, but those defendants are liable as between themselves for

contribution towards any such costs proportionately according to the respective amounts for which those judgments were given.

**263 Amount paid to nonlegal representative**

On the taxation of costs in proceedings, an amount paid to a person (other than a legal practitioner) who appears on behalf of another person at the hearing of proceedings shall not be allowed.

**264 Retainer to legal practitioner**

On the taxation of costs in proceedings, a fee by way of retainer paid to a legal practitioner shall not be allowed.

**265 Brief fees paid to more than 1 barrister**

- (1) On the taxation of costs in proceedings, the brief fees paid to more than 1 barrister shall not be allowed unless the court otherwise orders.
- (2) If the court makes an order under subsection (1), it may direct the amount to be allowed in respect of any 1 or more of the barristers briefed.

**266 Refresher fees**

- (1) Subject to this part, if—
  - (a) a barrister is briefed to appear at the hearing of proceedings; and
  - (b) the hearing exceeds 5 hours in duration;on a taxation of costs in the proceedings, the registrar may allow refresher fees paid to the barrister in the amount that he or she thinks fit.
- (2) Refresher fees paid to a barrister allowed under subsection (1) shall not exceed an amount calculated at the rate of  $\frac{2}{3}$  of the brief fee

paid to the barrister per 5 hours in respect of the period by which the duration of the hearing exceeds 5 hours.

- (3) Refresher fees in respect of a hearing of proceedings may be allowed under subsection (1) whether or not witnesses were examined at the hearing.

### **267 Fees when barrister absent**

- (1) If a barrister has been briefed to appear at the hearing of proceedings, on a taxation of costs in the proceedings the brief fee paid to him or her shall not be allowed unless—
- (a) he or she was present at the hearing for a substantial part of the relevant period; or
  - (b) he or she gave substantial assistance during the relevant period in the conduct of the proceedings; or
  - (c) the court otherwise orders.
- (2) In subsection (1):
- relevant period* means—
- (a) if the hearing did not exceed 5 hours in duration—the duration of the hearing; or
  - (b) if the hearing exceeded 5 hours in duration—the first 5 hours of the duration of the hearing.
- (3) If a barrister was briefed to appear at the hearing of proceedings, on a taxation of costs in the proceedings refresher fees paid to him or her in respect of any period shall not be allowed unless—
- (a) he or she was present at the hearing for a substantial part of that period; or
  - (b) he or she gave substantial assistance during that period in the conduct of the proceedings; or
  - (c) the court otherwise orders.

**268 Reckoning of 5 hour periods**

For sections 266 and 267, in reckoning a period of 5 hours referred to in either of those sections on a taxation of costs in proceedings, any adjournment of the hearing of the proceedings shall not be taken into account unless the court otherwise orders.

**269 Amounts paid to witnesses**

- (1) Subject to this section, on a taxation of costs in proceedings amounts paid to witnesses for their attendance at the court or other assistance at the hearing of the proceedings shall be allowed.
- (2) The costs that may be awarded to a party to proceedings in respect of the attendance of a person at the court or before an examiner as a witness in the proceedings are—
  - (a) the amount that the court, by order, directs at a rate not exceeding the rate applicable, and subject to the same conditions as are applicable, in relation to witnesses' expenses in an action in the Supreme Court; or
  - (b) if such an order is not made in the proceedings—the amount that the registrar allows on taxation at a rate not exceeding those rates and subject to those conditions.
- (3) On a taxation of costs in proceedings, an amount referred to in subsection (1) or (2)—
  - (a) in respect of a witness who gave evidence at the hearing of the proceedings—shall be allowed unless the court otherwise orders; or
  - (b) in respect of a witness who did not give evidence at the hearing of the proceedings—may be allowed if the registrar thinks fit;

whether or not the witness was served with a summons under section 187 for his or her attendance before the court.

**270 Expenses of preparing plans etc**

In proceedings, the court may order that the expenses of preparing and proving plans, drawings, models, photographs or the like for the purposes of the proceedings be allowed or disallowed, and if—

- (a) the court orders that those expenses be so allowed; or
- (b) the court makes no order in relation to the allowance or disallowance of those expenses and the registrar thinks fit to allow those expenses;

on taxation, amounts paid in respect of those expenses shall be allowed in such amount as the registrar thinks fit.

**271 Disbursements**

- (1) Subject to this Act and to any order of the court, on a taxation of costs in proceedings the costs that may be allowed include all court fees and other disbursements (other than barrister's fees) that, in the opinion of the registrar, have been reasonably incurred.
- (2) On a taxation of costs in proceedings, a disbursement referred to in subsection (1) or the barrister's fees shall not be allowed unless, before the taxation is completed, the registrar is satisfied, by the production of a receipt or otherwise as the registrar may direct, that the disbursement or fees has or have been paid.

**272 Costs not otherwise provided for**

On a taxation of costs in proceedings, the registrar may, in his or her discretion, allow such amount as he or she thinks just and reasonable having regard to all the circumstances of the case for work or labour properly performed for the purposes of or incidental to the proceedings, being work or labour that is not provided for in the prescribed scale of costs.

## **Division 18.3 Taxation**

### **273 Filing, and appointment to tax, bill of costs**

- (1) A party to proceedings whose costs in the proceedings are to be taxed shall file a bill of those costs.
- (2) On the filing of a bill of costs under subsection (1), the registrar shall—
  - (a) give an appointment in accordance with form 65 to tax the bill; and
  - (b) endorse that appointment on the bill.
- (3) A party to proceedings whose costs in the proceedings are to be taxed shall serve a copy of his or her bill of costs, endorsed under subsection (2), on each other party who will be affected by the taxation not later than 7 days before the date appointed for the taxation.

### **274 Contents of bills of costs**

- (1) A bill of costs prepared by a party whose costs in proceedings are to be taxed shall contain, in respect of those costs—
  - (a) a detailed statement of the work done by the solicitor for the party, or an employee or agent of that solicitor; and
  - (b) the date when each item of work was done; and
  - (c) the number of the item in the schedule on which it is intended to rely in claiming an amount in respect of each item of costs; and
  - (d) a detailed statement of the disbursements made; and
  - (e) the date when each disbursement was made; and
  - (f) the costs claimed for each item of work done or disbursement made.

- (2) If any item of work specified in a bill of costs was done by a registrar or other employee of a solicitor and that fact is relevant to the amount of costs allowable for that work, a statement of that fact shall be included in the bill.
- (3) If an item of work is done once in respect of 2 or more proceedings, the item may be included in a bill of costs filed in relation to any of those proceedings.
- (4) If an item (other than an attendance in court by a solicitor or barrister) referred to in subsection (3) is allowed on a taxation of costs in proceedings, that item shall be allowed at the proportion of the appropriate amount for that item that the registrar thinks fit.
- (5) The registrar may, if he or she thinks fit, proceed with the taxation of a bill of costs in proceedings notwithstanding that the bill does not comply with this section.
- (6) The court or the registrar may, on the terms that it or he or she thinks fit, give leave for the amendment of a bill of costs filed in proceedings.

## **275 General powers of registrar on taxation**

On or in relation to the taxation of costs in proceedings, the registrar may—

- (a) if he or she is satisfied that service of a copy of the bill of costs cannot be effected within a reasonable time—dispense with that service; and
- (b) extend or abridge the time for service of a copy of the bill of costs; and
- (c) require any party to the proceedings represented jointly with any other party before him or her to be separately represented; and



- (d) proceed to tax the costs in the absence of any party to the proceedings who does not appear at the time appointed for the taxation; and
- (e) take evidence by the examination of witnesses or otherwise; and
- (f) direct the production of any document; and
- (g) control generally any proceedings before him or her; and
- (h) strike out or adjourn any proceedings before him or her; and
- (i) do any other things that the court may, by order, direct.

**276 Notice of adjournment of taxation proceedings**

If the registrar adjourns a taxation of costs in proceedings, he or she may direct any party to the proceedings attending before him or her to give notice of the adjournment to any absent party.

**277 Report to court**

The registrar may make a report in writing to the court on any taxation of costs in proceedings, whether as regards the whole of the costs or any item of those costs.

**278 Reference to court for directions**

- (1) The registrar may, on the registrar's own initiative, refer any question arising on a taxation of costs in proceedings for the direction of the court.
- (2) On a reference under subsection (1), the court may, after hearing any party to the proceedings or without doing so—
  - (a) give its direction on the question referred; or
  - (b) decline to give such a direction.
- (3) A direction given under subsection (2) is binding on the registrar.

## **279 Default of party entitled**

- (1) If a party to proceedings who is entitled to have his or her costs in the proceedings taxed does not, within a reasonable time after the party liable to pay those costs has served on him or her a request in writing to do so, file and serve a bill of costs under section 273, the registrar may fix a time within which the firstmentioned party shall file and serve a bill of costs.
- (2) If a party to proceedings who is entitled to have his or her costs in the proceedings taxed fails to file and serve a bill of costs in accordance with subsection (1) within the time fixed by the registrar under that subsection, the registrar may—
  - (a) certify the failure; and
  - (b) disallow the costs of that party or allow those costs in such amount as the registrar thinks fit.
- (3) If a party to proceedings who is entitled to have his or her costs in the proceedings taxed fails to proceed to taxation, the registrar may, for the purpose of preventing any other party being adversely affected by the failure—
  - (a) certify the failure; and
  - (b) disallow the costs of the firstmentioned party or allow those costs at such amount as the registrar thinks fit; and
  - (c) certify the costs of those other parties in the proceedings.

## **280 Cross costs**

If, under a judgment or order of the court, a party to proceedings is entitled to have his or her costs in the proceedings paid by another party and the firstmentioned party is also liable to pay costs of that other party in the proceedings, each of those parties is entitled to have his or her costs taxed whether or not the costs of that other party have been taxed, and—

- (a) if the costs of both parties have been taxed or otherwise determined—the judgment or order may, as regards costs between those parties, be enforced only for the balance ascertained after setting off the respective amounts of costs so taxed or determined; or
- (b) if the costs of only 1 of those parties have been taxed or otherwise determined—the judgment or order may be enforced for the amount of those costs.

**281 Certificate of taxed costs**

- (1) On completion of a taxation of costs in proceedings, the registrar shall make a certificate in accordance with form 66 of the amount at which he or she allows the costs, and subject to this Act, the amount so certified shall be the amount of the taxed costs for the purpose of the enforcement of the judgment or other order for costs under which the costs were taxed.
- (2) A certificate made by the registrar under subsection (1) in proceedings shall, unless it was made on the bill of costs to which it relates, be filed.

**282 Review of taxation**

- (1) If the costs of a party in proceedings have been taxed, any party to the proceedings may, within 5 days after the date of completion of the taxation, apply to the court for a review of the taxation.
- (2) An application under subsection (1) shall specify the applicant's objections to the taxation and the grounds of those objections.
- (3) On an application made in accordance with this section, the court may make the order that it thinks just in relation to the taxation generally or any item of costs included in the taxation.
- (4) On a review of a taxation under this section, the court may—

- (a) exercise all the powers of the registrar in relation to the taxation under review; and
- (b) make the orders that it thinks just for the alteration of the certificate made under section 281 in relation to the taxation; and
- (c) make an order for the remission of the matter as regards the costs generally or any item of those costs to the registrar for taxation in accordance with a direction of the court; and
- (d) make any other orders it thinks just, including an order as to the costs of the application.

**283 Costs of proceedings before registrar on taxation**

- (1) On a taxation of costs in proceedings, the reasonable costs of the taxation shall be allowed unless the judgment or order of the court under which those costs are payable otherwise provides.
- (2) Subject to subsection (1) and to any order of the court, the registrar may make orders in relation to the costs of or incidental to any taxation proceedings before him or her.
- (3) If the registrar makes an order under subsection (2) allowing costs to a party whose costs in proceedings are being taxed, the registrar shall direct that the bill of costs prepared by that party be amended to include the costs so allowed.
- (4) If the registrar makes an order under subsection (2) allowing costs to a party to proceedings liable to pay the costs being taxed, the registrar shall direct that the amount of the bill of costs prepared by the party whose costs he or she is liable to pay be reduced by the amount of the costs so allowed.

**284 Fee to barrister on taxation proceedings**

On a taxation of costs in proceedings, a fee paid to a barrister for attending before the registrar on the taxation shall not be allowed unless the court otherwise orders.

**285 Attendance of parties on taxation**

- (1) The registrar may—
  - (a) direct which parties to proceedings should attend before him or her on a taxation of costs in proceedings; and
  - (b) disallow on taxation the costs of attendance before him or her of any person whose attendance he or she considers unnecessary.
- (2) Notwithstanding subsection (1), any party to proceedings is entitled to attend before the registrar on a taxation of costs in the proceedings.

**Division 18.4 Security for costs**

**286 Security for costs**

- (1) In this section—
  - (a) a reference to a plaintiff includes a reference to any party who makes a claim for relief; and
  - (b) a reference to a defendant includes a reference to any party against whom a claim for relief is made.
- (2) Subject to subsection (3), where, in any proceedings, it appears to the court that—
  - (a) the plaintiff is ordinarily resident outside Australia; or
  - (b) the plaintiff is suing only for the benefit of another person and there is reason to believe that the plaintiff would be unable to pay the costs of the defendant in the proceedings; or

- (c) the address of the plaintiff is not stated, or is misstated, in his or her originating process; or
- (d) that the plaintiff has changed his or her address after the proceedings were instituted with a view to avoiding any consequences of the proceedings;

the court may, on the application of the defendant, order that the plaintiff give the security that the court thinks fit for the costs of the defendant of and incidental to the proceedings.

- (3) An order under subsection (2) shall not be made under subsection (2) (c) in proceedings if it appears to the court that the failure of the plaintiff in the proceedings to state his or her address, or the misstatement of his or her address, in his or her originating process was without intention to deceive.
- (4) If the court makes an order under subsection (2) in proceedings, the plaintiff in the proceedings shall give the security required by the order in the way, at the time, and in the terms (if any), that the court may, by order, direct.
- (5) If the court makes an order under subsection (2) in proceedings, it may order—
  - (a) that the proceedings be stayed as regards any claim for relief by the plaintiff until the security required by the firstmentioned order is given; or
  - (b) that if the plaintiff fails to give the security required by the firstmentioned order within the time (if any) specified in an order under subsection (4), the proceedings shall be stayed or dismissed.
- (6) Subject to subsection (7), the court may, by order, set aside or vary any order made under this section.
- (7) If proceedings are dismissed under an order under subsection (5), that order shall not be set aside or varied unless the court considers that there are special circumstances that justify it so doing.

## **Part 19**                      **Enforcement of judgments**

### **Division 19.1**              **Preliminary**

#### **287**              **Interpretation for pt 19**

(1) In this part:

*account* 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;

but does not include an account or record that is prescribed by the regulations as exempt from the operation of this section.

*earnings*, in relation to a person, means a sum payable to the person—

- (a) by way of wages or salary, including any fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or
- (b) by way of pension, including—
  - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
  - (ii) periodical payments in respect of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; and
  - (iii) periodical payments in respect of compensation for the loss of wages or salary because of illness or injury;

but does not include a pension, benefit or allowance payable to the person under—

- (iv) the *Social Security Act 1991* (Cwlth); or
- (v) the *Veterans' Entitlements Act 1986* (Cwlth).

**examination summons** means an examination summons issued under this part.

**garnishee** means the person to whom a garnishee order is directed.

**garnishee order** means a garnishee order made under this part.

**instalment order** means an instalment order made under this part.

**judgment** includes an order of the court for the payment of money, whether as costs or otherwise.

**judgment creditor** means a person in whose favour a judgment is given.

**judgment debt** includes an amount of money ordered by the court to be paid, whether as costs or otherwise.

**judgment debtor** means a person against whom a judgment is given.

**writ of execution** means a writ of execution issued under this part.

- (2) A reference in this part to the **giving** of a judgment includes a reference to the making of an order.
- (3) A reference in this part to a debt **due** or **accruing** includes a debt that will become due and payable.

## 288 Exercise of powers

The court or registrar shall—

- (a) before making an order under division 19.2, 19.3 or 19.4, endeavour to ascertain the property and financial circumstances of the judgment debtor; and



- (b) in determining the amount of an instalment to be paid under an instalment order, take into account the other financial obligations of the judgment debtor.

**289 Costs**

If the court or registrar is of the opinion that a party has acted unreasonably in proceedings under this part, the court or registrar may order that party to pay—

- (a) the costs, or part of the costs, of the other party; or  
(b) the amount that the court or registrar thinks fit for the expenses of the other party;

incurred by reason of those proceedings.

**290 Judiciary (Stay of Proceedings) Act 1933 not to apply**

A judgment debtor or garnishee is not entitled to make an application under the *Judiciary (Stay of Proceedings) Act 1933*, section 4 in relation to any payment to the judgment creditor under this part in respect of the judgment debt.

**291 Court may exercise powers of registrar**

The court may exercise any of the functions of the registrar under this part.

**Division 19.2 Orders at time of judgment**

**292 Instalment and garnishee orders**

- (1) When giving judgment in proceedings, the court may, on the oral application of a party to the proceedings or on its own initiative—
- (a) make any of the orders specified in subsection (3); or  
(b) adjourn the proceedings to a hearing before the registrar.

- (2) On an adjournment under subsection (1) (b), the registrar may hear the judgment creditor and the judgment debtor, or such of them as appears, and may make any of the orders specified in subsection (3).
- (3) The court or the registrar may make any of the following orders under this section:
  - (a) an instalment order for the payment of the judgment debt by the instalments payable at the times that the court thinks just;
  - (b) a garnishee order in respect of the judgment debt directed to a specified person attaching earnings;
  - (c) a garnishee order in respect of the judgment debt directed to a specified person attaching debts other than earnings;
  - (d) an order for the issue of an examination summons directed to—
    - (i) the judgment debtor; or
    - (ii) if the judgment debtor is a corporation—an officer or former officer of the corporation.
- (4) In considering whether to make an order specified in subsection (3), the court or the registrar shall have regard to—
  - (a) the order (if any) preferred by the judgment debtor; and
  - (b) the likelihood of the judgment debtor complying with an instalment order; and
  - (c) any other information that, in the opinion of the court or the registrar, is relevant and reliable.

### **293 Order for issue of writ of execution**

- (1) If, when giving judgment in proceedings, the court does not make an order under section 292 (1) (a) or adjourn the proceedings under section 292 (1) (b), the court may, on the oral application of a party

to the proceedings or on its own initiative, make an order for the issue of a writ of execution against goods of the judgment debtor.

- (2) On an adjournment under section 292 (1) (b), the registrar may hear the judgment creditor and the judgment debtor, or such of them as appears, and may issue a writ of execution against goods of the judgment debtor.
- (3) A writ of execution shall not be ordered by the court to be issued under subsection (1) or issued by the registrar under subsection (2), unless—
  - (a) the judgment creditor consents to the making of the order; and
  - (b) the court or the registrar is satisfied that, having regard to—
    - (i) the amount of the judgment debt remaining unpaid; and
    - (ii) the interests of the judgment creditor; and
    - (iii) the interests of the judgment debtor;it would be inappropriate to make an instalment order or garnishee order in relation to the judgment debt.

## **Division 19.3 Examination procedures**

### **294 Notice requiring financial information**

- (1) If a judgment debt has not been satisfied—
  - (a) the judgment creditor may file; and
  - (b) the registrar may sign, seal and return to the judgment creditor; a notice in accordance with form 74 calling on the judgment debtor to give the judgment creditor answers to the questions contained in the notice relating to the property and financial circumstances of the judgment debtor within 21 days after the day when the notice is served on the judgment debtor.

- (2) A judgment creditor is not entitled to file a notice while an instalment order or garnishee order is in force in respect of the judgment unless the registrar otherwise orders.

### **295 Issue of examination summons**

- (1) If a judgment debt has not been satisfied, the registrar may, on application by the judgment creditor in accordance with form 75, issue an examination summons in accordance with form 76 directed to—
- (a) the judgment debtor; or
  - (b) if the judgment debtor is a corporation—an officer or former officer of the corporation.
- (2) A judgment creditor is not entitled to make an application while an instalment order or garnishee order is in force in respect of the judgment unless the registrar otherwise orders.
- (3) An examination summons issued under subsection (1) shall not be directed to an officer or former officer of a corporation unless the registrar is satisfied, by affidavit or otherwise, that the officer or former officer is likely—
- (a) to have a sufficient knowledge of the affairs of the corporation to enable him or her to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination; or
  - (b) to have in his or her possession or control any document or thing that tends to show the true position as to the property or financial circumstances of the corporation.

### **296 Content of examination summons**

An examination summons—

- (a) shall summon the person to whom it is directed to attend before the registrar at the time and place specified in the

summons to be orally examined as to the matters referred to in section 298 (1) (a) and (b); and

- (b) may require that person to produce to the registrar at the examination any document or thing in that person's possession or control that tends to show the true position as to the judgment debtor's property or financial circumstances.

### **297 Service of examination summons**

An examination summons shall be served personally on the person to whom it is directed not less than 14 days before the date when the attendance of the person is required by the summons.

### **298 Examination of judgment debtor**

- (1) If the person to whom an examination summons is directed attends before the registrar, the registrar and the judgment creditor (if present) may orally examine the person—
  - (a) as to the judgment debtor's property and other means of satisfying the judgment debt; and
  - (b) generally as to the judgment debtor's financial circumstances.
- (2) An examination—
  - (a) shall be taken on oath administered by the registrar; and
  - (b) may be conducted in open court or in chambers, as the registrar directs.

### **299 Orders following examinations**

- (1) Following the examination of a judgment debtor, the registrar may, on the oral application of the judgment creditor or judgment debtor or on the registrar's own initiative, make 1 or more of the following orders:
  - (a) an instalment order for the payment of the judgment debt by such instalments payable at the times the registrar thinks just;

- (b) a garnishee order in respect of the judgment debt directed to a specified person attaching earnings or debts other than earnings;
  - (c) an order varying or revoking an instalment order or garnishee order in force in relation to the judgment debt.
- (2) In considering whether to make an order under subsection (1), the registrar shall have regard to—
  - (a) the order (if any) preferred by the judgment debtor; and
  - (b) the likelihood of the judgment debtor complying with an instalment order; and
  - (c) any other information that, in the registrar’s opinion, is relevant and reliable.
- (3) Subject to section 344, if the registrar does not make an order under subsection (1), the registrar may, on the oral application of the judgment creditor or judgment debtor or on the registrar’s own initiative, issue a writ of execution against goods of the judgment debtor.
- (4) The registrar shall not issue a writ under subsection (3) unless—
  - (a) the judgment creditor consents to the issue of the writ; and
  - (b) the registrar is satisfied that, having regard to—
    - (i) the amount of the judgment debt remaining unpaid; and
    - (ii) the interests of the judgment creditor; and
    - (iii) the interests of the judgment debtor;it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the judgment debt; and
  - (c) the registrar revokes any instalment order or garnishee order in force in relation to the judgment debt.

**300 Report of certain examinations**

If—

- (a) a person is examined by the registrar; and
- (b) the judgment creditor does not attend the examination;

the results of the examination and any order made shall be reported to the judgment creditor by the registrar as soon as is reasonably practicable.

**301 Subsequent examinations**

If a person has attended for examination under an examination summons, the registrar shall not issue a further examination summons directed to that person in respect of the judgment debt within 3 months after that attendance unless satisfied, by affidavit, as to—

- (a) any change in the property or financial circumstances of the judgment debtor since the last examination of a person in respect of the judgment debt; or
- (b) any additional relevant information that has become available since that last examination.

**302 Failure to attend in answer to summons**

- (1) If at the time set down (whether originally or on an adjournment) for the examination of a person to whom an examination summons is directed—
  - (a) the person fails to attend before the registrar; and
  - (b) there is proof—
    - (i) that the person has been served with the summons in accordance with section 297; or

- (ii) if the examination has been adjourned—that the person has been notified of the date, time and place fixed for the examination; and
  - (c) the judgment creditor so requests;

the registrar shall report in writing to the court that the person has failed to attend.
- (2) On receipt of a report, the court may—
  - (a) authorise the registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or
  - (b) adjourn the examination and order that the person attend before the registrar at a time and place specified in the order;

and the registrar shall forthwith serve on the person a notice informing the person of the action taken by the court.
- (3) A warrant shall not be issued until after the end of 14 days after the court authorises its issue.
- (4) If a person in respect of whom the court has authorised the issue of a warrant has not, within 14 days after the authorisation, attended by arrangement with the registrar to be examined, the registrar may—
  - (a) on the application of the judgment creditor verified by his or her affidavit in accordance with form 77; and
  - (b) not later than 3 months after the authorisation;

issue a warrant.
- (5) If a judgment creditor fails to make an application within the period limited by subsection (4), the court may, on receiving a satisfactory explanation from the judgment creditor as to the reasons for the failure, direct the registrar to issue a warrant.



**303 Warrants**

- (1) A warrant shall be in accordance with form 78 and shall—
  - (a) be signed by the registrar; and
  - (b) name, or otherwise describe, the person whose apprehension is required by the warrant; and
  - (c) state briefly the reason for its issue; and
  - (d) require the bailiff to apprehend the person named or described, if the person is in the ACT, and to bring that person before the registrar to be examined; and
  - (e) continue in force until—
    - (i) the warrant is executed; or
    - (ii) the warrant is revoked by order of the court (because the judgment debt has been paid or for any other reason) and the revocation is communicated to the bailiff in whose hands the warrant is for execution; or
    - (iii) the end of 3 months after the warrant is issued;whichever occurs first.
- (2) For subsection (1) (d), the bailiff may enter and search any premises where the bailiff suspects the person to be, using such force as is necessary and reasonable.
- (3) For subsection (1) (e) (i), a warrant is executed when—
  - (a) the person whose apprehension is required has been examined; or
  - (b) the examination is adjourned to another day; or
  - (c) the examination is struck out;whichever occurs first.

**304 Police assistance**

A police officer shall, if called on by the bailiff to do so, aid and assist in the execution of a warrant.

**305 Examination after issue of warrant**

(1) If—

- (a) the person in respect of whom the issue of a warrant is authorised—
  - (i) attends, by arrangement, before the registrar; or
  - (ii) is brought before the registrar under a warrant; and
- (b) the judgment creditor, having been notified of the date, time and place set down for the conduct of the examination, attends before the registrar;

the registrar and the judgment creditor may orally examine that person as to the matters referred to in section 298 (1) (a) and (b).

(2) If—

- (a) the person in respect of whom the issue of a warrant is authorised—
  - (i) attends, by arrangement, before the registrar; or
  - (ii) is brought before the registrar under a warrant; and
- (b) the judgment creditor, having been notified of the date, time and place set down for the conduct of the examination, does not attend before the registrar;

the registrar may—

- (c) orally examine that person as to the matters referred to in section 298 (1) (a) and (b); or
- (d) strike out the examination.

**306 Refusal to be examined**

If a person attends, or is brought, before the registrar for examination and the person—

- (a) refuses or fails, without reasonable excuse—
  - (i) to take an oath; or
  - (ii) to answer a question he or she is required by the registrar to answer; or
  - (iii) to produce a document or thing he or she is required by the registrar, or by a summons issued under section 295, to produce; or
- (b) gives false information;

the registrar may adjourn the examination and refer the matter of the refusal, failure or giving of false information to the court.

**307 Registrar may adjourn examination**

The registrar may adjourn an examination at any time (whether before or after the time originally set down for the examination or to which it has already been adjourned).

**Division 19.4 Instalment orders**

**308 Instalment orders on application by judgment debtor**

- (1) Subject to subsection (5), a judgment debtor may make application to the registrar in accordance with form 79 for—
  - (a) leave to pay the judgment debt, or the balance of the judgment debt owing to the judgment creditor, by the instalments payable at the times that may be specified in the application; or
  - (b) an order varying or revoking an instalment order in force in respect of the judgment debt.

- (2) An application shall be supported by an affidavit (in duplicate) in accordance with form 80 as to—
  - (a) for an application under subsection (1) (a)—the judgment debtor’s property and financial circumstances; or
  - (b) for an application under subsection (1) (b)—any change in the property or financial circumstances of the judgment debtor since the instalment order was made.
- (3) The registrar shall consider an application made in accordance with this section and—
  - (a) for an application under subsection (1) (a)—may make an instalment order for payment of the judgment debt by the instalments payable at the times that are specified in the application; or
  - (b) for an application under subsection (1) (b)—may make an order varying or revoking the instalment order as specified in the application.
- (4) Before making an order under subsection (3), the registrar may consult the judgment creditor (either orally or in writing) about the order he or she proposes to make.
- (5) A judgment debtor is entitled to make 1 application only under subsection (1) in any period during which a writ of execution is in force in relation to the judgment debt.

### **309 Instalment orders by agreement**

- (1) A judgment creditor and judgment debtor may enter into an agreement in accordance with form 81—
  - (a) specifying—
    - (i) the amount owing by the judgment debtor to the judgment creditor; and

- (ii) by what instalments payable at what times the amount owing is to be paid; or
  - (b) as to the variation or revocation of an instalment order in force in respect of the amount owing.
- (2) An agreement has no effect unless the signature of every person executing it (other than a legal practitioner) is witnessed by—
  - (a) the registrar; or
  - (b) a legal practitioner; or
  - (c) a justice of the peace; or
  - (d) a person prescribed for the *Magistrates Court Act 1930*, section 116C (3).
- (3) If an agreement in accordance with this section is filed, the registrar shall make an order—
  - (a) for an agreement under subsection (1) (a)—for the payment of the judgment debt by such instalments payable at the times that are specified in the agreement; or
  - (b) for an agreement under subsection (1) (b)—varying or revoking the instalment order as specified in the agreement.

### **310 Objection by judgment creditor to instalment order**

If an instalment order is made under section 308 (3), the judgment creditor may, within 14 days after the day when he or she was served in accordance with section 312, file a notice objecting to the order.

### **311 Hearing by court**

- (1) If—
  - (a) the registrar refuses to make an order on an application under section 308; or

- (b) a notice of objection is filed under section 310;  
the registrar shall—
  - (c) set down the application or objection for hearing by the court;  
and
  - (d) give notice of the date, time and place set down for the hearing  
to the judgment creditor and judgment debtor.
- (2) If an application or objection has been set down for hearing, the  
court shall consider the matter and hear the judgment creditor and  
judgment debtor, or such of them as appears, and may make—
  - (a) an instalment order for the payment of the judgment debt by  
such instalments payable at the times the court thinks just; or
  - (b) a garnishee order in respect of the judgment debt directed to a  
specified person attaching earnings or debts other than  
earnings; or
  - (c) an order confirming, varying or revoking an instalment order  
or garnishee order in force in relation to the judgment debt; or
  - (d) an order for the issue of a writ of execution against goods of  
the judgment debtor.
- (3) In considering whether to make an order under subsection (2) (a),  
(b) or (c), the court shall have regard to—
  - (a) the order (if any) preferred by the judgment debtor; and
  - (b) the likelihood of the judgment debtor complying with an  
instalment order; and
  - (c) any other information that, in the court's opinion, is relevant  
and reliable.
- (4) The court shall not make an order under subsection (2) (d) unless—
  - (a) the judgment creditor consents to the making of the order; and
  - (b) the court is satisfied that, having regard to—

- (i) the amount of the judgment debt remaining unpaid; and
- (ii) the interests of the judgment creditor; and
- (iii) the interests of the judgment debtor;

it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the judgment debt; and

- (c) the court revokes any instalment order or garnishee order in force in relation to the judgment debt.

### **312 Service of instalment orders**

The registrar shall serve—

- (a) notice of the making of an instalment order on the judgment creditor and judgment debtor; and
- (b) if the order is made under section 308 (3)—a copy of any affidavit filed by the judgment debtor under section 308 (2) on the judgment creditor.

### **313 Judgment creditor may apply for variation or revocation**

- (1) A judgment creditor may make an application (in duplicate) to the registrar in accordance with form 79 for an order varying or revoking an instalment order in force in respect of the judgment debt on the ground that—
  - (a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the judgment debtor; or
  - (b) at the time the order was made, material facts had been withheld from the court or registrar or material evidence before the court or registrar was false.
- (2) An application shall be supported by an affidavit (in duplicate) setting out the facts sought to be relied on.

- (3) Unless the registrar otherwise orders, the judgment creditor shall serve a sealed copy of both the application and supporting affidavit on the judgment debtor by—
- (a) if the judgment debtor is an individual—serving them on the judgment debtor personally; or
  - (b) if the judgment debtor is a body corporate—leaving them at a registered office, principal place of business or principal office of the judgment debtor with a person who is apparently an officer or employee of the judgment debtor over the age of 16 years.
- (4) The registrar shall consider an application made in accordance with this section and hear the judgment creditor and the judgment debtor, or such of them as appears, and may—
- (a) make an order confirming, varying or revoking the instalment order or any garnishee order in force in relation to the judgment debt; or
  - (b) make a garnishee order in respect of the judgment debt directed to a specified person attaching earnings or debts other than earnings; or
  - (c) issue a writ of execution against goods of the judgment debtor.
- (5) In considering whether to make an order under subsection (4) (a) or (b), the registrar shall have regard to—
- (a) the order (if any) preferred by the judgment debtor; and
  - (b) the likelihood of the judgment debtor complying with an instalment order; and
  - (c) any other information that, in the registrar’s opinion, is relevant and reliable.
- (6) The registrar shall not issue a writ under subsection (4) (c) unless—
- (a) the judgment creditor consents to the issue of the writ; and



- (b) the registrar is satisfied that, having regard to—
  - (i) the amount of the judgment debt remaining unpaid; and
  - (ii) the interests of the judgment creditor; and
  - (iii) the interests of the judgment debtor;  
it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the judgment debt; and
- (c) the registrar revokes any instalment order or garnishee order in force in relation to the judgment debt.

### **314 Stay of enforcement of judgment**

- (1) An instalment order operates as a stay of enforcement of the judgment in respect of which it is made unless the court or registrar otherwise orders.
- (2) If—
  - (a) an application is required to be set down for hearing under section 311 (1) (c) because the registrar has refused to make an order under section 308 (3); and
  - (b) no previous application in respect of the judgment to which the application relates has been made by the judgment debtor under section 308 (1);

the application shall operate as a stay of enforcement of the judgment (other than by way of an instalment order or garnishee order that was made before the application) until the application is determined under section 311 (2) or the court otherwise orders.

### **315 Payment to judgment creditor**

Subject to section 237, the registrar shall, as soon as practicable after receiving a payment from a judgment debtor under an instalment order, pay the amount received to the judgment creditor.

**316 Default**

- (1) If—
- (a) a judgment debtor fails to make a payment under an instalment order; and
  - (b) the failure continues for 7 days after the day when the payment was due;
- unless—
- (c) the court otherwise orders; or
  - (d) for an instalment order made under section 309 (3)—the relevant agreement otherwise provides;
- the instalment order ceases to be in force and the judgment may be enforced for the balance of the judgment debt owing to the judgment creditor.
- (2) If—
- (a) the execution of a garnishee order is stayed under section 321; and
  - (b) the instalment order ceases to be in force under subsection (1);
- the registrar shall, on the application of the judgment creditor in accordance with section 123, remove the stay of execution.

**Division 19.5 Garnishee orders**

**317 Orders on application to registrar**

- (1) The registrar may, on the application of a judgment creditor supported by the affidavit of the judgment creditor, make a garnishee order in respect of the judgment debt attaching earnings or debts other than earnings in the terms specified in the application.
- (2) The application and supporting affidavit shall be in accordance with form 82.

**318      Grounds for refusing orders**

The registrar may refuse to make a garnishee order if—

- (a) because of the smallness of—
  - (i) the judgment debt; or
  - (ii) the earnings or other debts sought to be attached; or
- (b) for any other reason;

the registrar is of the opinion that the order should not be made.

**319      Form and effect of orders**

- (1) A garnishee order shall be in accordance with form 83 and shall—
  - (a) specify the unpaid amount of the judgment debt owing to the judgment creditor; and
  - (b) require the garnishee to pay to the registrar the earnings or other debts attached or so much of those earnings or other debts as may be sufficient to satisfy the unpaid amount after deducting the amount (if any) that may be notified in writing to the garnishee by the judgment creditor or registrar as having been paid or credited to the judgment creditor on account of the unpaid amount otherwise than under the order; and
  - (c) include such particulars of the earnings or other debts to be attached as are—
    - (i) known to, or reasonably capable of being ascertained by, the judgment creditor; and
    - (ii) necessary to enable the garnishee to identify the earnings or other debts including, where the garnishee is an authorised deposit-taking institution or other person carrying on business at more than 1 place, the places where the accounts on which the debts are due or accruing are kept so far as those places are known to, or

reasonably capable of being ascertained by, the judgment creditor; and

- (d) contain a statement to the effect that the garnishee may apply for the variation or revocation of the order on the ground of exceptional hardship; and
  - (e) contain a statement to the effect that the judgment debtor may apply for—
    - (i) if such an order is not already in force in respect of the judgment debt—an instalment order that, if made, will result in a stay of execution of any garnishee order attaching earnings; or
    - (ii) the variation or revocation of the garnishee order on the ground of exceptional hardship.
- (2) A garnishee order comes into force as soon as it is served on the garnishee and, subject to this division, operates—
- (a) for an order attaching earnings—to attach, to the extent of the amount specified in the order, any earnings payable by the garnishee to the judgment debtor from time to time until the amount so specified has been paid; or
  - (b) for an order attaching debts other than earnings—to attach, to the extent of the amount specified in the order, all debts that at the time of service are due or accruing from the garnishee to the judgment debtor (whether they were due and accruing at the time the order was made or not).

### **320 Service of garnishee orders**

- (1) Subject to subsection (2), the judgment creditor shall serve a copy of a garnishee order on the garnishee.
- (2) If execution of a garnishee order is stayed, the judgment creditor shall not serve a copy of the order on the garnishee until the stay is lifted.

- (3) The judgment creditor shall serve a copy of a garnishee order on the judgment debtor within 5 days after the day when the garnishee is served under this section.

**321 Stay of garnishee orders attaching earnings**

If, as a consequence of making an order under this part, there is an instalment order and a garnishee order attaching earnings in force in relation to a judgment debt—

- (a) the execution of the garnishee order is, by force of this section, stayed until the court or registrar otherwise orders; and
- (b) the registrar shall revoke the garnishee order as soon as the judgment debt is satisfied.

**322 Part only of earnings may be attached**

A garnishee order attaching earnings shall attach only that part of the earnings that exceeds—

- (a) the amount calculated at the rate referred to in the *Earnings (Assignment and Attachment) Act 1966*, section 5; or
- (b) if the order specifies an amount greater than that amount—the greater amount.

**323 One order attaching earnings to operate at a time**

Only 1 garnishee order attaching earnings may be in force in respect of a judgment debt at any time.

**324 Limitations on payments under orders attaching earnings**

- (1) In this section:
- garnishee order*** means a garnishee order made under this Act or any other Territory law.
- (2) If earnings are attached under 2 or more garnishee orders, the sum of the payments made by the garnishee under those orders shall not

exceed that part of the earnings that exceeds the amount calculated at the rate referred to in the *Earnings (Assignment and Attachment) Act 1966*, section 5.

- (3) A garnishee who is required to make payments under 2 or more garnishee orders shall make them in order of the times when the orders were made.

### **325 Accounts with authorised deposit-taking institutions**

- (1) For the purpose of determining whether an amount standing to the credit of a judgment debtor in an account in an authorised deposit-taking institution is attachable as a debt due or accruing to the judgment debtor, the following conditions shall be disregarded:
- (a) a condition that a demand is required to be made before any money or share is withdrawn;
  - (b) a condition relating to the way in which or the place where a demand is to be made;
  - (c) a condition that a passbook, receipt or other document or thing is required to be produced before any money or share is withdrawn;
  - (d) a condition that notice is required before any money or share is withdrawn;
  - (e) a condition that any money or share may not be withdrawn for a specified period;
  - (f) a condition prescribing a minimum amount in respect of any withdrawal;
  - (g) a condition that a minimum balance is required to be maintained in the account;
  - (h) a condition relating to the account prescribed by the regulations for this section.

- (2) So much of the amount standing to the credit of a judgment debtor in a withdrawable share account in a building society or credit union as is the minimum amount that is required to be maintained in the account in order that the judgment debtor retains membership of the society or union is not attachable.
- (3) If an amount standing to the credit of a judgment debtor in an account with an authorised deposit-taking institution is attached—
- (a) the garnishee order shall be deemed to operate as a notice of withdrawal or demand for payment under the contract between the garnishee and the judgment debtor in respect of the account; and
  - (b) that notice or demand is, while the order remains in force, irrevocable; and
  - (c) that notice or demand shall be deemed to have been received by the garnishee—
    - (i) on the date of service of the order; or
    - (ii) if the judgment debtor is not entitled under the contract to give a notice of withdrawal, or to make a demand for payment, on the date of service of the order—on the date when the judgment debtor would, but for the order, have become so entitled.
- (4) A charge on an amount standing to the credit of a judgment debtor in an account in a building society or credit union, being a charge created by the rules of the building society or credit union, shall be disregarded for the purposes of a garnishee order.
- (5) Subsection (4) does not affect the rights of a building society or credit union to set off or appropriate the whole or any part of an amount standing to the credit of a judgment debtor.
- (6) If—

- (a) before the end of 21 days after service of a garnishee order on an authorised deposit-taking institution with respect to an amount standing to the credit of a judgment debtor in an account, the garnishee pays to the registrar the debt attached to the extent of the attachment; and
- (b) 1 of the conditions applicable to the account is that a passbook is required to be produced before any money or share is withdrawn;

the garnishee may, at the time of payment of that amount to the registrar, by writing signed by an officer of the institution, require the registrar to retain the amount so paid for a specified period (not exceeding 14 days) commencing on the date of payment.

- (7) The registrar shall, as soon as practicable after receiving a payment to which subsection (6) applies, give notice of the payment to the judgment creditor.
- (8) If—
  - (a) the registrar is required to retain an amount for a specified period under subsection (6); and
  - (b) the garnishee has, because of the production of a current passbook relating to that amount, or any part of that amount, before or during that period, paid to the judgment debtor the whole or any part of the debt attached, or otherwise dealt with the debt, so as to satisfy the whole or any part of the debt;

the court—

- (c) on application by the garnishee before the end of the specified period; and
- (d) if satisfied that, despite the payment or other dealing, the garnishee acted with reasonable diligence in relation to the garnishee order;



may order the registrar to repay the amount, or any part of the amount, to the garnishee.

- (9) If the registrar is required to retain an amount for a specified period under subsection (6), the registrar shall not pay that amount, or any part of it, to the judgment creditor—
- (a) until—
- (i) the garnishee, by writing signed by an officer of the authorised deposit-taking institution, informs the registrar or the registrar is otherwise satisfied that during that period a current passbook relating to that amount, or any part of it, has come into the possession of the garnishee at the place of the account to the credit of which that amount or part was standing; or
- (ii) the end of that period;
- whichever occurs first; and
- (b) unless the registrar is satisfied, on the information available to the registrar, that no application by the garnishee for an order under subsection (8) is pending.
- (10) If an amount required to be retained by the registrar under subsection (6), or any part of such an amount, has been ordered to be repaid to the garnishee, the balance (if any) is payable by the registrar to the judgment creditor.

### **326 Direct crediting—veterans' pensions**

- (1) If—
- (a) a judgment debtor has an account with an authorised deposit-taking institution; and
- (b) instalments of a pension payable to the judgment debtor (whether on the judgment debtor's own behalf or not) are being paid into the account; and

(c) a garnishee order attaching debts other than earnings is in force in respect of the account;

the garnishee order does not attach to the saved amount (if any).

(2) The saved amount is the difference between—

(a) the total amount of pension payable to the judgment debtor that has been paid to the credit of the account during the 4 week period immediately before the garnishee order came into force; and

(b) the total amount withdrawn from the account during the same 4 week period.

(3) This section applies to an account whether it is maintained by the judgment debtor—

(a) alone; or

(b) jointly with another person; or

(c) in common with another person.

(4) In this section:

*pension* means a pension, benefit or allowance payable under the *Veterans' Entitlements Act 1986* (Cwlth).

### **327 Payments by garnishees**

(1) A payment under a garnishee order—

(a) shall, subject to section 325, be made to the registrar for payment to the judgment creditor; or

(b) if, before making the payment, the garnishee notifies the judgment debtor and the registrar that he or she proposes to do so—may be made to or at the direction in writing of the judgment creditor.

- (2) Subject to subsection (3), an amount paid by or raised as the result of execution against a garnishee shall—
- (a) satisfy the judgment debt; and
  - (b) be a valid discharge to the garnishee as against the judgment debtor;
- to the extent of the amount paid or raised, despite that the judgment may be set aside or the garnishee order may be set aside, varied or revoked.
- (3) If an amount is ordered to be repaid to a garnishee under section 325 (8)—
- (a) the payment of that amount by the garnishee shall be deemed not to satisfy, and never to have satisfied, the judgment debt; and
  - (b) this part applies in respect of the judgment debt as if the garnishee had not made the payment.

### **328 Time for payment**

- (1) Payment by a garnishee under a garnishee order attaching earnings shall be made within 14 days after the day when the earnings are due for payment to the judgment debtor.
- (2) Payment by a garnishee under a garnishee order attaching debts other than earnings shall be made—
  - (a) within 21 days after the day when the order is served on the garnishee; or
  - (b) if the debt attached is due for payment to the judgment debtor after the end of that period—not later than the date when the debt is due for payment.

### **329 Notice by garnishee to judgment creditor**

- (1) If a garnishee order attaches a debt other than earnings that is due for payment after the end of the period of 21 days after the day when the order is served on the garnishee, the garnishee shall, before the end of that period, serve on the judgment creditor a notice specifying—
  - (a) the date when the debt is, or is likely to be, due for payment to the judgment debtor; and
  - (b) if the amount of the debt is less than the unpaid amount of the judgment debt specified in the garnishee order—the amount of the debt.
- (2) A person who knowingly makes a statement in a notice under subsection (1) that is false or misleading commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **330 Application to vary or revoke garnishee order**

At any time after a garnishee order comes into force, the judgment debtor or the garnishee may make application in accordance with section 123 for an order varying or revoking the garnishee order on the ground that the order imposes exceptional hardship on the applicant or a member of the applicant's family.

### **331 Application for instalment order**

- (1) At any time after a garnishee order attaching earnings comes into force, the judgment debtor may make application for leave to pay the judgment debt, or the balance of the judgment debt owing to the judgment creditor, by the instalments payable at the times that may be specified in the application.

- (2) An application shall be in accordance with form 79 and supported by an affidavit (in duplicate) in accordance with form 80 as to the judgment debtor's property and financial circumstances.

### **332 Determination of application**

- (1) If an application is made under section 330 or 331, the registrar shall—
- (a) set down the application for hearing by the court; and
  - (b) give notice of the date, time and place set down to the judgment creditor, the judgment debtor and the garnishee; and
  - (c) for an application under section 331—give a copy of the supporting affidavit to the judgment creditor.
- (2) If an application has been set down for hearing, the court shall consider the application and hear the judgment creditor, the judgment debtor and the garnishee, or such of them as appears, and may make 1 or more of the following orders:
- (a) an instalment order for the payment of the judgment debt by the instalments payable at the times that the court thinks just;
  - (b) an order varying or revoking the garnishee order;
  - (c) if the application relates to a garnishee order attaching earnings, and whether that order is varied or revoked or not—a garnishee order attaching debts other than earnings;
  - (d) if the application relates to a garnishee order attaching debts other than earnings, and whether that order is varied or revoked or not—a garnishee order attaching earnings.
- (3) In considering whether to make an order under subsection (2), the court shall have regard to—
- (a) the order (if any) preferred by the judgment debtor; and

- (b) the likelihood of the judgment debtor complying with an instalment order; and
  - (c) the property and financial circumstances of the judgment debtor, including any other instalment orders or garnishee orders in force against the judgment debtor under this Act or any other law in force in the ACT; and
  - (d) any other information that, in the court's opinion, is relevant and reliable.
- (4) The registrar shall serve a copy of any order made under this section on the judgment creditor, the judgment debtor and the garnishee.

### **333 Court may order writ of execution to be issued**

- (1) If, following a hearing under section 332 (2), the court does not make any orders under that subsection, the court may, on the oral application of the judgment creditor or judgment debtor or on its own initiative, make an order for the issue of a writ of execution against goods of the judgment debtor.
- (2) The court shall not make an order for the issue of a writ of execution under subsection (1) unless—
- (a) the judgment creditor consents to the issue of the writ; and
  - (b) the court is satisfied that, having regard to—
    - (i) the amount of the judgment debt remaining unpaid; and
    - (ii) the interests of the judgment creditor; and
    - (iii) the interests of the judgment debtor;it would be inappropriate to continue to enforce the existing garnishee order, to vary that order or to make an instalment order or a further garnishee order in respect of the judgment debt; and
  - (c) the court revokes the garnishee order.

**334 No debts due or accruing**

- (1) If a garnishee reasonably believes that, at the time the garnishee order was served on him or her, there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the registrar an affidavit in accordance with form 84 to that effect containing a summary of the grounds on which that belief is based.
- (2) A garnishee shall not be subject to any action, liability, claim or demand in respect of a disclosure of information under subsection (1) if, in the circumstances, it was reasonable to have made the disclosure.

**335 Failure to comply with order**

- (1) If a garnishee order has not been complied with, the judgment creditor may apply for the issue of a summons under subsection (2) by filing an affidavit in accordance with form 85 sworn by the judgment creditor as to the noncompliance of the garnishee.
- (2) If an affidavit is filed under subsection (1), the registrar may issue a summons in accordance with form 86 requiring the garnishee to attend before the court on a day and at a time specified in the summons to show cause why the garnishee should not comply with the garnishee order.
- (3) At the time set down (whether originally or on an adjournment) for a garnishee to attend to answer a summons under subsection (2), the court may hear and determine any question in dispute about the liability of the garnishee to pay the earnings or other debts sought to be attached by the garnishee order and—
  - (a) give judgment for the amount of those earnings or other debts or the unpaid amount of the judgment debt (whichever is the lesser) in favour of the judgment creditor against the garnishee; or
  - (b) vary or revoke the garnishee order.

- (4) The court shall not give judgment in the absence of the garnishee unless the court is satisfied that—
- (a) the garnishee was duly served with the summons; and
  - (b) if the hearing has been adjourned—the garnishee was notified of the date and time fixed for the garnishee to attend.
- (5) If—
- (a) because of the smallness of the judgment debt or of the earnings or other debts sought to be attached; or
  - (b) for any other reason;
- the court is of the opinion that judgment should not be given under subsection (3) (a), the court may refuse to give judgment.

**336 Lien or claim of third party on debt**

If, in proceedings under this part, it appears to the court that a person other than the judgment debtor is or claims to be entitled to—

- (a) any money paid under a garnishee order; or
- (b) the earnings or other debts attached by the order; or
- (c) any charge or lien on or interest in that money or those earnings or debts;

the court may—

- (d) order that notice of the proceedings be given to the person; and
- (e) hear and determine the claim and give the judgment or make the orders in respect of the claim (including an order barring the claim and an order for the payment into court by the judgment creditor of money received under the garnishee order) that the court thinks just.



**337 Excess paid by garnishee**

- (1) If a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, the judgment creditor shall—
  - (a) notify the garnishee and the judgment debtor of the excess payment; and
  - (b) pay the excess to the garnishee or the judgment debtor.

Maximum penalty: 10 penalty units.

- (2) If an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable as a debt due to the garnishee or the judgment debtor from the judgment creditor.

**338 Reduction of attached debt**

- (1) If—
  - (a) a garnishee order has been served on the garnishee; and
  - (b) the garnishee pays to the judgment debtor the whole or any part of the earnings or other debts attached, or otherwise deals with those earnings or other debts, so as to satisfy the whole or any part of the debts attached;

the court may order that, for the purposes of the garnishee proceedings, the earnings or other debts attached be reduced to the extent of the payment or satisfaction.

- (2) The court shall not make an order under subsection (1) unless satisfied that, despite the payment or other dealing, the garnishee acted with reasonable diligence for the purpose of giving effect to the attachment.

**339 Deductions by garnishees**

- (1) If a garnishee—
-

(a) complies with a garnishee order attaching debts other than earnings within the period specified in section 328 (2) (a) or by the date referred to in section 328 (2) (b), as the case requires; and

(b) if applicable, complies with section 329 (1);

the garnishee may retain out of the amount otherwise payable under the garnishee order an amount (not exceeding the prescribed amount) for the garnishee's own use and any amount so retained shall be taken to have been paid to the judgment creditor on account of the unpaid amount of the judgment debt.

(2) A garnishee required to make a payment under a garnishee order attaching earnings may deduct from the payment an amount (not exceeding 10% of the payment) for the reasonable expenses incurred by the garnishee in complying with the order.

(3) If a garnishee makes a deduction in accordance with subsection (2), the garnishee shall, when paying the balance of the payment due, forward to the judgment creditor a statement showing—

(a) the amount deducted under the garnishee order from the earnings of the judgment debtor; and

(b) the amount deducted by the garnishee under subsection (2); and

(c) the amount paid to the registrar or to or at the direction of the judgment creditor.

(4) If a garnishee makes a deduction in accordance with subsection (2), the amount deducted shall be taken to have been paid to the judgment creditor on account of the unpaid amount of the judgment debt.

### **340 Judgment debtor ceases employment**

(1) If a garnishee order attaching earnings is in force and the judgment debtor ceases to be employed by the garnishee, the judgment debtor

and the garnishee shall, within 21 days after the judgment debtor ceases to be so employed, each notify the registrar in writing—

- (a) that the judgment debtor has ceased employment with the garnishee; and
- (b) specifying the date when the employment ceased;

and, if the judgment debtor has a new employer, the judgment debtor shall also specify in his or her notice—

- (c) the name and address of the new employer and the place of the new employment; and
- (d) the amount of his or her earnings from the new employer.

Maximum penalty: 10 penalty units.

- (2) If the registrar receives a notice in accordance with subsection (1), the registrar—
  - (a) shall notify the judgment creditor in writing of the contents of that notice; and
  - (b) if no written objection is received from the judgment creditor or the judgment debtor within a reasonable time—may on the registrar's own initiative revoke the existing garnishee order and make a further garnishee order in respect of the judgment debt directed to the judgment debtor's new employer attaching the judgment debtor's earnings.

### **341 Prejudice to employee**

- (1) An employer shall not dismiss an employee, or otherwise prejudice an employee in his or her employment, because a garnishee order attaching the earnings of the employee has been made.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If—

- (a) an employee is dismissed or prejudiced within 6 months after a garnishee order is made; and
- (b) all the elements of the offence other than the reason for the employer's action are proved;

the onus of proving that the dismissal or prejudice was not because of the garnishee order is on the employer.

- (3) A conviction under subsection (1) does not limit, restrict or otherwise effect any obligation that the garnishee may have in relation to the judgment debtor or any right or remedy that the judgment debtor may have against the garnishee under any other law in force in the ACT.

### **342 Stay of enforcement of judgment**

A garnishee order operates as a stay of enforcement of the judgment in respect of which it is made unless the court or registrar otherwise orders.

## **Division 19.6 Execution against personal property**

### **343 Issue of writs of execution**

- (1) Subject to section 344, the registrar may, on the application of a judgment creditor supported by the affidavit of the judgment creditor, issue a writ of execution against goods of the judgment debtor to enforce the judgment debt.
- (2) The application and supporting affidavit shall be in accordance with form 87.
- (3) The supporting affidavit shall contain and verify a statement of the following:
  - (a) the date of the judgment in respect of which the writ of execution is sought;
  - (b) the amount of money originally payable under the judgment;

- (c) the amount of costs originally payable under the judgment, whether that amount has been fixed by taxation or otherwise;
- (d) the total amount (if any) paid by the judgment debtor in reduction of the judgment debt;
- (e) the total amount of the credits (if any) accrued in reduction of the judgment debt otherwise than by payment;
- (f) such other particulars (if any) as are necessary to calculate the amount payable under the judgment;
- (g) the amount payable under the judgment on the day on which the affidavit is sworn;
- (h) the interest (if any) payable under section 234 as at the day on which the affidavit is sworn;
- (i) the address at which it is alleged that personal property of the judgment debtor is situated.

**344 Leave to issue required in certain circumstances**

- (1) The registrar shall not, without leave of the court granted on the application of the person seeking to execute a judgment, issue a writ of execution—
  - (a) if, since the judgment was given or entered, a change has taken place (whether by assignment, death or otherwise) in the persons entitled or liable to execution under the judgment; or
  - (b) the judgment is against the assets of a deceased person coming into the hands of his or her executor or administrator after the day when the judgment was given or entered and the writ of execution is sought against assets of that description.
- (2) An application under subsection (1)—
  - (a) shall be in accordance with section 123; and

- (b) shall be supported by an affidavit containing and verifying a statement of the following:
- (i) the amount due on the date of the motion;
  - (ii) if a period of more than 12 years has elapsed since the judgment was given or entered—the reason for the delay before seeking to execute the judgment;
  - (iii) if subsection (1) (a) applies—the change that has taken place;
  - (iv) if subsection (1) (b) applies—that a demand for satisfaction of the judgment debt has been made of the person liable to execution but the judgment debt has not been satisfied;
  - (v) that the applicant is entitled to proceed to execution of the judgment;
  - (vi) that the person against whom execution is sought is liable to execution on the judgment.

**345 Form of writ of execution**

A writ of execution shall be in accordance with form 88 and shall bear the date when it is issued.

**346 Priority and duration of writs**

- (1) On receipt of a writ of execution, a bailiff shall endorse the date and time of receipt on the back of the writ.
- (2) A bailiff who is required to execute more than 1 writ of execution against the property of a judgment debtor shall execute them in order of the dates and times of receipt.
- (3) If—
  - (a) a writ of fieri facias against the property of a person issues out of the Supreme Court; and

(b) a writ of execution against the same property issues out of the Magistrates Court;

the right to that property when seized shall be determined by the priority of—

(c) the time of the delivery of the writ issued out of the Supreme Court to the sheriff; or

(d) the time of receipt of the writ issued out of the Magistrates Court by the bailiff.

(4) A writ of execution shall be valid for a period of 6 months commencing on the date of issue.

(5) Despite subsection (4), a writ of execution remains valid until the property seized under the writ is sold or otherwise disposed of, or is returned to the judgment debtor, in accordance with this division.

### **347 Seizure of property for sale**

(1) For the purpose of executing a writ of execution, a bailiff may seize and sell personal property (other than any right or interest in respect of land) that is or may be in the judgment debtor's possession, to that the judgment debtor is or may be entitled or that the judgment debtor can (at law or in equity) assign or dispose of except—

(a) necessary items of clothing, and beds, bedding and kitchen furniture, including a stove, oven and refrigerator, but not including a washing machine or automatic dishwasher; and

(b) ordinary tools of trade, plant and equipment, professional instruments and reference books, the aggregate value of which does not exceed the prescribed amount.

(2) Property seized shall, prior to its sale, remain in the custody the bailiff directs.

**348 Seizure of money and things in action**

- (1) A bailiff or any other person executing a writ of execution may seize any money, banknotes, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to the person against whom the writ has been issued.
- (2) When the time for payment in respect of a cheque, bill of exchange, promissory note, bond, specialty or security for money so seized has arrived, the person on whose behalf the writ has been issued is entitled to—
  - (a) demand and receive payment; and
  - (b) sue in the name of the person against whom the writ has been issued, or in the name of a person in whose name that person might have sued, for the recovery of the sum made payable or secured.

**349 Entry, search and seizure—bailiff's powers**

- (1) This section applies if, in executing a writ of execution against a judgment debtor—
  - (a) a bailiff is refused entry into the judgment debtor's premises by an occupier of the premises, after having informed, or having made reasonable attempts to inform, the occupier (orally or in writing) about the procedure in relation to the execution of the writ and the bailiff's intention to seek an order for entry under this section if entry is refused; or
  - (b) a bailiff—
    - (i) has made reasonable attempts to contact both the judgment debtor and any other occupier of the judgment debtor's premises to obtain consent to entry of the premises; and
    - (ii) has been unable to make such contact with the judgment debtor or any other occupier of those premises.



- (2) If this section applies, on application by a bailiff in accordance with section 123 the court may issue an order authorising the bailiff, for any purpose connected with executing the writ of execution, to enter the judgment debtor's premises using the force that is necessary and reasonable, with the assistance of a police officer or officers if the bailiff considers the assistance to be necessary.
- (3) Without limiting subsection (2), an order under that subsection is sufficient authority for the bailiff—
- (a) to search the premises for any property that the bailiff is entitled to seize under section 347 (1) or 348 (1); and
  - (b) to seize and remove any such property.
- (4) The court shall not make an order under subsection (2) authorising entry to a judgment debtor's premises unless satisfied that—
- (a) the judgment debtor resides at the premises; or
  - (b) there is within the premises property that the bailiff is entitled to seize under section 347 (1) or 348 (1) in executing the writ of execution.
- (5) No action, suit or proceeding lies against a bailiff in relation to an act done or omitted to be done in good faith in carrying out an order of the court under subsection (2).
- (6) In this section:
- judgment debtor's premises* means premises occupied by the judgment debtor.

### **350 Safekeeping of property seized**

A bailiff shall serve—

- (a) a judgment debtor against whom a writ of execution has been issued; or

- (b) any person who has custody of any personal property of a judgment debtor;

with a notice, in accordance with form 89, listing the property in the custody of the person served that has been seized under the writ and, if appropriate, informing the person served that he or she is responsible for the safekeeping of the property so seized.

**351 Property seized not abandoned**

- (1) A bailiff may, after seizing property under a writ of execution—
- (a) leave the house or other place where the property seized then is; and
  - (b) at all reasonable times re-enter that house or place.
- (2) A bailiff leaving and subsequently returning to a house or other place under subsection (1) shall not be deemed to have abandoned the property seized there.

**352 Removal of property seized**

- (1) A bailiff may remove property seized under a writ of execution from the place where it was seized to another place if it is necessary to do so for the safekeeping or sale of the property.
- (2) A bailiff shall, as soon as practicable after removing property under subsection (1), give to the judgment debtor or leave for the judgment debtor at the place from which the property is removed, notice of the removal and an inventory of the property removed.

**353 Notice of seizure**

On seizing property under a writ of execution, a bailiff shall deliver to the judgment debtor, or leave at the place where the property is seized, a notice in accordance with form 90—

- (a) specifying the amount that is necessary to satisfy the judgment, including costs and charges; and

- (b) setting out the effects of sections 360 (1) and (2) and 364; and
- (c) informing the judgment debtor that he or she may make an application for a declaration exempting specified property from execution or an application for an instalment order; and
- (d) setting out the effect of section 314.

### **354 Exempt property**

- (1) The registrar may, on application by a judgment debtor, declare that specified property of the judgment debtor is exempt from execution.
- (2) An application under subsection (1) shall be in accordance with section 123.
- (3) The registrar shall not make a declaration under subsection (1) unless satisfied that, if the declaration were not made, the judgment debtor or a member of his or her family would be likely to suffer exceptional hardship.
- (4) The registrar may vary or revoke a declaration.

### **355 Stay of sale of property seized**

- (1) If, after a writ of execution has been issued, the judgment debtor makes an application under section 308 (1), a bailiff shall not sell any property seized under the writ until after the registrar has considered the application.
- (2) If the registrar refuses to make an order under section 308 (3) in respect of an application referred to in subsection (1), the registrar may order a stay of the sale of the property seized under the writ of execution.
- (3) A stay of the sale of property under subsection (2) remains in force until the court has considered the application under section 311 (2).

### **356 Payment preventing execution**

If a person—

- (a) pays to a bailiff the amount for which a writ of execution was issued or produces to the bailiff the receipt of the registrar for that amount; and
- (b) pays the amount of all the proper costs and charges actually incurred in effecting the sale up to the time of payment, including any costs associated with removing the property from the place where it was seized and advertising the sale;

the bailiff shall not proceed with the execution and shall return the writ.

**357 Suspension of execution by judgment creditor**

- (1) If property has not been seized under a writ of execution, the judgment creditor may—
  - (a) require execution of the writ to be suspended unconditionally; and
  - (b) if the execution of the writ has been suspended—require execution to be resumed.
- (2) A requirement under subsection (1) shall be in writing.
- (3) A bailiff shall comply with a requirement in accordance with this section.

**358 Agreements to withdraw and re-enter**

- (1) If property has been seized under a writ of execution and the judgment creditor—
  - (a) enters into an arrangement with the judgment debtor that a bailiff shall be at liberty to withdraw from and re-enter possession; and
  - (b) communicates that arrangement to the bailiff; and
  - (c) requests the bailiff to withdraw from possession;

the bailiff shall withdraw from possession and suspend execution of the writ but shall be at liberty, at the request in writing of the judgment creditor, to re-enter possession and resume the execution in accordance with the terms of the arrangement.

- (2) If property has been seized under a writ of execution and the judgment creditor, without communicating any arrangement referred to in subsection (1), requests a bailiff to withdraw from possession or to suspend execution, other than for the purposes of postponing a sale for a reasonable time—
  - (a) the judgment creditor shall be deemed to have abandoned the execution; and
  - (b) the bailiff shall withdraw from possession and return the writ.

### **359 Deposit to cover costs of execution**

- (1) The registrar may, before issuing a writ of execution or during the execution of a writ, require the judgment creditor to deposit with the registrar an amount of money sufficient to meet the costs and charges incurred, or likely to be incurred, by a bailiff in executing the writ.
- (2) If a deposit required by the registrar is not paid as soon as practicable—
  - (a) the registrar may refuse to issue the writ of execution; or
  - (b) the bailiff executing the writ may withdraw from any possession entered into and return the writ.

### **360 Conditions of sale**

- (1) If a bailiff is of the opinion that the property seized under a writ of execution is more than sufficient to satisfy the execution, the bailiff shall sell—
  - (a) so much of the property as, in his or her opinion, would be sufficient; and

- (b) if the property sold is not sufficient—so much more of the property as, in his or her opinion, would be sufficient to satisfy the balance due under the execution.
- (2) If property is to be sold in accordance with subsection (1), the bailiff shall sell the property—
- (a) in the order that, in his or her opinion, is best for the speedy execution of the writ without undue expense; and
  - (b) subject to paragraph (a), in the order that the judgment debtor may specify; and
  - (c) subject to paragraphs (a) and (b), in the order that, in his or her opinion, is best for minimising hardship to the judgment debtor or any other person.
- (3) Subsections (1) and (2) do not affect any liability of the bailiff to the judgment creditor.
- (4) Subject to section 361 (1), the bailiff shall offer the property for sale at a public auction as soon as practicable, having regard to—
- (a) the interests of the judgment creditor and the judgment debtor; and
  - (b) the need to obtain the reserve price for the property.

**361 Time of sale**

- (1) Subject to sections 354 (1) and 360 (1) and (2), property seized under a writ of execution shall be offered for sale at a public auction—
- (a) within 10 weeks after the day when the property is seized; or
  - (b) if execution of the writ is suspended—within 10 weeks from and including the day when execution is resumed;

unless the amount for which the writ has been issued and the costs and charges of the execution are sooner paid or the court otherwise orders.

- (2) Subject to subsection (3), property seized under a writ of execution shall not be sold before—
  - (a) the end of 6 days after the day when the property is seized unless the judgment debtor requests in writing that the property be sold within that period; and
  - (b) any application made by the judgment debtor under section 354 (1) is determined.
- (3) Property of a perishable nature seized under a writ of execution may be sold forthwith after it is seized.

### **362 Postponement**

Subject to section 361 (1), a bailiff may postpone, or require the auctioneer to postpone, a sale of property under the writ—

- (a) if the bailiff is of the opinion that a postponement is necessary to obtain the reserve price; or
- (b) in compliance with a request by the judgment creditor for a postponement.

### **363 Determining market value**

- (1) Before an item of property is offered for sale at an auction under section 365, the bailiff shall, so far as he or she can do so by exercising reasonable diligence, determine the market value of the item.
- (2) For subsection (1), the bailiff—
  - (a) may require the judgment creditor to give him or her any information about the property to be auctioned known to, or

reasonably capable of being ascertained by, the judgment creditor; and

- (b) if the nature and apparent value of the property is such that it is reasonable to do so—may engage a suitably qualified and experienced person to provide the bailiff with an opinion as to the value of the property; and
  - (c) may make the other inquiries that are reasonable.
- (3) If a judgment creditor unreasonably fails to provide any information required under subsection (2) (a), the bailiff—
- (a) shall report the failure to the registrar; and
  - (b) may refuse to proceed further towards the sale of the property.
- (4) The bailiff shall, as soon as practicable after determining the market values of the items to be offered for sale under subsection (1), notify the judgment debtor in writing of those market values.

### **364 Judgment debtor may challenge market value**

- (1) The registrar may, on application by the judgment debtor, revoke a determination under section 363 (1) in respect of an item and determine a higher market value for the item.
- (2) An application under subsection (1)—
  - (a) shall be made within 5 days after the judgment debtor is notified of the determination under section 363 (4); and
  - (b) shall be in accordance with section 123.
- (3) The registrar shall not make a determination under subsection (1) unless—
  - (a) there is evidence before the registrar from a suitably qualified and experienced person as to the true market value of the item; and



- (b) the registrar is satisfied that, having regard to that evidence, the market value of the item determined under section 363 (1) is substantially less than its true market value.
- (4) If a judgment debtor makes an application under subsection (1), a bailiff shall not sell any property seized under the writ of execution until the application has been determined.

### **365 Sale by public auction**

- (1) Subject to subsection (5), property seized under a writ of execution and offered for sale at a public auction shall be sold to the highest bidder.
- (2) The bailiff—
  - (a) may conduct the auction; or
  - (b) if the nature and apparent value of property to be sold is such that it is reasonable to do so—may engage an auctioneer licensed under the *Auctioneers Act 1959* to conduct the auction under the bailiff's direction.
- (3) The bailiff shall, at least 48 hours before the day of the auction—
  - (a) advertise the details of the proposed auction in the principal daily newspaper circulating in the ACT; and
  - (b) serve on the judgment debtor a notice specifying the date, time and place of the auction and the property to be auctioned.
- (4) The advertisement shall not contain any statement to the effect, or from which it may be inferred, that the auction is in respect of property seized under a writ of execution.
- (5) There shall be a single reserve price in respect of each item offered for sale at the auction equal to 65% of the market value of the item determined under section 363 or 364, as the case may be.
- (6) The reserve price of an item shall not be disclosed at any time before or during the auction at which it is offered for sale.

- (7) Before the auction is conducted, the bailiff shall—
  - (a) prepare a list in accordance with form 91 of the items of property to be offered for sale at the auction; and
  - (b) record opposite each item in the list the reserve price of the item and how that price was determined.
- (8) No item shall be sold at the auction for a price less than the reserve price.

**366 Sale by private agreement**

- (1) If property seized under a writ of execution remains unsold after being offered for sale at an auction under section 365, a bailiff or the auctioneer may sell the property by private agreement.
- (2) No item of property shall be sold by private agreement for a price less than the reserve price set under section 365 (5).

**367 Terms about payment**

- (1) A bailiff or auctioneer shall sell property seized under a writ of execution on terms that the purchaser of an item of that property—
  - (a) shall pay—
    - (i) an amount equal to 10% of the purchase price as a deposit immediately after the sale; and
    - (ii) the balance of the purchase price within the period (not exceeding 2 working days after the day of the sale) that the bailiff may determine prior to the sale; or
  - (b) shall pay the whole of the purchase price immediately after the sale.
- (2) The bailiff shall require payment of the purchase price to be in cash, by bank draft or, with the approval of the bailiff, by credit card.

- (3) If payment is made by credit card, any charge made to the bailiff or auctioneer in respect of the payment shall be included in the costs and charges of the execution.

**368 Sale price to be recorded**

The bailiff or auctioneer shall record opposite each item in the list under section 365 (7) that is sold the price for which the item was sold.

**369 Purchase by bailiffs or auctioneer prohibited**

Neither a bailiff nor the auctioneer is entitled—

- (a) to bid at the auction at which property seized under a writ of execution is offered for sale; or
- (b) to purchase, on his or her own behalf or on another person's behalf, any item of that property at the auction or by private agreement.

**370 Auctioneer to account**

- (1) An auctioneer shall, as soon as practicable after being advised by a bailiff that his or her services will not be required in respect of a writ of execution or asked by a bailiff for an account of his or her charges, advise the bailiff of the amount of those charges.
- (2) An auctioneer shall, as soon as practicable after receiving any money under a writ of execution, pay the money, less his or her charges, to a bailiff.

**371 Surplus sale proceeds paid to judgment debtor**

A bailiff shall deduct from the amount realised from the sale of property seized under a writ of execution—

- (a) the amount of all proper costs and charges actually incurred in effecting the sale, including any costs associated with

removing the property from the place where it was seized and advertising the sale; and

(b) the amount for which the writ was issued;

and shall pay the surplus (if any) to the judgment debtor.

**372 Costs of execution**

Unless the court otherwise orders, the costs and charges of a writ of execution (whether executed or not and whether productive or not) shall be added to and form part of the judgment debt.

**373 Payment of amounts raised to registrar**

A bailiff shall, within 24 hours after receiving the amount realised from the sale of property seized under a writ of execution, pay the amounts deducted under section 371 to the registrar.

**374 Proceeds of writ**

- (1) Subject to section 237, if the registrar receives an amount of money as the proceeds of a writ of execution under a judgment given or entered on a claim, the registrar shall (unless the *Public Trustee Act 1985*, section 25 or the court otherwise requires) pay the amount to the judgment creditor.
- (2) Subject to section 237, if the registrar receives an amount of money as the proceeds of a writ of execution issued other than under a judgment given or entered on a claim, the registrar shall (unless a law in force in the ACT or the court otherwise requires) pay the amount to the Territory.

**375 Account**

A bailiff shall, on request, give to—

- (a) a party to the proceedings in relation to which a writ of execution was issued; or

- (b) a person who claims that his or her property has been sold by the bailiff;

a report of the sale of the property seized under the writ and an account of—

- (c) the proceeds of the sale and any other money received by the bailiff under the writ;
- (d) all the proper costs and charges actually incurred in effecting the sale, including any costs associated with removing the property from the place where it was seized and advertising the sale; and
- (e) the way of disposal of those proceeds and that money.

**376 Order for disposal**

- (1) If property seized under a writ of execution remains unsold after being offered for sale at an auction under section 365, the court may, on application by the judgment creditor, make an order for the disposal of the property.
- (2) An application under subsection (1) shall be made in accordance with section 123 and—
- (a) within 11 weeks after the property was seized; or
- (b) if execution of the writ is suspended—within 11 weeks from and including the day on which execution is resumed.
- (3) In considering whether to make an order for the disposal of the property, the court shall have regard to—
- (a) the amount of the judgment debt and costs and charges remaining unpaid; and
- (b) any hardship that would be occasioned to the judgment creditor if the order were not made and to the judgment debtor if the order were made.

**377 Property to be returned to judgment debtor**

If—

- (a) the judgment creditor does not make an application in accordance with section 376 (2) in respect of property remaining unsold; or
- (b) the court refuses to make an order for the disposal of property remaining unsold under section 376 (1);

that property shall be returned to the judgment debtor.

**378 Separate execution for costs**

If—

- (a) there is a judgment for the payment of money and for the payment of costs; and
- (b) the money becomes payable under the judgment before the costs become payable because the costs have not been taxed or for any other reason;

a person entitled to enforce the judgment by execution may have execution issued separately to enforce payment of the money and costs when each becomes payable.

**379 Interference with seized property etc**

A person who knows that property has been seized under section 347 or is the subject of a notice under section 350 shall not, except with the consent of the court or the consent in writing of the bailiff by whom the property was seized or the notice was served—

- (a) interfere with or dispose of the property; or
- (b) remove the property from the place where it was seized or where it was situated when the notice was served; or

- (c) cause, permit or suffer the property to be interfered with, disposed of or removed.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**380 Liability of bailiffs**

A bailiff who executes a writ of execution is responsible to the parties to the proceedings in relation to which the writ was issued for all the acts and omissions of the bailiff, and any person assisting the bailiff, in executing that writ in the same way as the sheriff is responsible for all the acts and omissions of the sheriff, and any person assisting the sheriff, in executing a writ of fieri facias.

**Division 19.7 Miscellaneous**

**380A Enforcement of payment directed by Essential Services Consumer Council**

- (1) In this section:

*council* means the Essential Services Consumer Council.

*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.

- (2) If a copy of a payment direction, certified by the registrar of the council, is filed, the direction is enforceable under this part as if it were a judgment of the Small Claims Court.

## Part 20 Transfer of proceedings from or to Supreme Court

### 381 Transfer of action from Supreme Court

- (1) If proceedings in relation to the cause of action on which a prescribed action pending in the Supreme Court is founded could properly have been instituted in the court, the Supreme Court may, if it thinks just, on the application of any party to the action or on its own initiative, order that the action be transferred to the court.

- (2) In subsection (1):

*prescribed action* means an action in which the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) does not exceed the amount for which the court has jurisdiction under this Act.

### 382 Procedure on transfer of action from Supreme Court

- (1) If the Supreme Court has made an order under section 381 that an action pending in the Supreme Court be transferred to the court, any party to the action may lodge in the office of the court for inclusion in the record of the court a copy of the order and a copy of each of the pleadings (if any) in the action and any other relevant documents filed in the Supreme Court, and when those copies have been so lodged, the action—
- (a) ceases to be an action in the Supreme Court; and
  - (b) becomes proceedings in the court (being proceedings that shall be deemed to have been instituted on the date when the action was commenced in the Supreme Court).
- (2) Costs in proceedings referred to in subsection (1) shall be allowed—



- (a) in relation to costs incurred before the relevant order under section 381 was made (including the costs of obtaining the order) and the costs of obtaining the copies referred to in subsection (1)—subject to any order of the Supreme Court and to subsection (3), in accordance with the *Supreme Court Rules*; and
  - (b) in relation to costs incurred after that order was made (other than the costs of obtaining the copies referred to in subsection (1))—in accordance with this Act.
- (3) If costs referred to in subsection (2) (a) are to be taxed, those costs shall be taxed by the registrar in accordance with this Act.

### **383 Removal of proceedings into Supreme Court**

On the application of a party to proceedings, the Supreme Court may order that the proceedings be removed into the Supreme Court on the terms as to costs, security for the amount claimed or costs, or otherwise, that the Supreme Court thinks just.

### **384 Stay of proceedings**

- (1) If an application under section 383 to have proceedings removed into the Supreme Court is pending, the Supreme Court may, on the application of any party to the proceedings, order that those proceedings be stayed until the firstmentioned application is determined or until the Supreme Court otherwise orders.
- (2) An order under subsection (1) that proceedings be stayed shall take effect immediately on a copy of the order being filed.

## Part 21 Appeals to Supreme Court

### 385 Interpretation for pt 21

- (1) In this part:

*appeal* means an appeal to the Supreme Court—

- (a) from a judgment or order of the Magistrates Court, whether final or interlocutory, in proceedings that the Magistrates Court has jurisdiction to hear and determine under this Act, other than proceedings in its jurisdiction under part 22; or

- (b) from a judgment of the Small Claims Court.

*judgment*, in relation to the Small Claims Court, has the same meaning as in part 22, but does not include an interim order of the Small Claims Court.

- (2) In this part, a reference to the appellant is, for an appeal in which there are 2 or more appellants, a reference to any or all of those appellants, as the case requires.

### 386 Jurisdiction

- (1) The jurisdiction of the Supreme Court to hear and determine appeals is subject to the exceptions and conditions prescribed in this part.
- (2) Nothing in subsection (1) shall be construed as affecting the operation of any other Act or ordinance that makes provision with respect to the appellate jurisdiction of the Supreme Court.

### 387 Cases in which appeal may be brought

- (1) Subject to subsection (2), an appeal shall not be brought unless the Supreme Court gives leave to appeal.
- (2) An appeal may be brought as of right from a judgment or order—

- (a) for, or for the payment of, an amount of \$2 000 or more; or
- (b) in proceedings—
  - (i) in which the matter in issue amounts to or is of the value of \$2 000 or more; or
  - (ii) that involve directly or indirectly a claim, demand or question to or in respect of any property or any civil right amounting to or of the value of \$2 000 or more.
- (3) This section does not apply in relation to an appeal from a judgment of the Small Claims Court.

### **387A Appeals—Small Claims Court**

- (1) A party to proceedings in the Small Claims Court may, with the leave of the Supreme Court, appeal from a judgment of the Small Claims Court in those proceedings.
- (2) The Supreme Court shall not grant leave under subsection (1) unless satisfied—
  - (a) that the decision of the Small Claims Court on a question of law was wrong; or
  - (b) that the conduct of the proceedings in the Small Claims Court was unfair to the applicant for leave to appeal.

### **388 Application for leave to appeal**

Leave to appeal shall not be given under section 387 (1) or section 387A unless application for that leave is made within 21 days after the date when the judgment or order from which leave to appeal is sought took effect or within any further time that the Supreme Court allows.

**389 Institution of appeal**

- (1) An appeal shall be instituted by the appellant filing a notice of appeal in the office of the registrar of the Supreme Court within—
  - (a) 21 days after the date when the judgment or order appealed from took effect; or
  - (b) 7 days after the date when leave to appeal is given by the Supreme Court;as the case requires, or within any further time that the Supreme Court allows.
- (2) As soon as practicable after an appeal has been instituted, the appellant shall—
  - (a) lodge a copy of the notice of appeal in the office of the Magistrates Court for inclusion in the record of that court; and
  - (b) subject to section 390, serve a copy of the notice of appeal on each other party to the proceedings out of which the appeal arose.

**390 Substituted service of notice of appeal**

- (1) On the application of the appellant, the Supreme Court may—
  - (a) make the order for substituted or other service that the Supreme Court thinks just if it appears to the Supreme Court that personal service of a copy of the notice of appeal cannot be effected in accordance with section 389 (2); or
  - (b) by order, dispense with the requirement for service of a copy of the notice of appeal if the Supreme Court thinks it necessary or expedient to do so.
- (2) An order under subsection (1) (b) may be made subject to the terms and conditions (if any) the Supreme Court thinks just.

**391 Evidence on appeal**

In an appeal, the Supreme Court shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence.

**392 Effect of appeal on execution of judgment**

- (1) The institution of an appeal does not operate as a stay of enforcement or execution, or otherwise affect the operation of the judgment or order appealed from unless the Supreme Court otherwise orders.
- (2) If, on an appeal, the Supreme Court orders that the enforcement, execution or operation of the judgment or order appealed from be stayed, the Supreme Court may order that the appellant give, within the time specified in the order, security, in the amount specified in the order, for the prosecution of the appeal.
- (3) If security for the prosecution of an appeal required to be given by an order under subsection (2) is not given in the amount and within the time specified in the order, the appeal shall be deemed to have been abandoned.

**393 Powers of Supreme Court on appeal**

- (1) On an appeal, the Supreme Court may—
  - (a) affirm, reverse or vary the judgment or order appealed from; or
  - (b) give the judgment, or make the order, that, in all the circumstances, it thinks fit, or refuse to make an order; or
  - (c) set aside the judgment or order appealed from, in whole or in part, and remit the proceedings to the Magistrates Court for further hearing and determination, subject to the directions that the Supreme Court thinks fit; or

- (d) award execution from the Supreme Court or remit the proceedings to the Magistrates Court for the execution of the judgment or order of the Supreme Court.
- (2) A judgment or order of the Supreme Court made in proceedings remitted under subsection (1) (d) shall have effect as if it were a judgment or order of the Magistrates Court and may be enforced by the Magistrates Court accordingly.
- (3) In this section, a reference to the Magistrates Court, in relation to an appeal from a judgment of the Small Claims Court, is to be taken to be a reference to the Small Claims Court.

## **Part 22**                      **Small Claims Court**

### **Division 22.1**              **Preliminary**

#### **394**              **Definitions for pt 22**

In this part:

*applicant* means a person making an application.

*application* means an application to the Small Claims Court, whether made under this Act or any other Territory law.

*common boundaries determination* means a determination under the *Common Boundaries Act 1981*, and includes a variation of such a determination.

*conference* means a conference under division 22.6.

*consent judgment* means a judgment entered by the registrar under section 415 (2), 425 (3) or 451 (3) in proceedings.

*damages application* means an application for damages for negligence or for any other tort except nuisance or trespass.

*debt application* means an application for the recovery of a debt, and includes an application for the *Landlord and Tenant Act 1949*, section 62AS in relation to an amount of bond money.

*debt declaration*, in relation to proceedings, means an order declaring that—

- (a) the applicant is or is not indebted to the respondent; or
- (b) the applicant is or is not indebted to the respondent in a stated amount; or
- (c) the applicant is or is not indebted to the respondent in an amount that is more than a stated amount.

**default judgment** means a judgment entered by the registrar under section 417 (2) (a) or 428 (3) (a) in proceedings.

**functions** includes powers and duties.

**goods application** means an application in relation to the provision of goods or services, and includes an application for damages for the detention of goods.

**inquiry** means an inquiry under division 22.7.

**interim order** means an order of the registrar under section 417 (2) (b) (i) or 428 (3) (b) (i) in proceedings.

**investigator** means an investigator appointed under section 432 (1).

**judgment**, in relation to proceedings, includes an order made in association with those proceedings.

**nuisance application** means an application for relief for nuisance.

**order** includes a declaration, determination and any other form of judgment of the Small Claims Court.

**originating application** means an originating application (form 1) filed in proceedings.

**proceedings** means proceedings on an application.

**referee** means a referee appointed under section 397.

**respondent** means the respondent to an application.

**response** means a response (form 2) filed in proceedings.

**restoration order** means an order made under section 443.

**specified**, in relation to an amount of money or damages sought to be recovered in the Small Claims Court, means a liquidated amount.

**summons** means a summons issued under section 444 (1).

**trespass application** means an application for relief for trespass to land.



*unspecified*, in relation to an amount of money or damages sought to be recovered in the Small Claims Court, means an unliquidated amount.

**394A Explanatory material in forms etc**

Explanatory material in a form approved under section 471 (Approved forms) for this part, or in a notice otherwise required in a proceeding, does not affect the law applying to proceedings.

**395 Application of Act to small claims proceedings**

- (1) Unless the contrary intention appears, subject to subsection (2) this Act applies with necessary changes to proceedings in the Small Claims Court in the same way as it applies to other proceedings in the Magistrates Court.
- (2) Unless the contrary intention appears, sections 5 and 9 and parts 3 to 10, 12 to 16 and 18 do not apply to proceedings in the Small Claims Court.

**Division 22.2 Establishment and jurisdiction**

**396 Small Claims Court**

- (1) The Magistrates Court has jurisdiction to inquire into and determine applications for this part.
- (2) The Magistrates Court shall be known as the Small Claims Court when exercising jurisdiction under this part.

**397 Referees—appointment**

- (1) The Executive may, in writing, appoint persons as referees for this part.
- (2) A person is eligible for appointment as a referee if—
  - (a) he or she is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory; and

- (b) he or she is a member of the staff of the Magistrates Court or any other body exercising judicial powers under a Territory law.
- (3) A referee ceases to hold office if he or she ceases to be eligible under subsection (2).

**398 Referees—functions**

- (1) A referee may exercise the jurisdiction of the Small Claims Court in an inquiry in proceedings by way of a debt application, goods application or damages application, or for a debt declaration or common boundaries determination, subject to subsection (2).
- (2) A referee only has jurisdiction in proceedings in respect of an amount of \$1 000 or less, or the equivalent value of goods or services (including any associated damages), excluding any claim for interest, or for an amount instead of interest, determined by the Small Claims Court under section 454.
- (3) In exercising the jurisdiction of the Small Claims Court under this section, a referee—
  - (a) has all the functions of a magistrate; and
  - (b) is otherwise to be taken to be a magistrate for all purposes.

**399 Referees—oath or affirmation of office**

- (1) Before proceeding to exercise the functions of office, a referee shall take an oath, or make an affirmation, before the Chief Justice of the Supreme Court.
- (2) An oath or affirmation under subsection (1) shall be in accordance with the form in schedule 1.

**400 Referees—resignation**

A referee may resign office by writing signed by the referee and delivered to the Minister.

**401 Jurisdiction**

The Small Claims Court has jurisdiction to inquire into the following applications:

- (a) debt applications;
- (b) goods applications;
- (c) damages applications;
- (d) nuisance applications;
- (e) trespass applications;
- (f) applications for debt declarations;
- (g) applications for common boundaries determinations.

**402 \$10 000 limit**

- (1) The Small Claims Court's jurisdiction is limited to applications claiming amounts of no more than \$10 000.
- (2) In relation to debt declarations, the Small Claims Court's jurisdiction is limited to applications for declarations in respect of debts not exceeding \$10 000.
- (3) The monetary limit on the Small Claims Court's jurisdiction does not include any claim for interest, or for an amount instead of interest, determined by the Small Claims Court as provided for by section 454.
- (4) In a goods application, the applicable amount for subsection (1) is an amount equal to the sum of the value of the relevant goods or services and any amount claimed for damages for the detention of goods.
- (5) A person who, if it were not for this section, would be entitled to make an application claiming an amount exceeding \$10 000 may, by the application, abandon the excess by limiting the claim to \$10 000.

- (6) This section does not apply to an application for a common boundaries determination.

## **Division 22.3 Commencement of proceedings**

### **403 Assistance to members of public**

At the request of any person, the registrar or a member of staff of the Magistrates Court shall explain the procedures of the Small Claims Court to the person for the purpose of assisting him or her to participate in those procedures.

### **404 Originating applications**

- (1) Proceedings shall be instituted by filing an originating application (form 1) together with the relevant attachment set out in form 1, except for proceedings for a common boundaries determination.
- (2) Proceedings for a common boundaries determination shall be instituted as provided for by the *Common Boundaries Act 1981*.
- (3) Proceedings are to be taken to have commenced on the date the application instituting the proceedings was first filed.

### **405 Single application for each matter**

A person shall file no more than 1 originating application on the basis of an assertion of a particular right entitling him or her to relief under this part.

### **406 Debt declarations**

A person shall file an application for a debt declaration only if the person named as the respondent has made a written demand on the person for payment of the debt.

**407 Interest claims**

- (1) If interest is applied for under a contractual agreement between the parties to proceedings, the applicant shall specify particulars of the interest in the originating application.
- (2) If interest to be determined by the Small Claims Court as provided for by section 454 is claimed, the originating application shall include—
  - (a) for a debt application or any other application for specified damages—
    - (i) a statement that interest to be determined by the Small Claims Court is applied for; and
    - (ii) particulars of the interest; and
    - (iii) the amount of interest calculated to have accrued to the date of lodgment of the originating application; or
  - (b) in any other case—a statement that interest to be determined by the Small Claims Court is claimed.
- (3) In this section:  
*particulars of the interest*, in relation to an application claiming interest, means particulars of—
  - (a) the period or periods in relation to which the interest is claimed; and
  - (b) the rate or rates of interest; and
  - (c) the amount or amounts in relation to which the interest is claimed.

**408 Service of originating applications**

- (1) After an originating application is filed, the registrar shall—

- (a) give the applicant a written notice summarising the possible future courses of action open to the applicant in the proceedings (depending on the respondent's actions) and the circumstances in which a conference or inquiry may be directed; and
  - (b) cause to be served on the respondent—
    - (i) a copy of the originating application; and
    - (ii) a written notice summarising the possible courses of action open to the respondent in the proceedings and the circumstances in which a conference or inquiry may be directed.
- (2) In proceedings in relation to which 2 or more persons are alleged to be jointly liable, it is sufficient if any 1 of those persons is served with a copy of the originating application.
- (3) A person undertaking personal service of an originating application on the registrar's behalf under subsection (1) (b) shall—
- (a) if service has been effected—file an affidavit of service within 14 days after service; or
  - (b) if service has been attempted but not effected—endorse on the copy of the originating application the reason for non-service, sign the endorsement and return the copy and the notice to the respondent under subsection (1) (b) (ii) to the registrar within 14 days after the attempted service.

## **409 Amendments**

The Small Claims Court or the registrar may, at any stage of proceedings, on application by a party or on the court's or the registrar's own initiative, make any amendment to a document filed by either party (including the addition or dismissal of a party) that appears to the court or the registrar (as the case may be) to be

necessary or conducive to the proper determination of the proceedings.

## **Division 22.4 Pre-conference procedures**

### **410 Application—common boundaries applications**

This division does not apply to applications for common boundaries determinations.

### **411 Response**

- (1) The respondent to an originating application may file a response (form 2) within 21 days after service of the originating application under section 408 (1) (b), or within any shorter period directed by the registrar under subsection (2).
- (2) On written application by a person making a nuisance application or a trespass application, the registrar may give a written direction that any response under subsection (1) is to be filed within a period shorter than 21 days after service of the originating application, if the registrar considers such a direction to be necessary or desirable to avoid undue hardship to the applicant.
- (3) The registrar shall cause a direction under subsection (2) to be served on the respondent as soon as practicable after it is made.
- (4) If a response is filed under subsection (1), the registrar shall cause a copy of the response to be served on the applicant.

### **412 Admission of liability**

A respondent may, by a response—

- (a) admit liability in respect of the application in whole or in part; and
- (b) state the terms under which liability is admitted (for example, terms as to time for payment, or payment by instalments, of an amount of money).

**413 Admission of liability—payment of money**

- (1) If a respondent admits liability for the payment of an amount of money, the respondent may pay the amount into the Small Claims Court.
- (2) If an amount paid by the respondent into the Small Claims Court is equal to the whole of the amount sought by the applicant, and no other order is sought by the applicant, the registrar shall—
  - (a) enter judgment in the proceedings for the amount so paid; and
  - (b) deliver the amount to the applicant.
- (3) If an amount of money paid into the Small Claims Court by the respondent is not delivered to the applicant under subsection (2), the money shall remain in the Small Claims Court pending the order of the Small Claims Court or the registrar.

**414 Admission of liability—bonds**

- (1) If a respondent admits liability for the payment of an amount of money, the respondent may lodge with the registrar a bond for the payment of that amount.
- (2) Section 85 applies with all necessary changes in relation to the lodgment of a bond in proceedings under this part.

**415 Admission of liability—acceptance by applicant**

- (1) If a respondent admits liability (in whole or in part) in respect of an application, the applicant may file an admission of liability acceptance (form 3) not later than 21 days after being served with the response.
- (2) If an applicant files an admission of liability acceptance under subsection (1), the registrar shall enter a consent judgment (form 11) in the proceedings in accordance with the terms of the respondent's admission of liability, subject to any terms stated by the respondent in the response.



- (3) A party to proceedings in which a consent judgment has been entered may apply to the Small Claims Court for the setting aside of the consent judgment and the restoration of proceedings under section 443 by filing an interlocutory application (form 9).

#### **416 Contested applications—conferences and inquiries**

- (1) This section applies where a respondent—
- (a) files a response in accordance with section 411 (1) indicating that the proceedings are to be contested; or
  - (b) files a response in accordance with section 411 (1) admitting liability in respect of the application, but—
    - (i) any amount paid into the Small Claims Court is less than the whole amount sought by the applicant; and
    - (ii) the applicant does not file an admission of liability acceptance (form 3) within 21 days after being served with the response.
- (2) If this section applies, the registrar shall—
- (a) direct the holding of a conference between the parties; or
  - (b) if he or she is satisfied that in the circumstances the objectives referred to in section 420 would not be significantly advanced by holding a conference—direct the holding of an inquiry.
- (3) If the registrar directs a conference to be held under subsection (2) (a), he or she shall cause a conference notice (form 4) to be served on the parties not later than 10 days before the day fixed for the conference.
- (4) If the registrar directs an inquiry to be held under subsection (2) (b), he or she shall cause an inquiry notice (form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry.

## **417 Failure to respond**

- (1) This section applies—
  - (a) if the respondent—
    - (i) fails to file a response in accordance with section 411 (1);  
or
    - (ii) after filing a response in accordance with section 411 (1) indicating that the proceedings are to be contested, gives the registrar written notice that this is no longer the case; and
  - (b) if the applicant files a default judgment application (form 6) within 12 months and 21 days after the originating application was served.
- (2) If this section applies, the registrar shall—
  - (a) if specified damages are claimed, or if the application is for a debt declaration—enter a default judgment (form 7) in favour of the applicant; or
  - (b) if unspecified damages are claimed, or any other order is sought by the applicant—
    - (i) make an interim order (form 8) in favour of the applicant; and
    - (ii) direct an inquiry to be held for the purpose only of the assessment of any unspecified amount of damages, and a determination in respect of any other order sought by the applicant.
- (3) If the registrar directs an inquiry to be held under subsection (2) (b) (ii), he or she shall cause an inquiry notice (form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry, together with a copy of the interim order made under subsection (2) (b) (ii).

- (4) In an inquiry directed under subsection (2) (b) (ii), the Small Claims Court shall give judgment for the applicant in relation to any unspecified amount assessed in the inquiry, and may make any other order sought by the applicant or otherwise considered by the Small Claims Court to be appropriate.
- (5) The registrar shall cause the respondent to be served with notice of—
  - (a) the action taken by the registrar under this section; and
  - (b) the respondent's right to apply under subsection (6) for the restoration of proceedings.
- (6) The respondent may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).

## **Division 22.5            Lapse of applications**

### **418            Lapse of applications after 18 months inactivity**

The registrar may strike out an application if no action is taken by either party in the proceedings during a period of 18 months.

## **Division 22.6            Conferences**

### **419            Directions for conferences**

- (1) A conference shall be held in the following circumstances:
  - (a) in accordance with a direction by the registrar under section 416 (2);
  - (b) for an application for a common boundaries determination—in accordance with a direction of the registrar under the *Common Boundaries Act 1981*;
  - (c) in accordance with a restoration order;

- (d) in accordance with an order of the Small Claims Court at any stage during proceedings;
  - (e) in any other circumstances provided for by a Territory law.
- (2) If a conference is ordered under subsection (1) (c) or (d), the registrar shall cause a conference notice (form 4) to be served on the parties not later than 10 days before the day fixed for the conference, or as soon as is otherwise practicable.

#### **420 Conference objectives**

- (1) The registrar's objectives at a conference are as follows:
- (a) to determine what are the real matters in dispute between the parties;
  - (b) by conciliation between the parties, to assist the parties to reach an agreement on terms that the registrar considers just, subject to subsection (2);
  - (c) to streamline any later inquiry by—
    - (i) ensuring that the parties do everything reasonably within their powers to enable any inquiry in the proceedings to take place expeditiously; and
    - (ii) assessing the time that is likely to be required for any inquiry.
- (2) The registrar shall undertake conciliation between the parties only if satisfied that there is a reasonable possibility of the parties settling the matters in dispute by this means.
- (3) The registrar may adjourn a conference in a way and on terms that he or she thinks fit in the pursuance of the objectives referred to in subsection (1).

**421 Variation of conference fixtures**

- (1) The registrar may vary the day, time or place fixed for a conference, if the registrar considers there are reasonable grounds for the variation.
- (2) The registrar shall, if practicable, give each party to proceedings 10 days written notice of a variation of the day, time or place of a conference under subsection (1), unless each party agrees to waive entitlement to the notice.

**422 Representation at conferences**

A party to proceedings may be represented at a conference by any other person.

**423 Persons entitled to be present**

Only the following persons are entitled to be present at a conference:

- (a) a party to the proceedings;
- (b) a representative of a party referred to in section 422;
- (c) the registrar and any other officer or member of staff of the Magistrates Court;
- (d) a person authorised in writing by the Chief Magistrate to attend that conference or to attend conferences generally;
- (e) a person authorised in writing by the Attorney-General to attend that conference or to attend conferences generally.

**424 Adjournment**

- (1) The registrar may adjourn a conference if he or she is satisfied that a party to the proceedings or his or her representative is, for good reason, unable to attend the conference.

- (2) If the registrar adjourns a conference under subsection (1), the registrar shall notify the parties of the day, time and place fixed for the resumption of the conference.

#### **425 Consent judgments**

- (1) If the parties to proceedings reach agreement at a conference as to the judgment to be entered, they may file a consent judgment application (form 10).
- (2) A consent judgment application shall be—
- (a) signed by or on behalf of each party to the agreement; and
  - (b) witnessed by the registrar, a legal practitioner or a justice of the peace.
- (3) If a consent judgment application is filed under this section, the registrar shall enter a consent judgment (form 11) in the proceedings in accordance with the application.
- (4) A party to proceedings in which a consent judgment has been entered may apply to the Small Claims Court for the setting aside of the consent judgment and the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).

#### **426 Failure of conciliation—direction for inquiry**

- (1) The registrar shall direct the holding of an inquiry, or the reconvening of an inquiry, if, after attempting to conciliate between the parties at a conference, it appears to the registrar that there is no reasonable possibility of the parties settling the matters in dispute by means of conciliation.
- (2) If the registrar directs an inquiry to be held or reconvened under subsection (1), he or she shall cause an inquiry notice (form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry.

**427 Admissibility of conference proceedings in inquiries**

Evidence, or any statement, of words spoken or acts done at a conference in proceedings is not admissible at an inquiry in the proceedings, unless the parties agree otherwise.

**428 Failure to attend conference**

- (1) This section applies to a party to proceedings if—
  - (a) a conference notice (form 4) was served on the party in accordance with this Act; and
  - (b) the party fails to appear at the time fixed for the conference, at any time to which the conference has been adjourned or at any time during the conference, either personally or by a representative; and
  - (c) the registrar is not satisfied that there is a good reason for adjourning the conference under section 424.
- (2) If this section applies to an applicant in proceedings, or to both parties, the registrar shall dismiss the application.
- (3) If this section applies to a respondent in proceedings, but not to the applicant, the registrar shall—
  - (a) if specified damages are claimed, or if the application is for a debt declaration—enter a default judgment (form 7) in favour of the applicant; or
  - (b) if unspecified damages are claimed, or any other order is sought by the applicant—
    - (i) make an interim order (form 8) in favour of the applicant; and
    - (ii) direct an inquiry to be held for the purpose only of the assessment of any unspecified amount of damages, and a determination in respect of any other order sought by the applicant.

- (4) If the registrar directs an inquiry to be held under subsection (3) (b) (i), he or she shall cause an inquiry notice (form 5) to be served on the parties not later than 10 days before the day fixed for the inquiry, together with a copy of the interim order made under that subparagraph.
- (5) In an inquiry directed under subsection (3) (b) (ii), the Small Claims Court shall give judgment for the applicant in relation to any unspecified amount assessed in the inquiry, and may make any other order sought by the applicant or otherwise considered by the court to be appropriate.
- (6) The registrar shall cause notice to be served on a party to whom this section applies of—
  - (a) the action taken by the registrar under this section; and
  - (b) the party's right to apply under subsection (7) for the restoration of proceedings.
- (7) A party to whom this section applies may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).

## **Division 22.7 Inquiries**

### **Subdivision 22.7.1 General procedure**

#### **429 Directions for inquiries**

An inquiry shall be held in the following circumstances:

- (a) in accordance with a direction by the registrar under section 416 (2) (b) or 417 (2) (b) (ii);
- (b) in an application for a common boundaries determination—as provided by the *Common Boundaries Act 1981*;
- (c) in accordance with a direction by the registrar under section 426 (1) or 428 (3) (b) (ii);



- (d) in relation to proceedings originally instituted under part 3—in accordance with section 439;
- (e) in accordance with the terms of a restoration order;
- (f) as otherwise provided for by a Territory law.

**430 Inquiries—constitution of Small Claims Court**

An inquiry shall be presided over by a Magistrate or referee sitting alone.

**431 Inquiry procedure**

- (1) The Small Claims Court shall deal with applications by way of inquiry.
- (2) The Small Claims Court is not bound by the rules of evidence, and may inform itself in any way it thinks fit.
- (3) The procedure to be followed in an inquiry shall be as directed by the Small Claims Court, subject to this part.
- (4) In giving directions for subsection (3), the Small Claims Court shall adopt such procedures as are likely to enable the inquiry to proceed expeditiously and with as little formality as possible.

**432 Investigators**

- (1) The Small Claims Court may, by order, appoint an investigator to assist in the investigation of any question of fact arising in proceedings.
- (2) An investigator shall investigate any question of fact referred to in the appointment, and give a written report to the Small Claims Court about the investigation.
- (3) An order under subsection (1) shall specify—
  - (a) particulars of the matter requiring investigation; and
  - (b) any conditions to which the appointment is subject.

- (4) The Small Claims Court shall give to an investigator's report in relation to proceedings the weight that the court thinks fit in its consideration of those proceedings.
- (5) An investigator is entitled to receive from the Territory the remuneration fixed by the Small Claims Court.
- (6) The Small Claims Court may order that a party or parties to proceedings in which an investigator is appointed pay some or all of the costs of remuneration of the investigator.

**433 Giving evidence by oath or affirmation**

- (1) Subject to this section, evidence in an inquiry shall not be given on oath or affirmation.
- (2) The Small Claims Court may require a person appearing as a witness in an inquiry to be examined on oath or affirmation if it appears to the court to be necessary or conducive to the proper determination of a matter at issue.
- (3) The Small Claims Court may administer, or cause to be administered, an oath or affirmation for the purposes of an inquiry.

**434 Representation at inquiries**

A party to proceedings may be represented at an inquiry by any other person.

**435 Public nature of inquiries**

Section 181 applies in relation to the conduct of an inquiry in the Small Claims Court as if references in that section to a hearing were references to an inquiry.

**436 Interlocutory applications**

- (1) An interlocutory application to the Small Claims Court in proceedings shall be made by filing an interlocutory application (form 9), unless the court directs otherwise.

- (2) The registrar shall cause a copy of an interlocutory application filed under subsection (1) to be served on each other party to the proceedings no later than 3 days before the date set down for inquiring into the application, unless the Small Claims Court directs otherwise.
- (3) Subsection (2) does not apply to an application for an order for substituted or other service under section 468 (3).

**437 Adjourment of inquiry**

- (1) The Small Claims Court or the registrar may vary the day, time or place fixed for an inquiry.
- (2) The Small Claims Court shall adjourn an inquiry if it appears to the court to be necessary or conducive to the proper determination of a matter at issue.
- (3) If a party does not appear at the time and place to which an inquiry has been adjourned, the Small Claims Court may continue the inquiry in the absence of that party.

**438 Transfer of small claims proceedings to general jurisdiction of court**

- (1) The Small Claims Court may, at any stage in proceedings on an application, of its own motion or on application by a party to the application, order the application to be heard as a claim under part 3.
- (2) The Small Claims Court shall only make an order under subsection (1) if satisfied that in all the circumstances such an order would not be unfair to any party to the proceedings.
- (3) If the Small Claims Court makes an order under subsection (1) in relation to an application—
  - (a) this Act applies as if, for any step taken in proceedings on the application, the corresponding step under this Act had been taken in proceedings on a claim; and

- (b) any evidence given in the proceedings on the application is to be taken to have been given in proceedings on the claim.

**439 Transfer of proceedings in general jurisdiction of court to small claims jurisdiction**

- (1) The Magistrates Court may, at any stage of proceedings on a claim under part 3, on its own initiative or on application by any party to the proceedings, order that the claim be heard as an application under this part.
- (2) The Magistrates Court shall only make an order under subsection (1) in relation to a claim if satisfied that—
  - (a) the claim could have been brought as an application under this part; and
  - (b) in all the circumstances such an order would not be unfair to any party to the proceedings.
- (3) If the Magistrates Court makes an order under subsection (1) in relation to a claim—
  - (a) this part applies as if, for any step taken in proceedings on the claim, the corresponding step under this part had been taken in proceedings on an application; and
  - (b) any evidence given in the proceedings on the claim is to be taken to have been given in proceedings on the application.
- (4) In this section:  
*claim* includes an application under section 22.

**440 Discontinuance**

- (1) The applicant may at any time discontinue proceedings in an inquiry.

- (2) If proceedings are discontinued before the commencement of the inquiry, the applicant shall give the registrar written notice of the discontinuance.
- (3) The registrar shall inform the respondent in writing of the discontinuance of proceedings upon receiving notice under subsection (2).
- (4) After proceedings have been discontinued under this section, the applicant may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).

#### **441 Failure to appear**

- (1) This section applies to a party to proceedings if—
  - (a) an inquiry notice (form 5) was served on the party in accordance with this part; and
  - (b) the party fails to appear at the time fixed for the inquiry, at any time to which the inquiry has been adjourned, or at any time during the inquiry, either personally or by a representative; and
  - (c) the Small Claims Court is not satisfied that there is a good reason for adjourning the inquiry.
- (2) If this section applies to an applicant in proceedings, or to both parties, the Small Claims Court may dismiss the claim.
- (3) If this section applies to a respondent in proceedings, but not to the applicant, the Small Claims Court may give judgment for the applicant.
- (4) The Small Claims Court shall give a party to whom this section applies written notice of—
  - (a) the action taken by the Small Claims Court; and
  - (b) the party's right to apply under subsection (5) for the restoration of proceedings.

- (5) A party to whom this section applies may apply to the Small Claims Court for the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).
- (6) The registrar may exercise the power of the Small Claims Court under this section.

#### **442 Dismissal for abuse of process**

- (1) The Small Claims Court may order the dismissal of proceedings, or any claim in proceedings, if it considers the proceedings or claim to be—
  - (a) frivolous or vexatious; or
  - (b) otherwise an abuse of the process of the court.
- (2) The Small Claims Court may make an order for dismissal under subsection (1) on its own initiative or on application by the respondent.
- (3) The Small Claims Court may receive evidence in an inquiry into an application for an order for dismissal under subsection (1).

#### **443 Restoration of proceedings**

- (1) The Small Claims Court may make a restoration order (form 12) for proceedings to be restored on application as follows:
  - (a) failure to respond to an application—under section 417 (6);
  - (b) following the making of a consent judgment—under section 415 (3), 425 (4) or 451 (4);
  - (c) failure to attend a conference—under section 428 (7);
  - (d) discontinuance of proceedings—under section 440 (4);
  - (e) failure to appear at an inquiry—under section 441 (5).
- (2) In conjunction with a restoration order, the Small Claims Court may make any of the following additional orders:

- (a) an order for the setting aside of a judgment, including a default judgment, an interim order or a consent judgment;
  - (b) orders for the payment of costs;
  - (c) an order staying proceedings until the payment of costs;
  - (d) orders setting aside any enforcement proceedings, writ issued or order made as a consequence of a judgment set aside under this section;
  - (e) orders relating to the further conduct of the proceedings, including an order as to the priority of any inquiry and an order requiring that a conference be held between the parties;
  - (f) any other order relating to the restoration of proceedings that the court thinks just.
- (3) The Small Claims Court shall only make an order under subsection (2) setting aside a consent judgment if any of the following circumstances apply in relation to the application for the judgment or the entry of the 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 of justice or equity justifying the setting aside of the judgment.
- (4) If the Small Claims Court refuses to make an order under subsection (1), it may make the orders for the payment of costs it considers necessary.

- (5) An order under this section shall be made on the terms the Small Claims Court thinks just.

### **Subdivision 22.7.2 Witnesses and evidence**

#### **444 Summons**

- (1) The Small Claims Court or the registrar may issue a summons (form 13) requiring a person to appear before the registrar, the court or an investigator for the purposes of proceedings.
- (2) Subject to section 445, a summons shall require the person served with the summons to appear on a specified date, and at a specified time and place—
- (a) to attend and give evidence; or
  - (b) to attend and give evidence and to produce any document or thing that is in the person's possession or control; or
  - (c) to produce any document or thing in the person's possession or control.
- (3) A person shall be taken to have complied with a summons under subsection (2) (c) if he or she delivers the document or thing to the registrar or investigator (as the case requires) before the date and time specified in the summons.
- (4) A summons may be issued in proceedings—
- (a) at the request of a party to the proceedings or an investigator; or
  - (b) by the Small Claims Court on its own initiative; or
  - (c) by the registrar on the registrar's own initiative.
- (5) If an inquiry or the taking of evidence is adjourned, any person required by summons to attend shall attend on the date and at the time and place to which the inquiry or the taking of evidence is



adjourned, unless excused by the Small Claims Court or the investigator (as the case requires).

- (6) A summons shall only be issued in proceedings if the person issuing the summons is satisfied that its issue is reasonably necessary for the proper determination of the proceedings.

#### **445 Summons to produce**

A person is only required to produce a document or thing under summons if—

- (a) the summons sufficiently specifies or describes it; and
- (b) the document or thing would be able to be required to be produced in the Supreme Court under a subpoena for production.

#### **446 Retention of summonsed documents and things**

- (1) A document or thing produced in accordance with a summons shall be returned by the Small Claims Court after the relevant proceedings are finalised.
- (2) For subsection (1), proceedings are to be taken to be finalised if—
  - (a) within 28 days after judgment by the Small Claims Court is given, no appeal has been instituted against that judgment; or
  - (b) if such an appeal is instituted—the appeal has been determined.
- (3) If an appeal is instituted against a judgment of the Small Claims Court in proceedings in which a document or thing is produced in accordance with a summons, the court shall deliver the document or thing to the Supreme Court.

#### **447 Witness fees and expenses**

- (1) A person who attends for the purpose of giving evidence before the Small Claims Court or an investigator under a summons is entitled to receive such fees and travelling expenses as the court directs in

accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.

- (2) Fees and travelling expenses under subsection (1) are payable—
- (a) if the summons was issued at the request of a party—in accordance with the direction of the Small Claims Court; or
  - (b) if the summons was not issued at the request of a party—by the Territory.

#### **448 Enforcement of summons**

- (1) A person duly served with a summons shall not, without reasonable excuse, refuse or fail to comply with the summons.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If a person contravenes subsection (1), the Small Claims Court may—
- (a) issue a warrant for the apprehension of the person, requiring the person to be brought before the court or an investigator to give evidence and to produce any document or thing specified in the summons; and
  - (b) order the person to pay any costs in the proceedings occasioned by the contravention.

#### **449 Requirement to answer questions**

A person appearing as a witness before the Small Claims Court or an investigator shall not, without lawful excuse, refuse to answer a question relevant to the proceedings asked by the court or the investigator.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **Subdivision 22.7.3 Judgments**

#### **450 Finality of judgments**

A judgment of the Small Claims Court (other than an interim order) is final and conclusive, subject to this part.

#### **451 Consent judgments**

- (1) If the parties to proceedings reach agreement before judgment has been given or entered in the proceedings, they may file a consent judgment application (form 10).
- (2) A consent judgment application under subsection (1) shall be—
  - (a) signed by or on behalf of each party to the agreement; and
  - (b) witnessed by a magistrate, a referee, the registrar, a legal practitioner or a justice of the peace.
- (3) If a consent judgment application is filed under subsection (1), the registrar shall enter a consent judgment (form 11) in the proceedings in accordance with the application.
- (4) A party to proceedings in which a consent judgment has been entered may apply to the Small Claims Court for the setting aside of the consent judgment and the restoration of the proceedings under section 443 by filing an interlocutory application (form 9).

#### **452 Form of judgments**

A judgment of the Small Claims Court other than a default judgment, an interim order or a consent judgment shall be in accordance with form 14.

#### **453 Counterclaims and set-offs**

- (1) The Small Claims Court shall, in giving judgment, take into account any set-off and any counterclaim for a total amount not exceeding \$10 000 established by the respondent or admitted by the applicant.

- (2) If a set-off or counterclaim referred to in subsection (1) exceeds the amount for which the applicant would otherwise be entitled to judgment, the Small Claims Court shall give judgment for the respondent for the amount of the excess.
- (3) If the respondent's total entitlement to any set-offs and in relation to any counterclaim exceeds \$10 000, he or she may—
  - (a) abandon the excess by limiting the total amount claimed to \$10 000; or
  - (b) apply to the Small Claims Court for an order under section 438 for the application to be heard as a claim under part 3.

#### **454 Interest up to judgment**

- (1) Sections 230, 232 and 233 apply in relation to the determination by the Small Claims Court of interest in proceedings as if they were proceedings on a claim under part 3.
- (2) In the determination of interest by the Small Claims Court for the purposes of a default judgment, section 231 applies as if that judgment were a judgment by default under section 43.
- (3) In the determination of interest by the Small Claims Court for the purposes of a consent judgment, section 231 applies as if that judgment were a judgment by agreement under section 45.

#### **455 Interest on judgment debts**

- (1) Interest is payable on the unpaid portion of a judgment debt in proceedings, unless the Small Claims Court orders otherwise.
- (2) Interest under subsection (1) shall form part of the judgment debt, but not so as to require the payment of interest on interest.
- (3) Interest under subsection (1) shall be calculated—
  - (a) from the date on which the judgment took effect, or from a later date directed by the Small Claims Court; and

(b) in accordance with the rate prescribed under section 231 (2).

**456 Costs**

- (1) The Small Claims Court shall not make any order in relation to the costs of proceedings, except if expressly provided by this or any other Act.
- (2) A judgment in favour of an applicant shall include an order that the respondent pay to the applicant—
  - (a) the amount of any fee paid by the applicant for the commencement of the proceedings; and
  - (b) any charges and out-of-pocket expenses in respect of the proceedings (excluding the costs of representation by a legal practitioner or any other person).
- (3) The Small Claims Court may make an order for costs (except costs for representation by a legal practitioner or anyone else) to compensate a party in proceedings who has incurred out-of-pocket expenses in the proceedings unnecessarily due to the action of another party.

**457 Orders to perform work**

- (1) In addition to any other order made in giving judgment in proceedings, the Small Claims Court may make an order requiring the respondent in the proceedings—
  - (a) to perform work, or do any other thing, to rectify any defect in goods or services related to the claim in accordance with conditions set out in the order; or
  - (b) in default of the respondent performing that work or thing in accordance with the order, to pay an amount of money to the applicant.
- (2) As an alternative to an order under subsection (1), the Small Claims Court may make an order requiring the respondent—

- (a) to perform work, or do any other thing, to rectify any defect in goods or services in accordance with the conditions set out in the order; and
- (b) in addition—
  - (i) to pay an amount of money to the applicant; and
  - (ii) in default of the respondent performing that work or thing in accordance with the order, to pay an additional amount of money to the applicant.

**458 Orders to perform work—conditions for payment**

- (1) This section applies to a judgment requiring—
  - (a) a first party to pay money to the registrar; and
  - (b) a second party to perform work, or do any other thing, to rectify a defect in goods or services.
- (2) A judgment to which this section applies may provide that the money paid to the registrar by the first party is not to be paid out until the second party has performed the work or otherwise complied with the judgment.

**459 Goods orders**

Section 217 applies, with necessary changes, in relation to a judgment of the Small Claims Court in proceedings on a goods application.

**460 Trespass**

- (1) Subject to this Act, in proceedings on a trespass application the Small Claims Court may grant the same relief as the Supreme Court may grant in proceedings of a like nature instituted in the Supreme Court.

- (2) A person shall not contravene an order of the court in proceedings referred to in subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**461 Debt declarations—orders**

The Small Claims Court may make a debt declaration in a proceeding on an application for a debt declaration.

**462 Other orders**

In addition to any order referred to in this part, the Small Claims Court may, for the proceedings—

- (a) make any other order for the purposes of its jurisdiction under another Territory law; or
- (b) make any other order that it thinks fit.

**Subdivision 22.7.4 Enforcement of judgments**

**463 Application of Act**

Judgments in proceedings on applications to the Small Claims Court may be enforced as follows:

- (a) debt applications—under part 19;
- (b) goods applications—under section 217;
- (c) damages applications—under part 19;
- (d) nuisance applications—as provided for by section 8;
- (e) trespass applications—as provided for by section 460;
- (f) applications for common boundaries determinations—under part 19;

(g) in relation to any judgment of the court requiring the payment of an amount of money—under part 19;

(h) in any application—as provided for by section 6.

**464 Joint liability**

Section 228 applies, with necessary changes, in relation to a judgment of the Small Claims Court in relation to which 1 or more persons is (or are) jointly liable.

**465 Notice—orders made in person’s absence**

If the Small Claims Court makes an order affecting a person in the absence of that person, the registrar shall cause notice of that order to be served on the person as soon as practicable.

**466 Enforcement of orders by executors and administrators**

Section 154 applies in relation to an order of the Small Claims Court for the payment of an amount of money or costs where the person entitled to enforce the order has died.

**467 Payment of money under judgment**

- (1) An amount due under a judgment shall be paid to the registrar or as the Small Claims Court otherwise directs.
- (2) If a person pays to the registrar the whole of the amount due under a judgment, that person is no longer liable under that judgment to pay that amount.
- (3) The registrar shall pay out an amount of money paid to the registrar under subsection (1), and any amount paid into the Small Claims Court under section 413 in relation to the proceedings, subject to the fulfilment of any condition referred to in section 458 (2).



## **Division 22.8      Service of documents**

### **468      Service**

- (1) For this part, service of a document on a person shall be effected—
  - (a) by delivering the document to the person;
  - (b) by leaving the document at the last-known or usual place of residence or business of the person with some other person apparently living or employed at that place and apparently not less than 16 years old; or
  - (c) by the registrar causing the document to be posted—
    - (i) for an individual—to the person at the address of his or her last-known or usual place of residence or business; or
    - (ii) for a body corporate—to the body corporate at its last-known address.
- (2) After a document is served by post, the registrar shall complete a postal service certificate (form 15) in respect of that service.
- (3) If the Small Claims Court is satisfied that service of a document under subsection (1) cannot be effected, it may order that—
  - (a) the document be served in the other way it thinks fit; or
  - (b) that a notice by advertisement or otherwise be substituted for service.
- (4) Service of a document by post—
  - (a) may be proved by production of the relevant postal service certificate completed under subsection (2); and
  - (b) shall, unless the contrary is proved, be deemed to have been effected 2 days after the date of posting.

**469 Doubtful service**

- (1) This section applies if—
  - (a) a document in proceedings has been served in a way other than by personal delivery; and
  - (b) the Small Claims Court is satisfied that—
    - (i) the document did not come to the knowledge of the party served within a reasonable time; or
    - (ii) doubt exists whether the document came to the knowledge of the party served within a reasonable time.
- (2) If this section applies, the Small Claims Court shall—
  - (a) not allow any fresh step in the proceedings to be taken against the party served; and
  - (b) make an order—
    - (i) that the proceedings be struck out or adjourned; or
    - (ii) that the relevant document be re-served on that party in the way (if any) specified in the order; and
  - (c) make the other orders, and give the directions, that it thinks just.
- (3) The Small Claims Court may proceed under subsection (2) on the application of the registrar or any party, or on its own initiative.

## Part 23                      Miscellaneous

### 470                      Directions as to procedure

If the procedure for taking any step in proceedings is not prescribed in this Act or the law under which the step is to be taken, the court may give directions with respect to the procedure to be followed as regards that step.

### 471                      Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*            For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note*            A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) In this Act, other than in part 22 (Small Claims Court), a reference to a form by a number is a reference to an approved form made under this section so numbered.
- (5) In part 22, a reference to a form by number is a reference to an approved form made under this section headed 'Small Claims Court' so numbered.
- (6) If there is not an approved form made under this section for a document to be filed in a proceeding, the document must be in a form acceptable to the registrar.

### 472                      Headings of court documents

- (1) Subject to subsection (2), a document to be filed in proceedings or served on a person in connection with proceedings shall be intitled, headed and concluded in accordance with form 1.

- (2) A document in proceedings (other than originating process, a document to be served on a person who is not a party to the proceedings, a judgment or an order) may bear an abbreviation of the title of the proceedings, being an abbreviation that is sufficient to identify the proceedings.
- (3) This section does not apply to a document in proceedings in the Small Claims Court.

#### **473 Requirements for documents**

- (1) A document to be filed in proceedings shall, except to the extent to which the nature of the document renders compliance impracticable—
  - (a) consist of paper of good and durable quality, being paper of the size known as International A4; and
  - (b) be in a clear and unobjectionable condition; and
  - (c) be written on 1 side only of the paper with a margin of not less than 5 cm on the left hand side of the paper; and
  - (d) be legibly, clearly and permanently written without blotting, erasure or such alterations as cause material disfigurement; and
  - (e) have a space of not less than 6 mm between each line; and
  - (f) bear, at the centre of the top of the first page, a description of the document; and
  - (g) have each page numbered.
- (2) Dates, amounts and other numbers in a document filed in proceedings shall be expressed in figures only.
- (3) A document to be filed in proceedings shall be lodged at the office of the court in duplicate together with such numbers of copies as is equal to the number of parties to the proceedings, and other persons (if any), to be served with the document.

- (4) A document shall not be filed if, because of a defect in the document or a failure to comply with this Act or for any other reason, the document would, if filed, be ineffective for the purpose for which it was lodged for filing.

**474 Power of court in relation to scandalous etc documents**

The court may order that any matter contained in a document filed in proceedings be struck out as scandalous, frivolous, vexatious, irrelevant or otherwise oppressive.

**475 Notice of rejection of documents**

If the registrar rejects a document lodged at the office of the court for filing in proceedings, he or she shall, either orally or in writing, give notice of the rejection and the reason for the rejection to the party who sought to file the document.

**476 Signature of legal practitioner on documents**

A document (other than an affidavit) to be filed by a party to proceedings that requires the signature of the legal practitioner for that party on the record in proceedings may be signed by a partner or employee of that legal practitioner or his or her agent.

**477 Sealing duplicate documents**

If any document filed in proceedings has been lost or destroyed, the registrar may seal a duplicate of the document on being satisfied, by affidavit or otherwise, of the loss or destruction.

**478 Court seals**

- (1) There shall be 2 seals of the court, as follows:
  - (a) a seal of the Magistrates Court;
  - (b) a seal of the Small Claims Court.
- (2) The registrar shall have custody of the seals of the court.

- (3) The registrar shall seal or stamp with the seal of the court—
- (a) any judgment, order, notice, warrant, writ, summons, certificate or process, or any copy of any of those documents, made, given or issued by the court or by him or her; and
  - (b) any document filed in proceedings, and any copy of such a document lodged with him or her; and
  - (c) any document required under this Act or any other Territory law to be sealed or stamped with the seal of the court.
- (4) In subsection (3) in its application to proceedings in the Small Claims Court, a reference to the seal of the court is to be taken to be a reference to the seal of the Small Claims Court.

#### **479 Magistrate in chambers**

- (1) Subject to subsection (2), a magistrate may, in chambers, give any judgment or decision or make any order in relation to any proceedings which he or she could lawfully give or make in court and which he or she considers may be properly given or made in chambers.
- (2) Subsection (1) does not apply in relation to a judgment or decision in proceedings if a magistrate has reserved his or her judgment or decision on any question of fact or law, and this subsection has effect irrespective of whether the judgment or decision is to be given after a hearing in court or in chambers.
- (3) The jurisdiction of the court to hear and determine an application in proceedings may be exercised by a magistrate in chambers.
- (4) A magistrate may adjourn into court the hearing of an application being heard in chambers.

#### **480 Chamber business**

- (1) Subject to section 123 (4), an application to a magistrate in chambers in respect of any proceedings shall be made by filing—

- (a) notice of the application; and
  - (b) all affidavits and other documents on which it is intended to rely in support of the application; and
  - (c) if the registrar so requires—a draft form of the order sought.
- (2) The registrar shall, as soon as practicable, submit any documents filed under subsection (1), together with any other documents filed in the proceedings to a magistrate.

#### **481 Consent orders**

- (1) Subject to this Act, the registrar may exercise the power of the court to make any order in proceedings, being an order consented to—
- (a) by the parties to the application for the order; and
  - (b) by any other person who will be required to comply with the order or who will be affected by the order.
- (2) This section does not apply in relation to any power of the court under part 11.

#### **U 482 Right of appearance**

- (1) A party to proceedings may appear before the court or the registrar—
- (a) by a legal practitioner; or
  - (b) for an individual—personally; or
  - (c) for a corporation—by an officer of the corporation duly authorised by the corporation; or
  - (d) with the leave of the court or the registrar, by another person.
- (2) Subject to this Act, a person so appearing may address the court or the registrar and may examine and cross-examine witnesses.

- (3) A person who is not a legal practitioner is not entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person.
- (4) Subsection (3) does not operate to prevent an employee who, in the ordinary course of his or her employment, appears on behalf of his or her employer from receiving wages or salary for so appearing.
- (5) This section does not apply to proceedings in the Small Claims Court.
- (6) If the court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1), a person who, under this section, is entitled to appear before the court or the registrar on his or her own or another person's behalf, may appear, address the court or the registrar (as the case requires) and examine and cross-examine witnesses in accordance with the direction.

#### **483 Review of decisions of registrar**

If the registrar makes an order, gives a direction or does any other act in connection with proceedings, the court may, on application made by any party to the proceedings, review the order, direction or other act and may make any order by way of confirmation, variation, discharge or otherwise that the court thinks just.

#### **484 Representation by legal practitioner**

- (1) Subject to subsection (2), any matter or thing in relation to any proceedings that, under this Act or otherwise by law, is required or allowed to be done by a party to the proceedings may be done by his or her legal practitioner on the record in the proceedings.
- (2) Subsection (1) does not apply if the context or subject matter otherwise indicates or requires.



**485 Appointment of legal practitioner**

- (1) If a legal practitioner signs, and files on behalf of a party to proceedings, any originating process, notice of grounds of defence, reply or other document in the proceedings, the legal practitioner shall be taken to be the legal practitioner of the party on the record in the proceedings.
- (2) If, after proceedings are instituted, a party appoints a legal practitioner to act for him or her in the proceedings, the party or the legal practitioner shall sign and file a notice in accordance with form 67 of the appointment and serve a copy of the notice on each other party to the proceedings.

**486 Change of legal practitioner**

- (1) A party to proceedings is entitled at any time to change his or her legal practitioner in the proceedings.
- (2) If a party changes his or her legal practitioner in proceedings, the party or his or her new legal practitioner shall sign and file notice of the appointment of the new legal practitioner and serve a copy of the notice on each other party to the proceedings and, if practicable, on the former legal practitioner of the party.
- (3) If—
  - (a) a legal practitioner (the *principal legal practitioner*) acts for a party in any proceedings; and
  - (b) another legal practitioner acts as agent for the principal legal practitioner in the proceedings; and
  - (c) the principal legal practitioner changes the legal practitioner so acting as agent;

the party, the principal legal practitioner or the new agent shall sign and file a notice of the change and serve a copy of the notice on each other party to the proceedings and, if practicable, on the legal practitioner who was the former agent.

- (4) If a party to proceedings, without changing his or her legal practitioner, determines the authority of a legal practitioner to act for him or her in the proceedings—
- (a) the party shall sign and file notice of the determination and shall serve a copy of the notice on each other party to the proceedings and, if practicable, on his or her former legal practitioner;
  - (b) the former legal practitioner may sign and file notice of the determination and serve a copy of the notice on each of those other parties.
- (5) If a legal practitioner ceases to act for a party to proceedings, the legal practitioner may, subject to subsection (6), sign and file a notice of the cessation and serve a copy of the notice on each other party.
- (6) A legal practitioner shall not file or serve a notice referred to in subsection (5) without leave of the court unless he or she has, not less than 7 days before doing so, served on his or her former client notice of his or her intention to do so.
- (7) A legal practitioner who files a notice under subsection (5) shall, except where the notice is filed with the leave of the court, file and serve with the notice an affidavit showing compliance with subsection (6).
- (8) A legal practitioner may serve a notice under this section on a former client by posting it to the former client at the residential or business address of the former client last known to the legal practitioner.
- (9) A notice under this section shall be in accordance with form 67.

#### **487 Time of effect of change etc of legal practitioner**

A change referred to in section 486 shall take effect, and a legal practitioner shall become or cease to be the legal practitioner of a

party in proceedings or the agent of that legal practitioner, as the case requires, when the notice required under that section has been filed and served.

#### **488 Corporations acting in person**

- (1) A corporation may, in respect of proceedings to which the corporation is or may become a party, authorise an officer of the corporation to sign any document or do any thing that a party acting in person may do.
- (2) A document signed or thing done by an officer authorised under subsection (1) shall be deemed to be signed or done by the corporation.
- (3) An authority shall—
  - (a) be given under the seal of the corporation; and
  - (b) before the officer so authorised takes any step in any proceedings under the authority, be lodged with the registrar.
- (4) An authority may be lodged by lodging the authority or a machine copy or reproduction of the authority.
- (5) An authority may be expressed to be—
  - (a) only for the purposes of the proceedings named in the authority; or
  - (b) for the purposes of all proceedings to which the corporation is, or may become, a party.
- (6) On lodgment, an authority remains in force until a revocation signed by the secretary or other public officer of the corporation is lodged with the registrar.

**489 Reckoning of time**

If a period of time, being a period of 5 days or less, is prescribed or allowed for any purpose under this Act, that period shall be reckoned exclusive of any day when the office of the court is closed.

**490 Extension and abridgment of time**

- (1) In any proceedings, the court may, on the terms it thinks just, by order, extend or abridge the time prescribed or allowed by or under this Act for any purpose or fixed by any judgment or order of the court.
- (2) The court may extend time under subsection (1) either before or after the time prescribed, allowed or fixed expires or expired and whether or not an application for the extension was made before the time prescribed, allowed or fixed expired.
- (3) The period within which a party to proceedings would otherwise be required by or under this Act or by any order of the court to file, serve, or amend any pleading or other document may be extended by consent of the parties to the proceedings.

**491 Fixing of times**

If no time is fixed by this Act or by any judgment or order of the court for the doing of any thing in or in connection with proceedings, the court may, by order, fix the time within which the thing is to be done.

**492 Irregularity in proceedings**

- (1) If, in instituting proceedings or at any stage in the course of proceedings there is, because of any act or omission in or in connection with the proceedings (whether as regards time, place, manner, form, content or in any other respect) a failure to comply with any requirement of this Act or a direction given by the court under section 470—

- (a) the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken or document filed in the proceedings or any judgment given or entered or order made in the proceedings; and
  - (b) subject to subsections (2) and (3), the court may, on the terms it thinks just, set aside, wholly or in part, the proceedings, any step taken or document filed in the proceedings or any judgment given or entered or order made in the proceedings, and exercise its powers under this Act to allow amendments and to make orders relating to the conduct of the proceedings generally.
- (2) The court shall not wholly set aside any proceedings under subsection (1) on the ground that the proceedings, not constituting an action for the recovery of a debt or liquidated demand, were instituted by the filing of a special claim.
- (3) The court shall not set aside any proceedings, any step taken or document filed in proceedings or any judgment given or entered or order made in proceedings on the ground of an irregularity referred to in subsection (1) on the application of a party to the proceedings unless the application is made within a reasonable time and before the applicant has taken any fresh step in the proceedings after becoming aware of the irregularity.

#### **493 Restoration of proceedings struck out**

If proceedings have been struck out under an order of the court under this Act, the court may, on the application of any party to the proceedings, order that the proceedings be restored on the terms as to costs, the staying of the proceedings until the payment of costs, the priority of the hearing of the proceedings or otherwise, that the court thinks just.

**494 Certified copies of official records**

- (1) Subject to subsection (2), on receiving an application in accordance with form 68 or 69, as the case requires, from a person, the registrar shall give that person—
  - (a) a certificate in accordance with form 70, or a copy, certified in accordance with form 71, of a judgment or order of the court in proceedings; or
  - (b) a copy, certified in accordance with form 71, of any document filed in proceedings.
- (2) The registrar shall not give a certificate or a certified copy of a judgment or order or document filed in proceedings to a person, other than a party to the proceedings, under an application under subsection (1) unless the person satisfies the registrar or a magistrate that he or she has a good and sufficient reason for so applying.
- (3) A party to proceedings applying for a certificate, or a certified copy, of a judgment in the proceedings shall include in his or her application a statement of any amount that has been paid in respect of the judgment.
- (4) At the request of a defendant in the proceedings, the registrar shall give the defendant, free of charge, a copy of the originating process.
- (5) A certificate in accordance with form 70 or 71 in relation to proceedings in the Small Claims Court is to be expressed as having been issued from the Small Claims Court in relation to proceedings in that court.

**495 Records of default judgments**

Any person may inspect a record of the court that contains particulars of any of the following:

- (a) a judgment that has been entered under section 43;
- (b) the setting aside of such a judgment under section 221;

- (c) in relation to proceedings in the Small Claims Court—
- (i) a default judgment within the meaning of part 22; or
  - (ii) a restoration order under section 443 setting aside such a judgment.

**496 Infant plaintiffs**

A person who has not attained full age may institute proceedings for the recovery of wages, salary or other money due to him or her in respect of his or her employment as if he or she were of full age.

**498 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 24 Application of Magistrates Court Act 1930 and rules

### 499 Application of former procedural provisions to new proceedings

- (1) Subject to this Act, the provisions of the *Magistrates Court Act 1930* specified in table 499, column 1, and the provisions of the *Magistrates Court Rules 1932* specified in table 499, column 2, continue to apply, so far as they are capable of application and with necessary modifications and adaptations, in relation to proceedings instituted after the commencement of this Act:

**Table 499**

<b>column 1</b> <b>applicable provisions of</b> <b>Magistrates Court Act 1930</b>	<b>column 2</b> <b>applicable provisions of</b> <b>Magistrates Court Rules 1932</b>
part 1	part 1
part 2	part 3
part 3 division 1	part 19
section 54A	schedule 1 (so far as the forms in it are relevant for the purposes of any of the abovementioned applicable provisions)
section 60	
part 5 division 4	
part 9 (other than divisions 9.1 and 9.3)	
part 12	
part 15	
schedule 1 (so far as the forms in it are relevant for the purposes of any of the abovementioned applicable provisions)	

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- (2) For the application, under subsection (1), of the provisions specified in table 499 in that subsection in relation to proceedings instituted after the commencement of this Act—
- (a) a reference in any of those provisions to the *Magistrates Court Act 1930* is a reference to this Act; and
  - (b) a reference in any of those provisions to a particular provision of that Act, being a provision to which a provision of this Act corresponds, is a reference to that corresponding provision.
- (3) Without limiting subsection (1), in the application, under that subsection, of the provisions specified in table 499 in that subsection in relation to proceedings instituted after the commencement of this Act—
- (a) a reference in any of those provisions to an action is a reference to proceedings; and
  - (b) a reference in any of those provisions to a complaint is a reference to a claim or an application under section 22, as the case requires; and
  - (c) a reference in any of those provisions to a notice of intention to defend is a reference to a notice of grounds of defence; and
  - (d) a reference in any of those provisions to an order of the court is a reference to a judgment or order of the court given or entered in proceedings.

## **Schedule 1      Appointment of referees in Small Claims Court**

(see s 399 (2))

### Oath

I, [*name*], swear that I will well and truly serve in the office of referee in the Small Claims Court.

I swear that I will do right to all manner of people according to law, without fear or favour, affection or ill will.

So help me God!

### Affirmation

I, [*name*], solemnly and sincerely affirm that I will well and truly serve in the office of referee in the Small Claims Court.

I solemnly and sincerely affirm that I will do right to all manner of people according to law, without fear or favour, affection or ill will.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* No 54 (Cwlth). It was renamed as the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* by the *Magistrates Court Ordinance 1985* No 67 (see sch).

The *ACT Self-Government (Consequential Provisions) Act 1988* No 109 (Cwlth), s 12) converted some former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 1 July 1990.

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on its conversion to an ACT enactment on 1 July 1990.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Commonwealth legislation

##### **Magistrates Court (Civil Jurisdiction) Act 1982 No 54**

notified 9 July 1982

commenced 1 September 1982 (s 2 and Cwlth Gaz 1982 No S178)

as amended by

##### **Court of Petty Sessions (Civil Jurisdiction) (Amendment) Ordinance 1984 No 76**

notified 19 December 1984

commenced 19 December 1984

##### **Court of Petty Sessions (Civil Jurisdiction) (Amendment) Ordinance (No 2) 1984 No 77**

notified 19 December 1984

commenced 2 September 1985 (s 2 and Cwlth Gaz 1985 No S326)

##### **Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9 sch 2**

notified 8 March 1985

commenced 28 October 1985 (s 2 and Cwlth Gaz 1985 No G42)

**Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985

commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

**Children's Services (Miscellaneous Amendments) Ordinance 1986 No 14 s 7**

notified 4 June 1986

commenced 26 April 1988 (s 2 and Cwlth Gaz 1988 No S116)

**Domestic Violence (Miscellaneous Amendments) Ordinance 1986 No 53 s 6**

notified 4 September 1986

commenced 1 October 1986 (s 2 and Cwlth Gaz 1986 No S484)

**Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74 pt 4**

notified 14 November 1986

commenced 14 November 1986

**Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1987 No 13**

notified 1 May 1987

commenced 9 November 1987 (s 2 and Cwlth Gaz 1987 No GN27)

**Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1988 No 81**

notified 14 December 1988

commenced 3 January 1989 (s 2)

**Government Solicitor Ordinance 1989 No 36 sch**

notified 10 May 1989

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch commenced 11 May 1989 (s 2 (2) and see Gaz 1989 No S164)

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 pt 2 div 17, sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

pt 2 div 17, sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S160)

## Endnotes

3 Legislation history

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### **Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1989 No 56**

notified 19 July 1989

s 3 is taken to have commenced 11 May 1989 (s 2)

remainder commenced 19 July 1989

### **Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance (No 2) 1989 No 58**

notified 11 October 1989

commenced 11 October 1989

### **Self-Government (Consequential Amendments) Ordinance 1990 No 5 sch 1**

notified 27 June 1990

s 1, s 2 commenced 27 June 1990 (s 2 (1))

sch 1 commenced 1 July 1990 (s 2 (2))

## **Legislation after becoming Territory enactment**

### **Magistrates Court (Civil Jurisdiction) (Amendment) Act 1991 No 39**

notified 20 September 1991 (Gaz 1991 No S95)

ss 1-3 commenced 20 September 1991 (s 2 (1))

remainder commenced 25 September 1991 (s 2 (2) and see Gaz 1991 No S103)

### **Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 7 (2), sch 1**

notified 20 September 1991 (Gaz 1991 No S95)

s 1, s 2 commenced 20 September 1991 (s 2 (1))

s 7 (2), sch 1 commenced 25 September 1991 (s 2 (2) and see Gaz 1991 No S103)

### **Workers' Compensation (Consequential Amendments) Act 1991 No 106 sch**

notified 15 January 1992 (Gaz 1992 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

sch commenced 22 January 1992 (s 2 (2) and see Gaz 1992 No S9)

### **Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)

sch 3 commenced 17 December 1993 (s 2)

**Magistrates Court (Civil Jurisdiction) (Amendment) Act 1994 No 5**

notified 14 March 1994 (Gaz 1994 No S44)  
ss 1-4, 11, 12 commenced 14 March 1994 (s 3 (1))  
remainder commenced 1 July 1994 (s 3 (2))

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 57**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 57 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S 142)

**Magistrates Court (Enforcement of Judgments) Act 1994 No 61 pt 2**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994  
pt 2 commenced 10 April 1995 (Gaz 1995 No S75)

**Magistrates Court (Civil Jurisdiction) (Amendment) Act (No 2) 1994 No 65**

notified 11 October 1994 (Gaz 1994 No S197)  
commenced 11 October 1994

**Legal Practitioners (Amendment) Act 1994 No 76 sch**

notified 23 November 1994 (Gaz 1994 No S247)  
sch commenced 23 November 1994 (s 2)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (Gaz 1994 No S269)

**Magistrates Court (Civil Jurisdiction) (Amendment) Act 1995 No 27**

notified 5 September 1995 (Gaz 1995 No S212)  
commenced 5 September 1995 (s 2)

**Magistrates Court (Amendment) Act 1996 No 6 s 20**

notified 12 March 1996 (Gaz 1996 No S35)  
ss 1-3 commenced 12 March 1996 (s 2 (1))  
s 20 commenced 12 September 1996 (s 2 (4))

## Endnotes

3 Legislation history

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**Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 17**

notified 1 July 1996 (Gaz 1996 No S130)  
sch pt 17 commenced 1 July 1996 (s 2)

**Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997 No 94**

notified 1 December 1997 (Gaz 1997 No S380)  
ss 1-3 commenced 1 December 1997 (s 2 (1))  
remainder commenced 25 May 1998 (Gaz 1998 No S140)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Magistrates Court (Civil Jurisdiction) (Amendment) Act 1998 No 7**

notified 25 May 1998 (Gaz 1998 No S150)  
commenced 25 May 1998 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 10**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 10 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

**Financial Sector Reform (ACT) Act 1999 No 33 sch**

notified 25 June 1999 (Gaz 1999 No S34)  
s 1, s 2, dict commenced 25 June 1999 (s 2 (1))  
sch commenced 1 July 1999 (s 2 (2) and see Cwlth Gaz 1999 No S28)

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)



**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 3 commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 ( s 2)

**Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 9**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 9 commenced 1 January 2001 (Gaz 2000 No S69)

**Leases (Commercial and Retail) Act 2001 No 18 s 175**

notified 19 April 2001 (Gaz 2001 No 16)  
s 1, s 2 commenced 19 April 2001 (IA s 10B)  
s 175 commenced 1 July 2002 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 239**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 239 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Workers Compensation Amendment Act 2001 No 81 s 36**

notified LR 28 September 2001  
s 1, s 2 commenced 28 September 2001 (LA s 75)  
s 36 commenced 1 July 2002 (s 2 (1))

**Protection Orders (Consequential Amendments) Act 2001 No 90 sch 1 pt 9**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
sch 1 pt 9 commenced 27 March 2002 (s 2, see Protection Orders Act 2001, s 3 and LA s 79)

## Endnotes

4 Amendment history

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### **Workers Compensation (Acts of Terrorism) Amendment Act 2002 No 22 pt 1.2**

notified LR 28 June 2002  
s 1, s 2 commenced 28 June 2002 (LA s 75)  
pt 1.2 commenced 1 July 2002 (s 2)

### **Justice and Community Safety Legislation Amendment Act 2003 A2003-2 pt 15**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 15 commenced 4 March 2003 (s 2 (1))

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.9**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.9 awaiting commencement (s 2)

*Note* default commencement under LA s 79: 30 April 2004

### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.55**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.55 commenced 9 April 2004 (s 2 (1))

### **Justice and Community Safety Legislation Amendment Act 2004 A2004-18 pt 9**

notified LR 6 April 2004  
s 1, s 2 commenced 6 April 2004 (LA s 75 (1))  
pt 9 commenced 20 April 2004 (s 2)

## 4 Amendment history

The *Magistrates Court (Enforcement of Judgments) Act 1994* No 61 s 28 amended the Act by reversing the order of masculine and feminine pronouns. The amendments have been incorporated in the republication but have not been noted in the amendment history.

#### **Title**

title am 1985 No 67 sch pt 1

#### **Short title**

s 1 am 1985 No 67 sch pt 1

**Commencement**

s 2 om 2001 No 44 amdt 1.2783

**Interpretation for Act**

s 3 am 1985 No 67 sch pt 1; 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 4; 1997 No 94 sch 2; 1997 No 96 sch 1; 2001 No 44 amdt 1.2785  
 def **approved form** ins 1994 No 61 s 4  
 am 1997 No 94 sch 2  
 om 2001 No 44 amdt 1.2784  
 def **bailiff** ins 1994 No 61 s 4  
 def **chief solicitor** ins 1989 No 36 sch  
 am 1994 No 38 sch 1 pt 57  
 def **corporation** ins 1994 s 4  
 def **determined fee** ins 1991 No 39 s 4  
 om 1994 No 5 s 4  
 def **officer** ins 1994 s 4  
 def **Small Claims Court** ins 1997 No 94 sch 2

**Application**

s 4 am 1986 No 14 s 7; 1986 No 74 s 87; 1990 No 5 sch 1; 1991 No 106 sch; 1997 No 94 sch 2; 1999 No 66 sch 3; 2001 No 90 amdt 1.82, 1.83

**Personal actions at law—amount or value**

s 5 am 1987 No 13 s 4; 1988 No 81 s 5; 1994 No 61 s 5; ss renum R7 LA

**Power of court to grant relief**

s 6 am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1

**Nuisance**

s 8 am 1994 No 81 sch; 1998 No 54 sch

**Disputed debts**

s 8A renum as s 9

**Disputed debts**

s 9 orig s 9 renum as s 10  
 (prev s 8A) ins 1994 No 61 s 6  
 renum 1994 No 61 s 29

**Cause of action arising, or defendant situated, outside ACT**

s 10 orig s 10 renum as s 11  
 (prev s 9) am 1990 No 5 s 6  
 renum 1994 No 61 s 29

**Disputes under Tenancy Tribunal Act 1994**

s 10A renum as s 12

## Endnotes

### 4 Amendment history

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#### **Proceedings affecting title to land**

s 11 orig s 11 renum as s 13  
(prev s 10) renum 1994 No 61 s 29

#### **Disputes under Tenancy Tribunal Act 1994**

s 12 (prev s 10A) ins 1994 No 65 s 3  
renum 1994 No 61 s 29  
sub 2001 No 18 s 175  
om A2003-2 s 72

#### **Disputes under Residential Tenancies Act**

s 12A ins 1999 No 66 sch 3

#### **Complaints under Utilities Act, pt 12 (Complaints)**

s 12B ins 2000 No 66 sch 1 pt 9

#### **Lodgment and filling of originating process**

s 13 orig s 13 renum as s 15  
(prev s 11) am 1990 No 5 s 6; 1991 No 39 s 5; 1991 No 44  
s 7 (2), sch 1; 1994 No 5 s 5  
renum 1994 No 61 s 29

#### **Numbering of proceedings**

s 14 orig s 14 renum as s 16  
(prev s 12) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Contents of originating process**

s 15 (prev s 13) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Signing of originating process**

s 16 (prev s 14) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Proceedings by claim**

s 17 (prev s 15) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Form of claim**

s 18 (prev s 16) am 1987 No 13 s 6; 1990 No 5 s 6; 1994 No 61 s 7  
renum 1994 No 61 s 29; ss renum R7 LA

#### **More than 1 cause of action**

s 19 (prev s 17) renum 1994 No 61 s 29

#### **Division of cause of action**

s 20 (prev s 18) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Abandonment of excess**

s 21 (prev s 19) am 1988 No 81 s 5; 1990 No 5 s 6  
renum 1994 No 61 s 29

**Proceedings by application**

s 22 (prev s 20) am 1990 No 5 s 6; 1991 No 39 s 6; 1991 No 44  
s 7 (2), sch 1; 1994 No 5 s 6  
renum 1994 No 61 s 29

**Service of documents generally**

s 23 (prev s 21) renum 1994 No 61 s 29

**Service of originating process by post**

s 24 (prev s 22) am 1991 No 39 s 7; 1991 No 44 s 7 (2), sch 1;  
1994 No 5 s 7  
renum 1994 No 61 s 29

**Substituted service**

s 25 (prev s 23) renum 1994 No 61 s 29

**Service on legal practitioner**

s 26 (prev s 24) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Service at address for service**

s 27 (prev s 25) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Address for service**

s 28 (prev s 26) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1995 No 27 s 4; 1997 No 96 sch 1

**Time of service**

s 29 (prev s 27) renum 1994 No 61 s 29

**Proof of service of documents**

s 30 (prev s 28) renum 1994 No 61 s 29

**Doubtful service**

s 31 (prev s 29) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**No need for production of original document**

s 32 (prev s 30) renum 1994 No 61 s 29

**Waiver of objection to service**

s 33 (prev s 31) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Cessation of original claim**

s 34 (prev s 32) renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Renewal of claim**

s 35 (prev s 33) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Cessation of renewed claim**

s 36 (prev s 34) renum 1994 No 61 s 29

#### **Notice of grounds of defence**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R2 LA

#### **Filing of notice of grounds of defence**

s 37 (prev s 35) am 1984 No 77; 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Form of notice of grounds of defence**

s 38 (prev s 36) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Service of notice of grounds of defence**

s 39 (prev s 37) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Reliance on defence not disclosed**

s 40 (prev s 38) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Judgment in default of defence**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R2 LA

#### **Interlocutory judgment by default on ordinary claim**

s 41 (prev s 39) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Assessment of recoverable amount following interlocutory judgment**

s 42 (prev s 40) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Judgment by default on special claim**

s 43 (prev s 41) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Judgment by confession**

div 6.3 hdg (prev pt 6 div 3 hdg) renum R2 LA

#### **Judgment by confession**

s 44 (prev s 42) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Judgment by agreement**

div 6.4 hdg (prev pt 6 div 4 hdg) renum R2 LA

**Judgment by agreement**

s 45 (prev s 43) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 8  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Special defences**

div 6.5 hdg (prev pt 6 div 5 hdg) renum R2 LA

**Defence of tender before action**

s 46 (prev s 44) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Defence of set-off**

s 47 (prev s 45) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Cross-claim**

s 48 (prev s 46) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Abandonment of excess of cross-claim**

s 49 (prev s 47) am 1988 No 81 s 6; 1990 No 5 s 6  
renum 1994 No 61 s 29

**Proceedings on cross-claim**

s 50 (prev s 48) renum 1994 No 61 s 29

**Trial of cross-claim**

s 51 (prev s 49) renum 1994 No 61 s 29

**Filing of reply**

s 52 (prev s 50) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Form of reply**

s 53 (prev s 51) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Service of reply**

s 54 (prev s 52) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Defence to cross-claim**

s 55 (prev s 53) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Meaning of *third party***

s 56 (prev s 54) renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Filing of third-party notice**

s 57 (prev s 55) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Service of documents**

s 58 (prev s 56) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Stay of proceedings**

s 59 (prev s 57) renum 1994 No 61 s 29

#### **Rights and liabilities of third party**

s 60 (prev s 58) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Procedure on hearing**

s 61 (prev s 59) renum 1994 No 61 s 29

#### **Enforcement**

s 62 (prev s 60) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Subsequent joinder of parties**

s 63 (prev s 61) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Separate trials**

s 64 (prev s 62) renum 1994 No 61 s 29

#### **Codefendants**

s 65 (prev s 63) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Costs in proceedings if third party joined**

s 66 (prev s 64) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Discontinuance**

s 67 (prev s 65) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Withdrawal**

s 68 (prev s 66) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Costs**

s 69 (prev s 67) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Effect of discontinuance**

s 70 (prev s 68) renum 1994 No 61 s 29



**How money paid into court**

s 71 (prev s 69) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Payment by defendant**

s 72 (prev s 70) am 1988 No 81  
renum 1994 No 61 s 29

**Form of notice of payment**

s 73 (prev s 71) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Service of notice of payment into court**

s 74 (prev s 72) renum 1994 No 61 s 29

**Abandonment of cross-claim**

s 75 (prev s 73) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**No admission of liability**

s 76 (prev s 74) renum 1994 No 61 s 29

**Acceptance of amount paid into court**

s 77 (prev s 75) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Effect of acceptance of money paid into court**

s 78 (prev s 76) renum 1994 No 61 s 29

**Withdrawal of money paid into court**

s 79 (prev s 77) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Order for payment out after acceptance**

s 80 (prev s 78) renum 1994 No 61 s 29

**Payment of money under defence of tender**

s 81 (prev s 79) am 1990 No 5 s 6; 1991 No 44 sch 1  
renum 1994 No 61 s 29

**Nondisclosure of payment into court**

s 82 (prev s 80) renum 1994 No 61 s 29

**Costs if money paid into court**

s 83 (prev s 81) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Money paid into court remaining at judgment**

s 84 (prev s 82) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Lodgment of bond**

s 85 (prev s 83) am 1988 No 81; 1989 No 36 sch; 1990 No 5 sch 1;  
1991 No 44 s 7 (2), sch 1; 1991 No 106 sch  
renum 1994 No 61 s 29  
am 1999 No 79 sch 3

#### **Capacity as regards proceedings**

s 86 (prev s 84) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2

#### **Liability for costs**

s 87 (prev s 85) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Entitlement to be next friend or guardian *ad litem***

s 88 (prev s 86) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Appointment of next friend**

s 89 (prev s 87) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Appointment of guardian *ad litem***

s 90 (prev s 88) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Record of appointee**

s 91 (prev s 89)renum 1994 No 61 s 29

#### **Removal of next friend or guardian *ad litem***

s 92 (prev s 90) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Admission on pleadings**

s 93 (prev s 91)renum 1994 No 61 s 29

#### **Judgment in proceedings if no guardian *ad litem* appointed**

s 94 (prev s 92) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1; 1994  
No 61 s 9  
renum 1994 No 61 s 29

#### **Compromise before action**

s 95 (prev s 93) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Approval of settlement involving person under disability**

s 96 (prev s 94)renum 1994 No 61 s 29

**Money recovered by person under disability**

s 97 (prev s 95) am 1985 No 9; 1990 No 5 sch 1; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1; ss renum R7 LA

**Service on person under disability**

s 98 (prev s 96) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Pleadings generally**

div 12.1 hdg (prev pt 12 div 1 hdg) renum R2 LA

**Paragraphs in pleadings**

s 99 (prev s 97) renum 1994 No 61 s 29

**Facts in evidence**

s 100 (prev s 98) renum 1994 No 61 s 29

**Brevity**

s 101 (prev s 99) renum 1994 No 61 s 29

**Documents and spoken words**

s 102 (prev s 100) renum 1994 No 61 s 29

**Presumed facts**

s 103 (prev s 101) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Conditions precedent**

s 104 (prev s 102) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Money claims**

s 105 (prev s 103) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Matters for specific pleading**

s 106 (prev s 104) renum 1994 No 61 s 29

**Contributory negligence**

s 107 (prev s 105) renum 1994 No 61 s 29

**New matter**

s 108 (prev s 106) renum 1994 No 61 s 29

**Departure**

s 109 (prev s 107) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Points of law**

s 110 (prev s 108) renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Admissions and traverse**

s 111 (prev s 109) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Joinder of issue**

s 112 (prev s 110) renum 1994 No 61 s 29

#### **Striking out of inadequate etc pleading**

s 113 (prev s 111) renum 1994 No 61 s 29

#### **General issue abolished**

s 114 (prev s 112) renum 1994 No 61 s 29

#### **Particulars**

div 12.2 hdg (prev pt 12 div 2 hdg) renum R2 LA

#### **Sufficient particulars**

s 115 (prev s 113) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Fraud etc**

s 116 (prev s 114) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Condition of mind**

s 117 (prev s 115) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Negligence and breach of statutory duty**

s 118 (prev s 116) renum 1994 No 61 s 29

#### **Out-of-pocket expenses etc**

s 119 (prev s 117) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Amount claimed for property damage**

s 120 (prev s 118) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **How particulars in pleadings given**

s 121 (prev s 119) renum 1994 No 61 s 29

#### **Further and better particulars**

s 122 (prev s 120) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Interlocutory application**

div 13.1 hdg (prev pt 13 div 1 hdg) renum R2 LA

#### **Interlocutory applications**

s 123 (prev s 121) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Hearing of motion**

s 124 (prev s 122) renum 1994 No 61 s 29

**Costs on application**

s 125 (prev s 123) renum 1994 No 61 s 29

**Amendment**

div 13.2 hdg (prev pt 13 div 2 hdg) renum R2 LA

**General power of amendment**

s 126 (prev s 124) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Amendment of pleading without leave**

s 127 (prev s 125) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Consequential amendment of defence or reply**

s 128 (prev s 126) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Disallowance of amendment**

s 129 (prev s 127) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Duration of leave**

s 130 (prev s 128) renum 1994 No 61 s 29

**Direction for mode of amendment**

s 131 (prev s 129) renum 1994 No 61 s 29

**Simple mode of amendment**

s 132 (prev s 130) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Mode of amendment of fresh document**

s 133 (prev s 131) renum 1994 No 61 s 29

**Service after amendment**

s 134 (prev s 132) renum 1994 No 61 s 29

**Statutes of limitation**

s 135 (prev s 133) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Amendment of judgment, order or certificate to correct error**

s 136 (prev s 134) renum 1994 No 61 s 29

**Costs in relation to amendment**

s 137 (prev s 135) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Summary judgment**

div 13.3 hdg (prev pt 13 div 3 hdg) renum R2 LA

## Endnotes

4 Amendment history

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### **Summary judgment for plaintiff**

s 138 (prev s 136) am 1984 No 77  
renum 1994 No 61 s 29

### **Summary stay or dismissal**

s 139 (prev s 137) renum 1994 No 61 s 29

### **Residue of proceedings**

s 140 (prev s 138) renum 1994 No 61 s 29

### **Dismissal for want of prosecution**

s 141 (prev s 139) renum 1994 No 61 s 29

### **Parties**

div 13.4 hdg (prev pt 13 div 4 hdg) renum R2 LA

### **Joinder of parties generally**

s 142 (prev s 140) renum 1994 No 61 s 29

### **Joint right**

s 143 (prev s 141) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Common liability**

s 144 (prev s 142) renum 1994 No 61 s 29

### **Inconvenient joinder of parties**

s 145 (prev s 143) renum 1994 No 61 s 29

### **Misjoinder and nonjoinder of parties**

s 146 (prev s 144) renum 1994 No 61 s 29

### **Joinder of parties by order**

s 147 (prev s 145) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Removal of parties**

s 148 (prev s 146) renum 1994 No 61 s 29

### **Death, transmission etc**

s 149 (prev s 147) renum 1994 No 61 s 29

### **Further conduct of proceedings**

s 150 (prev s 148) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Failure to proceed after death of party**

s 151 (prev s 149) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Representatives re concurrent interests**

s 152 (prev s 150) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Deceased person**

s 153 (prev s 151) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Executors and administrators**

s 154 (prev s 151A) ins 1994 No 61 s 10  
renum 1994 No 61 s 29

**Consolidation**

div 13.5 hdg (prev pt 13 div 5 hdg) renum R2 LA

**Consolidation**

s 155 (prev s 152) renum 1994 No 61 s 29

**Admissions**

div 13.6 hdg (prev pt 13 div 6 hdg) renum R2 LA

**Voluntary admissions**

s 156 (prev s 153) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Notice to admit facts**

s 157 (prev s 154) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Admission of documents discovered**

s 158 (prev s 155) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Judgment on admissions**

s 159 (prev s 156) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Restricted effect of admissions**

s 160 (prev s 157) renum 1994 No 61 s 29

**Costs**

s 161 (prev s 158) renum 1994 No 61 s 29

**Interrogatories**

div 13.7 hdg (prev pt 13 div 7 hdg) renum R2 LA

**Interrogatories**

s 162 (prev s 159) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Discovery and inspection**

div 13.8 hdg (prev pt 13 div 8 hdg) renum R2 LA

**Notice for discovery**

s 163 (prev s 160) renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Discovery on notice**

s 164 (prev s 161) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Limitation of discovery on notice**

s 165 (prev s 162) renum 1994 No 61 s 29

#### **Codefendants**

s 166 (prev s 163) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Order for general discovery**

s 167 (prev s 164) renum 1994 No 61 s 29

#### **Contents of affidavit of discovery**

s 168 (prev s 165) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Absence of privilege**

s 169 (prev s 166) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Order for particular discovery**

s 170 (prev s 167) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Document referred to in pleading or affidavit**

s 171 (prev s 168) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Order for production**

s 172 (prev s 169) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Power to take copies**

s 173 (prev s 170) renum 1994 No 61 s 29

#### **Production to court**

s 174 (prev s 171) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Inspection to decide objection**

s 175 (prev s 172) renum 1994 No 61 s 29

#### **Order only if necessary**

s 176 (prev s 173) renum 1994 No 61 s 29

#### **Default**

s 177 (prev s 174) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Public interest**

s 178 (prev s 175) renum 1994 No 61 s 29



**Setting down for hearing**

div 14.1 hdg (prev pt 14 div 1 hdg) renum R2 LA

**Certificate of readiness for hearing**

s 179 orig s 179 am 1990 No 5 s 6  
om 1994 No 61 s 11  
(prev s 176) am 1990 No 5 sch 1; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Application for expedited hearing**

s 180 (prev s 177) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Procedure on hearing**

div 14.2 hdg (prev pt 14 div 2 hdg) renum R2 LA

**Hearings to be in public except in special circumstances**

s 181 (prev s 178) renum 1994 No 61 s 29  
sub 1996 No 6 s 20

**Court's direction in relation to conduct of hearing**

s 182 (prev s 180) renum 1994 No 61 s 29

**Order of presentation of cases**

s 183 (prev s 181) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Procedure if both parties appear**

s 184 (prev s 182) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1999 No 22 s 26

**Procedure in absence of party**

s 185 (prev s 183) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Procedure if neither party appears**

s 186 (prev s 184) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Summons to witness**

div 14.3 hdg (prev pt 14 div 3 hdg) renum R2 LA

**Issue of summons**

s 187 (prev s 185) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1;  
1994 No 81 sch  
renum 1994 No 61 s 29  
am 1998 No 54 sch; 1999 No 22 s 27; 2000 No 17 sch 1; ss  
renum R7 LA; [A2003-48 amdt 2.12](#)

## Endnotes

### 4 Amendment history

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#### **Production by non-party**

s 188 (prev s 186) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Setting aside of summons**

s 189 (prev s 187) renum 1994 No 61 s 29

#### **Production on notice**

s 190 (prev s 188) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Adjournment, stay or postponement of proceedings**

div 14.4 hdg (prev pt 14 div 4 hdg) renum R2 LA

#### **Adjournment of proceedings**

s 191 (prev s 189) renum 1994 No 61 s 29

#### **Stay of proceedings**

s 192 (prev s 190) renum 1994 No 61 s 29

#### **Postponement of hearing by registrar**

s 193 (prev s 191) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Case stated for Supreme Court**

div 14.5 hdg (prev pt 14 div 5 hdg) renum R2 LA

#### **Case stated**

s 194 (prev s 192) renum 1994 No 61 s 29

#### **Evidence generally**

div 15.1 hdg (prev pt 15 div 1 hdg) renum R2 LA

#### **Oral evidence**

s 195 (prev s 193) renum 1994 No 61 s 29

#### **Evidence by affidavit**

s 196 orig s 196 am 1990 No 5 s 6; 1994 No 81 sch  
om 1994 No 61 s 11  
(prev s 194) renum 1994 No 61 s 29

#### **Examination on oath**

s 197 (prev s 195) renum 1994 No 61 s 29

#### **Proof of court documents**

s 198 (prev s 197) renum 1994 No 61 s 29

#### **Medical evidence**

s 199 (prev s 198) am 1990 No 5 s 6  
renum 1994 No 61 s 29

#### **Privilege**

s 200 (prev s 199) renum 1994 No 61 s 29

**Dispensing with rules of evidence**

s 201 (prev s 200) renum 1994 No 61 s 29

**Examinations de bene esse**

div 15.2 hdg (prev pt 15 div 2 hdg) renum R2 LA

**Order for examination of witnesses**

s 202 (prev s 201) am 1986 No 74 s 87; 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Affidavits**

div 15.3 hdg (prev pt 15 div 3 hdg) renum R2 LA

**Time for swearing affidavits**

s 203 (prev s 202) am 1994 No 61 s 12  
renum 1994 No 61 s 29

**Form of affidavit**

s 204 (prev s 203) renum 1994 No 61 s 29

**Irregularity in affidavit**

s 205 (prev s 204) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Filing and service of affidavit**

s 206 (prev s 205) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Cross-examination of deponent**

s 207 (prev s 206) renum 1994 No 61 s 29

**Contents of affidavits**

s 208 (prev s 207) am 1990 No 5 s 6; 1994 No 61 s 13  
renum 1994 No 61 s 29

**Deponents for affidavits answering interrogatories or of discovery**

s 209 (prev s 208) am 1989 No 38; 1990 No 5 s 6  
renum 1994 No 61 s 29

**Affidavit by illiterate or blind person**

s 210 (prev s 209) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Affidavit by person unable to understand English**

s 211 (prev s 210) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Annexures and exhibits to affidavits**

s 212 (prev s 211) renum 1994 No 61 s 29

## Endnotes

4 Amendment history

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### **Alterations in affidavits**

s 213 (prev s 212) renum 1994 No 61 s 29

### **Scandalous or offensive matter**

s 214 (prev s 213) renum 1994 No 61 s 29

### **Powers of court on judgment**

s 215 (prev s 214) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Damages to time of assessment in certain cases**

s 216 (prev s 215) renum 1994 No 61 s 29

### **Judgment in actions relating to detention of goods**

s 217 (prev s 216) am 1990 No 5 s 6  
sub 1994 No 61 s 14  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2; 1998 No 54 sch

### **Judgment for costs only**

s 218 (prev s 217) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Time for compliance**

s 219 (prev s 217A) ins 1994 No 61 s 15  
renum 1994 No 61 s 29

### **Judgment final and conclusive**

s 220 (prev s 218) renum 1994 No 61 s 29

### **Setting aside of judgment or order**

s 221 (prev s 219) am 1994 No 61 s 16  
renum 1994 No 61 s 29

### **Setting aside of judgment entered irregularly**

s 222 (prev s 220) renum 1994 No 61 s 29  
am 1997 No 94 sch 2

### **Time of effect of judgment or order**

s 223 (prev s 221) renum 1994 No 61 s 29

### **Reservation of judgment or decision**

s 224 (prev s 222) am 1990 No 5 s 6  
renum 1994 No 61 s 29

### **Minute of judgment**

s 225 (prev s 223) renum 1994 No 61 s 29

### **Formal order for judgment**

s 226 (prev s 224) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Evidence of judgment**

s 227 (prev s 225) renum 1994 No 61 s 29

**Joint liability**

s 228 (prev s 226) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Setting off of judgments**

s 229 (prev s 227) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Interest up to judgment**

s 230 (prev s 227A) ins 1987 No 13 s 6  
renum 1994 No 61 s 29

**Judgment by default, confession or agreement—interest**

s 231 (prev s 227B) ins 1987 No 13 s 6  
am 1989 No 58 s 2  
renum 1994 No 61 s 29

**Judgment for interest only**

s 232 (prev s 227C) ins 1987 No 13 s 6  
renum 1994 No 61 s 29

**Amendment of claim for interest**

s 233 (prev s 227D) ins 1987 No 13 s 6  
renum 1994 No 61 s 29

**Interest on judgments**

s 234 (prev s 228) am 1993 No 91 sch 3; 1994 No 61 s 17  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2; 1999 No 66 sch 3

**Limitation periods**

s 235 (prev s 229) sub 1994 No 61 s 18  
renum 1994 No 61 s 29

**Payment of judgment debts generally**

s 236 (prev s 229A) ins 1994 No 61 s 18  
renum 1994 No 61 s 29

**Payment of part of judgment debt**

s 237 (prev s 229B) ins 1994 No 61 s 18  
renum 1994 No 61 s 29

**Entry and enforcement of judgment in Supreme Court**

s 238 (prev s 230) am 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 19  
renum 1994 No 61 s 29

**Meaning of *property* for pt 17**

s 239 (prev s 231) renum 1994 No 61 s 29

## Endnotes

4 Amendment history

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### **Interpleader by defendant**

s 240 (prev s 232) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

### **Interpleader by bailiff**

s 241 (prev s 233) am 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 20  
renum 1994 No 61 s 29

### **Notice of application for relief**

s 242 (prev s 234) renum 1994 No 61 s 29

### **Interpleader proceedings**

s 243 (prev s 235) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

### **Service of documents**

s 244 (prev s 236) renum 1994 No 61 s 29

### **Adverse titles**

s 245 (prev s 237) renum 1994 No 61 s 29

### **General**

div 18.1 hdg (prev pt 18 div 1 hdg) renum R2 LA

### **Costs in discretion of court or to follow event**

s 246 (prev s 238) renum 1994 No 61 s 29

### **Time for exercise of court's powers in relation to costs**

s 247 (prev s 239) renum 1994 No 61 s 29

### **Fixing of costs**

s 248 (prev s 240) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

### **Agreement about costs**

s 249 (prev s 241) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

### **Entitlement to taxation**

s 250 (prev s 242) renum 1994 No 61 s 29

### **Costs part of judgment debt**

s 251 (prev s 243) renum 1994 No 61 s 29

### **Court's power about costs if no jurisdiction**

s 252 (prev s 244) renum 1994 No 61 s 29

### **Power of court to vary entitlement to taxed costs**

s 253 (prev s 245) renum 1994 No 61 s 29

### **Time for payment of costs**

s 254 (prev s 246) renum 1994 No 61 s 29

**Taxation if judgment subject to appeal etc**

s 255 (prev s 247) renum 1994 No 61 s 29

**Noncompliance with Act or order**

s 256 (prev s 248) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Liability of solicitor for costs**

s 257 (prev s 249) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Particular items**

div 18.2 hdg (prev pt 18 div 2 hdg) renum R2 LA

**Nature of costs to be allowed or disallowed on taxation**

s 258 (prev s 250) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Scale of costs**

s 259 (prev s 251) am 1994 No 76 sch  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Scale of costs for proceedings on cross-claim**

s 260 (prev s 252) renum 1994 No 61 s 29

**Scale of costs in enforcement proceedings**

s 261 (prev s 253) renum 1994 No 61 s 29

**Scale of costs in proceedings if there are separate judgments against defendants**

s 262 (prev s 254) renum 1994 No 61 s 29

**Amount paid to nonlegal representative**

s 263 (prev s 255) renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Retainer to legal practitioner**

s 264 (prev s 256) renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Brief fees paid to more than 1 barrister**

s 265 (prev s 257) renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Refresher fees**

s 266 (prev 258) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

## Endnotes

### 4 Amendment history

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#### **Fees when barrister absent**

s 267 (prev s 259) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Reckoning of 5 hour periods**

s 268 (prev s 260) renum 1994 No 61 s 29

#### **Amounts paid to witnesses**

s 269 (prev s 261) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Expenses of preparing plans etc**

s 270 (prev s 262) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Disbursements**

s 271 (prev s 263) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **Costs not otherwise provided for**

s 272 (prev s 264) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Taxation**

div 18.3 hdg (prev pt 18 div 3 hdg) renum R2 LA

#### **Filing, and appointment to tax, bill of costs**

s 273 (prev s 265) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Contents of bills of costs**

s 274 (prev s 266) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

#### **General powers of registrar on taxation**

s 275 (prev s 267) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Notice of adjournment of taxation proceedings**

s 276 (prev s 268) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Report to court**

s 277 (prev s 269) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

#### **Reference to court for directions**

s 278 (prev s 270) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29



**Default of party entitled**

s 279 (prev s 271) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Cross costs**

s 280 (prev s 272) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Certificate of taxed costs**

s 281 (prev s 273) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Review of taxation**

s 282 (prev s 274) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Costs of proceedings before registrar on taxation**

s 283 (prev s 275) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Fee to barrister on taxation proceedings**

s 284 (prev s 276) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Attendance of parties on taxation**

s 285 (prev s 277) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

**Security for costs**

div 18.4 hdg (prev pt 18 div 4 hdg) renum R2 LA

**Security for costs**

s 286 (prev s 278) am 1990 No 5 s 6  
renum 1994 No 61 s 29

**Enforcement of judgments**

pt 19 hdg (prev pt 18A hdg) ins 1994 No 61 s 21  
renum 1997 No 94 s 10

**Preliminary**

div 19.1 hdg (prev pt 19 div 1 hdg) renum R2 LA

**Interpretation for pt 19**

s 287 (prev s 278A) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1999 No 33 sch

**Exercise of powers**

s 288 (prev s 278B) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Costs**

s 289 (prev s 278C) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Judiciary (Stay of Proceedings) Act 1933 not to apply**

s 290 (prev s 278D) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Court may exercise powers of registrar**

s 291 (prev s 278E) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Orders at time of judgment**

div 19.2 hdg (prev pt 19 div 2 hdg) renum R2 LA

#### **Instalment and garnishee orders**

s 292 orig s 292 am 1986 No 74; 1990 No 5 sch 1; 1991 No 39 s 8;  
1991 No 44 s 7 (2), sch 1  
om 1994 No 5 s 8  
(prev s 278F) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Order for issue of writ of execution**

s 293 (prev s 278G) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Examination procedures**

div 19.3 hdg (prev pt 19 div 3 hdg) renum R2 LA

#### **Notice requiring financial information**

s 294 (prev s 278H) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Issue of examination summons**

s 295 (prev s 278I) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Content of examination summons**

s 296 (prev s 278IA) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Service of examination summons**

s 297 (prev s 278IB) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Examination of judgment debtor**

s 298 (prev s 278J) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Orders following examinations**

s 299 (prev s 278K) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Report of certain examinations**

s 300 (prev s 278L) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Subsequent examinations**

s 301 (prev s 278M) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Failure to attend in answer to summons**

s 302 (prev s 278N) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Warrants**

s 303 (prev s 278O) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1995 No 27 s 5

**Police assistance**

s 304 (prev s 278P) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Examination after issue of warrant**

s 305 (prev s 278Q) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Refusal to be examined**

s 306 (prev s 278R) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Registrar may adjourn examination**

s 307 (prev s 278S) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Power of Minister to determine fees**

s 307B ins 1991 No 39 s 10  
om 1994 No 5 s 11

**Instalment orders**

div 19.4 hdg (prev pt 19 div 4 hdg) renum R2 LA

**Instalment orders on application by judgment debtor**

s 308 (prev s 278T) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Instalment orders by agreement**

s 309 (prev s 278U) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1

**Objection by judgment creditor to instalment order**

s 310 (prev s 278V) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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#### **Hearing by court**

s 311 (prev s 278W) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Service of instalment orders**

s 312 (prev s 278X) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Judgment creditor may apply for variation or revocation**

s 313 (prev s 278Y) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Stay of enforcement of judgment**

s 314 (prev s 278Z) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Payment to judgment creditor**

s 315 (prev s 278AA) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Default**

s 316 (prev s 278AB) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Garnishee orders**

div 19.5 hdg (prev pt 19 div 5 hdg) renum R2 LA

#### **Orders on application to registrar**

s 317 (prev s 278AC) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Grounds for refusing orders**

s 318 (prev s 278AD) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Form and effect of orders**

s 319 (prev s 278AE) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1999 No 33 sch

#### **Service of garnishee orders**

s 320 (prev s 278AF) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Stay of garnishee orders attaching earnings**

s 321 (prev s 278AG) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Part only of earnings may be attached**

s 322 (prev s 278AH) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**One order attaching earnings to operate at a time**

s 323 (prev s 278AI) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Limitations on payments under orders attaching earnings**

s 324 (prev s 278AJ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Accounts with authorised deposit-taking institutions**

s 325 (prev s 278AK) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1999 No 33 sch

**Direct crediting—veterans' pensions**

s 326 (prev s 278AL) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1999 No 33 sch

**Payments by garnishees**

s 327 (prev s 278AM) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Time for payment**

s 328 (prev s 278AN) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Notice by garnishee to judgment creditor**

s 329 (prev s 278AO) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1998 No 54 sch

**Application to vary or revoke garnishee order**

s 330 (prev s 278AP) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Application for instalment order**

s 331 (prev s 278AQ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Determination of application**

s 332 (prev s 278AR) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Court may order writ of execution to be issued**

s 333 (prev s 278AS) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**No debts due or accruing**

s 334 (prev s 278AT) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

## Endnotes

### 4 Amendment history

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**Failure to comply with order**

s 335 (prev s 278AU) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Lien or claim of third party on debt**

s 336 (prev s 278AV) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Excess paid by garnishee**

s 337 (prev s 278AW) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1998 No 54 sch

**Reduction of attached debt**

s 338 (prev s 278AX) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Deductions by garnishees**

s 339 (prev s 278AY) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Judgment debtor ceases employment**

s 340 (prev s 278AZ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1998 No 54 sch

**Prejudice to employee**

s 341 (prev s 278BA) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1998 No 54 sch

**Stay of enforcement of judgment**

s 342 (prev s 278BB) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Execution against personal property**

div 19.6 hdg (prev pt 19 div 6 hdg) renum R2 LA

**Issue of writs of execution**

s 343 (prev s 278BC) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Leave to issue required in certain circumstances**

s 344 (prev s 278BD) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
pars renum R7 LA

**Form of writ of execution**

s 345 (prev s 278BE) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Priority and duration of writs**

s 346 (prev s 278BF) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Seizure of property for sale**

s 347 (prev s 278BG) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Seizure of money and things in action**

s 348 (prev s 278BH) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Entry, search and seizure—bailiff's powers**

s 349 (prev s 278BI) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
sub 1998 No 7 s 4

**Safekeeping of property seized**

s 350 (prev s 278BJ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Property seized not abandoned**

s 351 (prev s 278BK) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Removal of property seized**

s 352 (prev s 278BL) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Notice of seizure**

s 353 (prev s 278BM) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Exempt property**

s 354 (prev s 278BN) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Stay of sale of property seized**

s 355 (prev s 278BO) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Payment preventing execution**

s 356 (prev s 278BP) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Suspension of execution by judgment creditor**

s 357 (prev s 278BQ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Agreements to withdraw and re-enter**

s 358 (prev s 278BR) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

## Endnotes

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#### **Deposit to cover costs of execution**

s 359 (prev s 278BS) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Conditions of sale**

s 360 (prev s 278BT) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Time of sale**

s 361 (prev s 278BU) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Postponement**

s 362 (prev s 278BV) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Determining market value**

s 363 (prev s 278BW) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Judgment debtor may challenge market value**

s 364 (prev s 278BWA) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Sale by public auction**

s 365 (prev s 278BX) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Sale by private agreement**

s 366 (prev s 278BY) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Terms about payment**

s 367 (prev s 278BZ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Sale price to be recorded**

s 368 (prev s 278CA) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Purchase by bailiffs or auctioneer prohibited**

s 369 (prev s 278CB) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Auctioneer to account**

s 370 (prev s 278CC) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

#### **Surplus sale proceeds paid to judgment debtor**

s 371 (prev s 278CD) ins 1994 No 61 s 21  
renum 1994 No 61 s 29



**Costs of execution**

s 372 (prev s 278CE) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Payment of amounts raised to registrar**

s 373 (prev s 278CF) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Proceeds of writ**

s 374 (prev s 278CG) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1996 No 26 sch pt 17

**Account**

s 375 (prev s 278CH) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Order for disposal**

s 376 (prev s 278CI) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Property to be returned to judgment debtor**

s 377 (prev s 278CJ) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Separate execution for costs**

s 378 (prev s 278CK) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Interference with seized property etc**

s 379 hdg sub A2004-15 amdt 2.119  
s 379 (prev s 278CL) ins 1994 No 61 s 21  
renum 1994 No 61 s 29  
am 1998 No 54 sch; A2004-15 amdt 2.120, amdt 2.121

**Liability of bailiffs**

s 380 (prev s 278CM) ins 1994 No 61 s 21  
renum 1994 No 61 s 29

**Miscellaneous**

div 19.7 hdg (prev pt 19 div 7 hdg) ins 2000 No 66 sch 1 pt 9  
renum R2 LA

**Enforcement of payment directed by Essential Services Consumer Council**

s 380A ins 2000 No 66 sch 1 pt 9

**Transfer of proceedings from or to Supreme Court**

pt 20 hdg (prev pt 19 hdg) renum 1997 No 94 s 10

## Endnotes

4 Amendment history

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### **Transfer of action from Supreme Court**

s 381 (prev s 279) renum 1994 No 61 s 29

### **Procedure on transfer of action from Supreme Court**

s 382 (prev s 280) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

### **Removal of proceedings into Supreme Court**

s 383 (prev s 281) renum 1994 No 61 s 29

### **Stay of proceedings**

s 384 (prev s 282) renum 1994 No 61 s 29

### **Appeals to Supreme Court**

pt 21 hdg (prev pt 19A hdg) ins 1984 No 76  
renum 1997 No 94 s 10  
am 1997 No 94 sch 2

### **Interpretation for pt 21**

s 385 (prev s 282A) ins 1984 No 76  
am 1985 No 67 sch pt 1  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2

### **Jurisdiction**

s 386 (prev s 282B) ins 1984 No 76  
am 1990 No 5 sch 1  
renum 1994 No 61 s 29

### **Cases in which appeal may be brought**

s 387 (prev s 282C) ins 1984 No 76  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2

### **Appeals—Small Claims Court**

s 387A ins 1997 No 94 sch 2

### **Application for leave to appeal**

s 388 (prev s 282D) ins 1984 No 76  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2

### **Institution of appeal**

s 389 (prev s 282E) ins 1984 No 76  
am 1985 No 67 sch pt 1; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29

### **Substituted service of notice of appeal**

s 390 (prev s 282F) ins 1984 No 76  
renum 1994 No 61 s 29

**Evidence on appeal**

s 391 (prev s 282G) ins 1984 No 76  
renum 1994 No 61 s 29

**Effect of appeal on execution of judgment**

s 392 (prev s 282H) ins 1984 No 76  
am 1986 No 53 s 6  
renum 1994 No 61 s 29

**Powers of Supreme Court on appeal**

s 393 (prev s 282J) ins 1984 No 76  
am 1985 No 67 sch pt 1  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2

**Small Claims Court**

pt 22 hdg ins 1997 No 94 s 6

**Preliminary**

div 22.1 hdg (prev pt 22 div 1 hdg) renum R2 LA

**Definitions for pt 22**

s 394 prev s 394 (prev s 283) renum as s 470 1997 No 94 s 10  
pres s 394 ins 1997 No 94 s 6  
am 1997 No 96 sch 1; 1999 No 66 sch 3; 2001 No 44  
amdt 1.2786, amdt 1.2787; A2004-18 s 28

**Explanatory material in forms etc**

s 394A ins 2001 No 44 amdt 1.2788

**Application of Act to small claims proceedings**

s 395 prev s 395 (prev s 284) renum as s 471  
pres s 395 ins 1997 No 94 s 6  
am 1997 No 94 sch 2

**Establishment and jurisdiction**

div 22.2 hdg (prev pt 22 div 2 hdg) renum R2 LA

**Small Claims Court**

s 396 prev s 396 (prev s 285) renum as s 472  
pres s 396 ins 1997 No 94 s 6  
am 1997 No 94 sch 2

**Referees—appointment**

s 397 prev s 397 (prev s 286) renum as s 473  
pres s 397 ins 1997 No 94 s 6

**Referees—functions**

s 398 prev s 398 (prev s 287) renum as s 474  
pres s 398 ins 1997 No 94 s 6

## Endnotes

### 4 Amendment history

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#### **Referees—oath or affirmation of office**

s 399 prev s 399 (prev s 288) renum as s 475  
pres s 399 ins 1997 No 94 s 6  
am 2001 No 44 amdt 1.2789

#### **Referees—resignation**

s 400 prev s 400 (prev s 289) renum as s 476  
pres s 400 ins 1997 No 94 s 6  
am 1997 No 96 sch 1

#### **Jurisdiction**

s 401 prev s 401 (prev s 290) renum as s 477  
pres s 401 ins 1997 No 94 s 6

#### **\$10 000 limit**

s 402 prev s 402 (prev s 291) renum as s 478  
pres s 402 ins 1997 No 94 s 6  
am 1997 No 94 sch 2; 1999 No 66 sch 3

#### **Commencement of proceedings**

div 22.3 hdg (prev pt 22 div 3 hdg) renum R2 LA

#### **Assistance to members of public**

s 403 prev s 403 (prev s 293) renum as s 479  
pres s 403 ins 1997 No 94 s 6

#### **Originating applications**

s 404 prev s 404 (prev s 294) renum as s 480  
pres s 404 ins 1997 No 94 s 6

#### **Single application for each matter**

s 405 prev s 405 (prev s 295) renum as s 481  
pres s 405 ins 1997 No 94 s 6

#### **Debt declarations**

s 406 prev s 406 (prev s 295A) renum as s 482  
pres s 406 ins 1997 No 94 s 6  
am 1997 No 94 sch 2; 1997 No 96 sch 1

#### **Interest claims**

s 407 prev s 407 (prev s 296) renum as s 483  
pres s 407 ins 1997 No 94 s 6

#### **Service of originating applications**

s 408 prev s 408 (prev s 297) renum as s 484  
pres s 408 ins 1997 No 94 s 6  
am 1997 No 96 sch 1

#### **Amendments**

s 409 prev s 409 (prev s 298) renum as s 485  
pres s 409 ins 1997 No 94 s 6  
am 1997 No 96 sch 1

**Pre-conference procedures**

div 22.4 hdg (prev pt 22 div 4 hdg) renum R2 LA

**Application—common boundaries applications**

s 410 prev s 410 (prev s 299) renum as s 486  
pres s 410 ins 1997 No 94 s 6  
am 1997 No 96 sch 1

**Response**

s 411 prev s 411 (prev s 300) renum as s 487  
pres s 411 ins 1997 No 94 s 6  
am 1997 No 94 sch 2; 1997 No 96 sch 1

**Admission of liability**

s 412 prev s 412 (prev s 300A) renum as s 488  
pres s 412 ins 1997 No 94 s 6

**Admission of liability—payment of money**

s 413 prev s 413 (prev s 301) renum as s 489  
pres s 413 ins 1997 No 94 s 6

**Admission of liability—bonds**

s 414 prev s 414 (prev s 302) renum as s 490  
pres s 414 ins 1997 No 94 s 6

**Admission of liability—acceptance by applicant**

s 415 prev s 415 (prev s 303) renum as s 491  
pres s 415 ins 1997 No 94 s 6

**Contested applications—conferences and inquiries**

s 416 prev s 416 (prev s 304) renum as s 492  
pres s 416 ins 1997 N 94 s 6  
am 1997 No 94 sch 2

**Failure to respond**

s 417 prev s 417 (prev s 305) renum as s 493  
pres s 417 ins 1997 No 94 s 6

**Lapse of applications**

div 22.5 hdg (prev pt 22 div 5 hdg) renum R2 LA

**Lapse of applications after 18 months inactivity**

s 418 prev s 418 (prev s 306) renum as s 494  
pres s 418 ins 1997 No 94 s 6  
am 1997 No 94 sch 2

**Conferences**

div 22.6 hdg (prev pt 22 div 6 hdg) renum R2 LA

## Endnotes

### 4 Amendment history

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#### **Directions for conferences**

s 419 prev s 419 (prev s 306A) renum as s 495  
ins 1997 No 94 s 6  
am 1997 No 94 sch 2

#### **Conference objectives**

s 420 prev s 420 (prev s 307) renum as s 496  
pres s 420 ins 1997 No 94 s 6

#### **Variation of conference fixtures**

s 421 prev s 421 (prev s 307A) renum as s 497  
pres s 421 ins 1997 No 94 s 6

#### **Representation at conferences**

s 422 prev s 422 (prev s 308) renum as s 498  
pres s 422 ins 1997 No 94 s 6

#### **Persons entitled to be present**

s 423 orig s 423 (prev s 309) am 1985 No 67 sch pt 1  
renum 1994 No 61 s 29  
om 1997 No 94 sch 2  
pres s 423 ins 1997 No 94 s 6

#### **Adjournment**

s 424 orig s 424 (prev s 310) am 1985 No 67 sch pt 1  
renum 1994 No 61 s 29  
om 1997 No 94 sch 2  
pres s 424 ins 1997 No 94 s 6

#### **Consent judgments**

s 425 prev s 425 (prev s 311) renum as s 499  
pres s 425 ins 1997 No 94 s 6

#### **Failure of conciliation—direction for inquiry**

s 426 ins 1997 No 94 s 6

#### **Admissibility of conference proceedings in inquiries**

s 427 ins 1997 No 94 s 6

#### **Failure to attend conference**

s 428 ins 1997 No 94 s 6

#### **Inquiries**

div 22.7 hdg (prev pt 22 div 7 hdg) renum R2 LA

#### **General procedure**

subdiv 22.7.1 hdg (prev pt 22 subdiv A hdg) renum R2 LA

#### **Directions for inquiries**

s 429 ins 1997 No 94 s 6

#### **Inquiries—constitution of Small Claims Court**

s 430 ins 1997 No 94 s 6

**Inquiry procedure**

s 431 ins 1997 No 94 s 6

**Investigators**

s 432 ins 1997 No 94 s 6

**Giving evidence by oath or affirmation**

s 433 ins 1997 No 94 s 6

**Representation at inquiries**

s 434 ins 1997 No 94 s 6

**Public nature of inquiries**

s 435 ins 1997 No 94 s 6

**Interlocutory applications**

s 436 ins 1997 No 94 s 6

**Adjournment of inquiry**

s 437 ins 1997 No 94 s 6

**Transfer of small claims proceedings to general jurisdiction of court**

s 438 ins 1997 No 94 s 6

**Transfer of proceedings in general jurisdiction of court to small claims jurisdiction**

s 439 ins 1997 No 94 s 6

**Discontinuance**

s 440 ins 1997 No 94 s 6

**Failure to appear**

s 441 ins 1997 No 94 s 6

**Dismissal for abuse of process**

s 442 ins 1997 No 94 s 6

**Restoration of proceedings**

s 443 ins 1997 No 94 s 6

**Witnesses and evidence**

subdiv 22.7.2 hdg (prev pt 22 subdiv B hdg) renum R2 LA

**Summons**

s 444 ins 1997 No 94 s 6

**Summons to produce**

s 445 ins 1997 No 94 s 6

**Retention of summonsed documents and things**

s 446 ins 1997 No 94 s 6

**Witness fees and expenses**

s 447 ins 1997 No 94 s 6

## Endnotes

### 4 Amendment history

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#### **Enforcement of summons**

s 448 ins 1997 No 94 s 6  
am 1998 No 54 sch

#### **Requirement to answer questions**

s 449 ins 1997 No 94 s 6

#### **Judgments**

subdiv 22.7.3 hdg (prev pt 22 subdiv C hdg) renum R2 LA

#### **Finality of judgments**

s 450 ins 1997 No 94 s 6

#### **Consent judgments**

s 451 ins 1997 No 94 s 6

#### **Form of judgments**

s 452 ins 1997 No 94 s 6  
am 2001 No 44 amdt 1.2790

#### **Counterclaims and set-offs**

s 453 ins 1997 No 94 s 6  
am 1999 No 66 sch 3

#### **Interest up to judgment**

s 454 ins 1997 No 94 s 6

#### **Interest on judgment debts**

s 455 ins 1997 No 94 s 6

#### **Costs**

s 456 ins 1997 No 94 s 6  
am 1999 No 66 sch 3

#### **Orders to perform work**

s 457 ins 1997 No 94 s 6

#### **Orders to perform work—conditions for payment**

s 458 ins 1997 No 94 s 6

#### **Goods orders**

s 459 ins 1997 No 94 s 6

#### **Trespass**

s 460 ins 1997 No 94 s 6

#### **Debt declarations—orders**

s 461 ins 1997 No 94 s 6  
sub A2004-18 s 29

#### **Other orders**

s 462 ins 1997 No 94 s 6



**Enforcement of judgments**

subdiv 22.7.4 hdg (prev pt 22 subdiv D hdg) renum R2 LA

**Application of Act**

s 463 ins 1997 No 94 s 6

**Joint liability**

s 464 ins 1997 No 94 s 6

**Notice—orders made in person's absence**

s 465 ins 1997 No 94 s 6

**Enforcement of orders by executors and administrators**

s 466 ins 1997 No 94 s 6

**Payment of money under judgment**

s 467 ins 1997 No 94 s 6

**Service of documents**

div 22.8 hdg (prev pt 22 div 8 hdg) renum R2 LA

**Service**

s 468 ins 1997 No 94 s 6

**Doubtful service**

s 469 ins 1997 No 94 s 6

**Miscellaneous**

pt 23 hdg (prev pt 20 hdg) renum 1997 No 94 s 10

**Directions as to procedure**

s 470 (prev s 283 and s 394) renum 1994 No 61 s 29; 1997 No 94 s 10

**Approved forms**

s 471 (prev s 284 and s 395) am 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 22  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10  
sub 2001 No 44 amdt 1.2791  
am 2002 No 22 amdts 1.2-1.4  
(7)-(10) exp 12 September 2002 (s 471 (10))

**Headings of court documents**

s 472 (prev s 285 and s 396) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10

**Requirements for documents**

s 473 (prev s 286 and s 397) renum 1994 No 61 s 29; 1997 No 94 s 10

## Endnotes

### 4 Amendment history

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#### **Power of court in relation to scandalous etc documents**

s 474 (prev s 287 and s 398) renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Notice of rejection of documents**

s 475 (prev s 288 and s 399) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No. 94 s 10

#### **Signature of legal practitioner on documents**

s 476 (prev s 289 and s 400) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10  
am 1999 No 66 sch 3

#### **Sealing duplicate documents**

s 477 (prev s 290 and s 401) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Court seals**

s 478 (prev s 291 and s 402) am 1990 No 5 s 6; 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 23  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10  
am 1999 No 66 sch 3; ss renum R7 LA

#### **Magistrate in chambers**

s 479 (prev s 293 and s 403) am 1990 No 5 s 6  
renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Chamber business**

s 480 (prev s 294 and s 404) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Consent orders**

s 481 (prev s 295 and s 405) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Right of appearance**

s 482 (prev s 295A and s 406) ins 1994 No 61 s 24  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2; 1997 No 96 sch 1  
renum 1997 No 94 s 10  
am 1999 No 22 s 28; 2000 No 17 sch 1; [A2003-48 amdt 2.12](#)

#### **Review of decisions of registrar**

s 483 (prev s 296 and s 407) am 1991 No 44 s 7 (2), sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10

**Representation by legal practitioner**

s 484 (prev s 297 and s 408) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1  
renum 1997 No 94 s 10

**Appointment of legal practitioner**

s 485 (prev s 298 and s 409) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1  
renum 1997 No 94 s 10

**Change of legal practitioner**

s 486 (prev s 299 and s 410) am 1990 No 5 s 6  
renum 1994 No 61 s 29  
am 1997 No 96 sch 1  
renum 1997 No 94 s 10

**Time of effect of change etc of legal practitioner**

s 487 (prev s 300 and s 411) renum 1994 No 61 s 29  
am 1997 No 94 sch 2; 1997 No 96 sch 1  
renum 1997 No 94 s 10

**Corporations acting in person**

s 488 (prev s 300A and s 412) ins 1994 No 61 s 25  
renum 1994 No 61 s 29; 1997 No 94 s 10

**Reckoning of time**

s 489 (prev s 301 and s 413) renum 1994 No 61 s 29; 1997 No 94  
s 10

**Extension and abridgment of time**

s 490 (prev s 302 and s 414) renum 1994 No 61 s 29; 1997 No 94  
s 10

**Fixing of times**

s 491 (prev s 303 and s 415) renum 1994 No 61 s 29; 1997 No 94  
s 10

**Irregularity in proceedings**

s 492 (prev s 304 and s 416) renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10

**Restoration of proceedings struck out**

s 493 (prev s 305 and s 417) renum 1994 No 61 s 29; 1997 No 94  
s 10

## Endnotes

### 4 Amendment history

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#### **Certified copies of official records**

s 494 (prev s 306 and s 418) am 1990 No 5 s 6; 1991 No 39 s 9;  
1991 No 44 s 7 (2), sch 1; 1994 No 5 s 9  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10

#### **Records of default judgments**

s 495 (prev s 306A and s 419) ins 1984 No 77  
am 1991 No 39 s 10  
sub 1994 No 5 s 10  
renum 1994 No 61 s 29  
am 1997 No 94 sch 2  
renum 1997 No 94 s 10

#### **Infant plaintiffs**

s 496 (prev s 307 and s 496) am 1990 No 5 s 6  
renum 1994 No 61 s 29; 1997 No 94 s 10

#### **Rule-making power**

s 497 (prev s 307A and s 421) ins 1989 No 38 s 31  
am 1989 No 56 s 3; 1990 No 5 sch 1; 1991 No 106 sch  
renum 1994 No 61 s 29; 1997 No 94 s 10  
sub 2001 No 44 amdt 1.2792  
om 2001 No 81 s 36

#### **Regulation-making power**

s 498 (prev s 308 and s 422) am 1990 No 5 sch 1  
renum 1994 No 61 s 29; 1997 No 94 s 10  
sub 2001 No 44 amdt 1.2792

#### **Application of Magistrates Court Act 1930 and rules**

pt 24 hdg (prev pt 21 hdg) am 1997 No 94 sch 2  
renum 1997 No 94 s 10

#### **Application of former procedural provisions to new proceedings**

s 499 (prev s 311 and s 425) am 1984 No 76; 1985 No 67 sch pt 1;  
1994 No 61 s 26  
renum 1994 No 61 s 29; 1997 No 94 s 10  
table renum R11 LA

#### **Appointment of referees in Small Claims Court**

sch 1 hdg sub 1997 No 94 sch 2  
sch 1 orig sch 1 (prev sch) am 1985 No 67 sch pt 1; 1987 No 13 s 7;  
1990 No 5 sch 1; 1991 No 44 s 7 (2), sch 1; 1994 No 61 s 27;  
1997 No 94 sch 2; 1997 No 96 sch 1; 1999 No 79 s 5 sch 3  
om 2001 No 44 amdt 1.2793  
pres sch 1 (prev sch 3) ins 1997 No 9  
renum 2001 No 44 amdt 1.2794

**Small claims forms**

sch 2 ins 1997 No 94 sch 1  
om 2001 No 44 amdt 1.2793

**Appointment of referees in Small Claims Court**

sch 3 renum as sch 1 2001 No 44 amdt 1.2994

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 106	31 March 1992
2	Act 1993 No 91	31 December 1993
3	Act 1994 No 61	10 April 1995
4	Act 1996 No 26	28 February 1997
5	Act 1998 No 7	1 June 1998
6	Act 2001 No 44	23 November 2001
7	Act 2001 No 90	27 March 2002
8*	Act 2002 No 22	1 July 2002
9	Act 2002 No 22	13 September 2002
10	A2003-2	4 March 2003
11	A2004-15	9 April 2004

**6 Renumbered provisions**

This Act was renumbered under the *Magistrates Court (Enforcement of Judgments) Act 1994*, in R6 (see s 29 ). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R9.

## Endnotes

7 Uncommenced amendments

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### 7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<p><b>Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.9</b></p>
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## Part 2.9 Magistrates Court (Civil Jurisdiction) Act 1982

### [2.12] Section 187 (8) and 482 (6)

*omit*

section 18 (1) or 30 (1)

*substitute*

section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings)

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