



Australian Capital Territory

Supreme Court Rules (Amendment)

Subordinate Law No. 8 of 1997

TABLE OF PROVISIONS

Rule

1. Commencement
2. Principal Rules
3. Saving
4. Interpretation
5. Insertion—
 5. General heading style—First Schedule Forms
6. Substitution—

ORDER 2

COMMENCEMENT OF ACTIONS

Division 1—Procedure on originating application

1. Commencement by originating application
 2. Date of commencement
 3. Oral applications
 4. Form of originating application
 5. Corporate information
 6. Address for service
 7. Time for appearance
 8. Identification of action
 9. Identification of relief sought
-

TABLE OF PROVISIONS—continued

Rule

10. Statements of claim
 11. Claims for debt and liquidated demands
 12. Motor vehicle personal injury claims
 13. Employment personal injury claims
 14. Originating applications with no defendant
 15. Notice to defendants
 16. Filing and sealing of originating applications
 17. Further sealed copies
 18. Authorisation for service
 19. Cause book
 20. Solicitor's declaration as to filing
 21. Directions hearings
 22. Interlocutory hearings
- Division 2—Duration and renewal
of originating applications*
23. Duration of originating applications
 24. Renewal for good cause
 25. Renewal to avoid statute-bar
 26. Endorsement of renewal
- Division 3—Inactive cases*
27. List of Inactive Cases
 28. Entry on List—7 months after commencement of action
 29. Entry on List—4 months after renewal of originating application
 30. Removal from List
 31. Dismissal of action following entry on List

Division 4—Evidence

32. Sealing of originating applications

ORDER 3

**UNCONTESTED ACTIONS—
DEBTS AND LIQUIDATED DEMANDS**

1. Payment of amounts claimed in originating applications
 2. Taxation of costs
 3. Taxation of costs—judgment in default of appearance
7. Substitution—
 1. Defence to claims for debt and liquidated demands
 - 1A. Defences to motor vehicle and employment personal injuries claims
 8. Substitution—
 1. Judgment Book
 9. Substitution
 10. Substitution

TABLE OF PROVISIONS—continued

Rule

- 11. Consequential and formal amendments
- 12. Amendment of Supreme Court Rules (Amendment) (Subordinate Law No. 15 of 1995)

SCHEDULE 1
NEW FORMS 1-5

SCHEDULE 2
NEW FORM 9

SCHEDULE 3
CONSEQUENTIAL AND FORMAL AMENDMENTS



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 8 of 1997²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 14 April 1997.

JEFFREY MILES
Chief Justice

J F GALLOP
Judge

T J HIGGINS
Judge

A G TOWILL
Registrar

Commencement

1. These Rules commence on 1 July 1997.

Principal Rules

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

Saving

3. The Principal Rules as in force immediately before the date of commencement of these Rules continue to apply in relation to proceedings commenced in the Court before that date.

Interpretation

4. Rule 4 of Order 1 of the Principal Rules is amended—
 - (a) by omitting from the definition of “Cause Book” in subrule (1) “Order 6, rule 5” and substituting “Order 2, rule 19”;
 - (b) by omitting from subrule (1) the definitions of “action” and “file” and substituting the following definitions:
 - “ ‘action’ means any proceeding other than a criminal proceeding or an appellate proceeding;
 - ‘file’, in relation to a document, means to place the document on the Court file;”;
 - (c) by omitting from subrule (1) the definitions of “Crown Solicitor” and “originating summons”; and
 - (d) by inserting in subrule (1) the following definitions:
 - “ ‘criminal proceeding’ includes an application in relation to bail;
 - ‘motor vehicle’ means a motor vehicle within the meaning of subsection 4 (1) of the *Motor Traffic Act 1936*;
 - ‘negligence’, in relation to an employer, means—
 - (a) the negligence of the employer;
 - (b) the negligence of another person for whose negligence the employer is liable; or
 - (c) a breach of statutory duty by the employer or by another person for whose breach of statutory duty the employer is liable;

‘originating application’ means an application under Order 2 for the commencement of an action;”.

Insertion

5. After rule 4 of Order 1 of the Principal Rules the following rule is inserted in Order 1:

General heading style—First Schedule Forms

“5. A document made out in accordance with a Form in the First Schedule shall be headed in the manner set out in Form 1 of that Schedule, unless otherwise indicated in the Form.”.

Substitution

6. Orders 2 to 7 (inclusive) of the Principal Rules are repealed and the following Orders substituted:

“ORDER 2

“COMMENCEMENT OF ACTIONS

“Division 1—Procedure on originating application

Commencement by originating application

“1. All actions shall be commenced by the filing of an originating application pursuant to this Order, unless otherwise provided by these Rules or any other law of the Territory.

Date of commencement

“2. (1) Where an originating application is filed for the commencement of an action, the action commences on the date the application was first lodged for filing (whether or not it is renewed under Division 3).

“(2) Where an action is commenced by oral application under subrule 3 (1), the action commences on the date of the oral application.

Oral applications

“3. (1) An action may be commenced by oral application to the Court if the Court is satisfied that it is necessary to commence it in this way.

“(2) Where an action is commenced by oral application, the plaintiff shall lodge an originating application in writing in the same terms as the oral application for filing pursuant to this Order as soon as practicable afterwards.

Form of originating application

“4. (1) An originating application shall be in accordance with Form 2 in the First Schedule.

“(2) An originating application shall identify the parties to the action.

“(3) For the purposes of an originating application—

- (a) the party claiming relief (including a relator) shall be referred to as the plaintiff; and
- (b) any other party entitled to be heard shall be referred to as a defendant.

“(4) An originating application shall include a statement of the following:

- (a) if the plaintiff is a natural person—the full name and occupation of the plaintiff, together with his or her full residential or business address;
- (b) if the plaintiff is a body corporate—the information specified under rule 5;
- (c) if the plaintiff sues, or the defendant is sued, in a representative capacity—that capacity;
- (d) if the plaintiff sues by a solicitor—
 - (i) the full name, address and telephone number of the solicitor; and
 - (ii) the full name, address and telephone number of any other solicitor acting as agent of the first-mentioned solicitor in relation to the action;
- (e) in accordance with rule 6—an address for the service of documents related to the proceedings on the application;
- (f) insofar as the plaintiff knows—
 - (i) if the defendant is a natural person—the full name and occupation of the defendant, together with his or her residential or business address;

- (ii) if the plaintiff knows the defendant to be a natural person, but does not know the full name of the defendant—the sex of the defendant; and
- (iii) if the defendant is a body corporate—the information specified under rule 5;
- (g) the relevant time under rule 7 for the defendant to enter an appearance;
- (h) the particulars of the action specified under rule 8;
- (j) the particulars of the relief sought specified under rule 9.

“(5) An originating application shall be signed by the plaintiff, or by the plaintiff’s solicitor.

Corporate information

“5. (1) For the purposes of paragraph 4 (4) (b) and subparagraph 4 (4) (f) (iii), an originating application shall specify the following information about a body corporate:

- (a) if the body is a company—the company’s Australian Company Number and the address of its registered office;
- (b) if the body is a registered body within the meaning of the Corporations Law—the body’s Australian Registered Body Number and the address of its registered office in Australia;
- (c) if the body is an association incorporated under the *Associations Incorporation Act 1991* or a corresponding law of a State or another Territory—the address of the association’s registered office or public officer;
- (d) if the body is a building society or a foreign building society, within the meaning of the Financial Institutions (ACT) Code—the address of its registered office;
- (e) if the body is a credit union or a foreign credit union, within the meaning of the Financial Institutions (ACT) Code—the address of its registered office;
- (f) if the body is a society registered under the *Co-operative Societies Act 1939*—the address of the society’s registered office;
- (g) if the body is a corporation within the meaning of the *Unit Titles Act 1970*—the address of the corporation.

“(2) In this rule—

‘Financial Institutions (ACT) Code’ means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*.

Address for service

“6. (1) If a solicitor acts for a plaintiff, the address for service included in the originating application shall be—

- (a) if the place of business of the plaintiff’s solicitor is within the Territory—the address of that place; or
- (b) in any other case—the address of a place within the Territory.

“(2) If a plaintiff sues in person, the address for service included in the originating application shall be—

- (a) if the plaintiff’s residence or place of business is within the Territory—the address of that residence or place; or
- (b) in any other case—the address of a place within the Territory.

“(3) An originating application may include in the address for service—

- (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory; or
- (b) a facsimile machine number.

“(4) The Registrar may refuse to file an originating application if the address for service included in the application is manifestly inconvenient for the defendant or for the Court, notwithstanding whether the address is otherwise in accordance with this rule.

Time for appearance

“7. An originating application shall specify a time after service within which any defendant is required to enter an appearance, as follows:

- (a) if the *Service and Execution of Process Act 1992* of the Commonwealth applies—as provided under section 17 of that Act;
- (b) if leave is to be sought under Order 12 for the application to be served outside Australia—the time sought to be included in the relevant order under rule 6 of Order 12;
- (c) in any other case—8 days.

Identification of action

“8. (1) An originating application shall identify each cause of action sufficiently for the purposes of determining the relevant limitation period under the *Limitation Act 1985*, or under any other applicable law.

“(2) If relief is claimed under a law of the Territory (other than the common law) or a law of the Commonwealth, a State or another Territory, the originating application shall identify the relevant provision of the law.

“(3) The originating application in an action for defamation shall identify each relevant publication.

“(4) An originating application including a claim for the determination or direction of the Court on any question shall include a statement of the question.

Identification of relief sought

“9. (1) An originating application shall specify the relief claimed in respect of each cause of action.

“(2) An originating application shall specify any claim for exemplary damages.

“(3) An originating application shall specify any claim for the taking of an account.

“(4) Costs need not be specifically claimed in an originating application.

“(5) A claim for interlocutory relief shall be specified separately in an originating application.

“(6) An originating application may state whether the plaintiff intends to apply for summary judgment.

“(7) An originating application shall state whether a statement of claim is attached.

“(8) If an action includes a claim for debt or a liquidated demand, a statement under rule 11 shall be attached to the originating application.

“(9) If an action includes a claim for damages for death or bodily injury arising out of the use of a motor vehicle, a statement under rule 12 shall be attached to the originating application.

“(10) If an action includes a claim for damages for death or bodily injury arising out of an employer’s negligence, a statement under rule 13 shall be attached to the originating application.

Statements of claim

“10. (1) A statement of claim shall accompany an originating application in the case of the following claims:

- (a) a claim for debt or a liquidated demand;
- (b) a claim for damages in tort other than—
 - (i) a claim for damages for death or bodily injury arising out of the use of a motor vehicle; or
 - (ii) a claim for damages for death or bodily injury arising out of the negligence of an employer;
- (c) a claim alleging fraud;
- (d) a claim in respect of a trust (other than an express trust wholly in writing).

“(2) A statement of claim shall not accompany an originating application in the case of the following claims:

- (a) a claim for damages for death or bodily injury arising out of the use of a motor vehicle;
- (b) a claim for damages for death or bodily injury arising out of the negligence of an employer.

“(3) A statement of claim may accompany an originating application in any other case.

Claims for debt and liquidated demands

“11. (1) An originating application which includes a claim for debt or a liquidated demand shall have attached a statement in accordance with Form 3 in the First Schedule—

- (a) of the amount of that debt or demand;
- (b) if interest is claimed—
 - (i) of the rate of interest claimed to be payable as of right (whether by virtue of an agreement or otherwise); or
 - (ii) that the plaintiff applies for a specified order for interest (or a lump sum in lieu of interest) to be included in the sum for which judgment is given;
- (c) whether taxed costs are claimed;
- (d) if taxed costs are not claimed—of the amount claimed for costs and disbursements; and

- (e) to the effect that proceedings on the claim will be stayed under Order 3 upon payment, within the time allowed for appearance, of the debt or demand, together with any amount allowed under that Order for interest and costs.

“(2) In this rule—

‘order’, in relation to a statement under subparagraph (1) (b) (ii), means—

- (a) an order under section 69 of the Act; or
- (b) an order under another law specified in the statement.

Motor vehicle personal injury claims

“12. An originating application which includes a claim for damages for death or bodily injury arising out of the use of a motor vehicle shall have attached a statement in accordance with Form 4 in the First Schedule of the following:

- (a) the time, date, place and circumstances of the use of the motor vehicle (including, where possible, the registration particulars of all vehicles involved);
- (b) precise particulars of negligence;
- (c) the nature and extent of the injuries and disabilities resulting from the use of the motor vehicle, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;
- (d) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;
- (e) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the use of the motor vehicle.

Employment personal injury claims

“13. An originating application which includes a claim for damages for death or bodily injury arising out of an employer’s negligence shall have attached a statement in accordance with Form 5 in the First Schedule of the following:

- (a) the time, date, place and circumstances of the negligence, including the acts or omissions constituting the negligence;
- (b) if the negligence was that of a person other than the defendant, for whose negligence the defendant is vicariously liable—particulars of the person, and particulars of the claim for vicarious liability;
- (c) if the cause of action is based upon a breach of statutory duty—particulars of the statutory provision and a precise statement of the acts or omissions constituting the breach;
- (d) the nature and extent of the injuries and disabilities resulting from the acts constituting the negligence, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;
- (e) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;
- (f) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the acts constituting the negligence.

Originating applications with no defendant

“14. (1) An originating application in relation to which there is no defendant shall be accompanied by an affidavit setting out evidence in relation to the claim for relief.

“(2) On filing an originating application in relation to which there is no defendant, the Registrar shall provide a hearing date to the plaintiff.

Notice to defendants

“15. Where there is a defendant to an action, the originating application shall include a statement to the effect that the action may be heard, and the defendant may become liable to suffer judgment or an order against the defendant, unless the defendant enters an appearance in the Registrar’s office within the time specified in the application.

Filing and sealing of originating applications

“16. (1) On filing an originating application the Registrar shall seal the application and a sufficient number of copies for service and proof of service.

“(2) The Registrar shall ensure that each copy sealed under subrule (1) is endorsed with—

- (a) the distinguishing number assigned to the relevant proceeding; and
- (b) the date on which—
 - (i) the application was first lodged for filing; or
 - (ii) if the application was commenced orally—the oral application was made.

Further sealed copies

“17. (1) At the request of the plaintiff at any time after an originating application is filed, the Registrar may seal a further copy or copies of the application, if satisfied that it is necessary to do so.

“(2) The Registrar shall ensure that each copy sealed under subrule (1) is endorsed with—

- (a) the distinguishing number assigned to the proceeding;
- (b) the date on which—
 - (i) the application was first lodged for filing; or
 - (ii) if the application was commenced orally—the oral application was made; and
- (c) the time after service within which the defendant is required to enter an appearance.

Authorisation for service

“18. If sealed under subrule 16 (1) or 17 (1), a copy of an originating application is duly authorised for the purpose of service under these Rules, or for any other purpose for which an originating application is required to be produced.

Cause book

“19. (1) The Registrar shall maintain a Cause Book for the purposes of these Rules.

“(2) The Cause Book may be maintained in electronic form.

“(3) The Cause Book shall be maintained in accordance with the directions of the Court.

- “(4) The Registrar shall record in the Cause Book—
- (a) the date, and a distinguishing number, of each originating application filed; and
 - (b) such other information about each originating application as the Registrar or the Court directs.

Solicitor’s declaration as to filing

“20. Where it appears from an originating application that the applicant sues by a solicitor—

- (a) on the written request of a defendant to the relevant action, the solicitor shall give the defendant a written declaration of whether the application was filed by him or her; and
- (b) if the solicitor declares that he or she did not file the application—on the application of the defendant, the Court may stay the proceeding.

Directions hearings

“21. Where, under Order 13, a defendant enters an appearance to an originating application, the Registrar shall appoint a date for a directions hearing, except in the following cases:

- (a) a claim for debt or a liquidated demand;
- (b) a claim for damages for death or bodily injury;
- (c) an application for interpleader under Order 59.

Interlocutory hearings

“22. (1) Where a directions hearing is appointed in relation to a claim in an originating application, any claim for interlocutory relief relevant to that claim and included in the application shall be set down for hearing at the time of the directions hearing, unless the Registrar considers that an earlier date should be set down for reasons of urgency.

“(2) On the hearing of a claim for interlocutory relief, the action is to be taken to be before the Court for directions as on a directions hearing.

***“Division 2—Duration and renewal
of originating applications***

Duration of originating applications

“23. An originating application remains in force for 6 months after it commences, subject to this Division.

Renewal for good cause

“24. (1) If a defendant in an action is not served with the originating application, the plaintiff may apply for its renewal within 6 months after the action commences.

“(2) If an originating application has been renewed or further renewed under this rule, and a defendant in the action is not served with the application, the plaintiff may apply for its further renewal within 3 months after the application is renewed or further renewed.

“(3) On application under subrule (1) or (2), the Court may renew or further renew the originating application for such period, not exceeding 3 months, as it thinks fit, if satisfied that—

- (a) reasonable efforts have been made to locate the defendant; or
- (b) there is some other good cause for renewing or further renewing the originating application.

Renewal to avoid statute-bar

“25. (1) If an action is entered into the List of Inactive Cases under rule 28 or 29, the plaintiff may apply for the renewal of the originating application at any time prior to its dismissal under rule 31 for want of prosecution.

“(2) On application under subrule (1), the Court shall renew or further renew the originating application for such period, not exceeding 3 months, as it thinks fit, if satisfied that—

- (a) the commencement of fresh proceedings in the same action would be statute-barred; and
- (b) there is good cause for such renewal or further renewal.

Endorsement of renewal

“26. If the Court makes an order under this Division for the renewal (or further renewal) of an originating application, the application shall be—

- (a) endorsed in the following form:
‘Renewed under [rule 24 *or* rule 25] of Order 2 by order made on [date] by [Judge/Registrar]’; and
- (b) sealed by the Registrar.

“Division 3—Inactive cases

List of Inactive Cases

“27. (1) The Registrar shall maintain a List of Inactive Cases.

“(2) The List of Inactive Cases may be maintained in electronic form.

Entry on List—7 months after commencement of action

“28. (1) The Registrar shall enter an action in the List of Inactive Cases

7 months after the date of its commencement, where—

- (a) no application has been made for renewal under Division 2, or such an application has been refused;
- (b) no appearance has been entered for any defendant; and
- (c) the plaintiff has not applied to the Court to proceed upon default of appearance under Order 14.

“(2) If paragraphs (1) (a), (b) and (c) apply to an action 6 months after the date of its commencement, the Registrar shall give notice to the plaintiff of his or her intention to enter the action in the List of Inactive Cases if those paragraphs continue to apply to the action 7 months after the date of its commencement.

“(3) The Registrar shall enter an action in the List of Inactive Cases if—

- (a) an application is made for renewal within 7 months after the date of commencement of the action;
- (b) the application is refused after that period has elapsed; and
- (c) at the time of refusal—
 - (i) no appearance had been entered for any defendant; and
 - (ii) the plaintiff had not applied to the Court to proceed upon default of appearance under Order 14.

Entry on List—4 months after renewal of originating application

“29. (1) If an originating application is renewed, the Registrar shall enter the action in the List of Inactive Cases 4 months after the date of renewal, where—

- (a) no application has been made for its further renewal under Division 2, or such an application has been refused;
- (b) no appearance has been entered for any defendant; and

- (c) the plaintiff has not applied to the Court to proceed upon default of appearance under Order 14.

“(2) If paragraphs (1) (a), (b) and (c) apply to an action 3 months after the date of its renewal, the Registrar shall give notice to the plaintiff of his or her intention to enter the action in the List of Inactive Cases if those paragraphs continue to apply to the action 4 months after the date of its renewal.

“(3) The Registrar shall enter an action in the List of Inactive Cases if—

- (a) the originating application is renewed under Division 2;
- (b) an application for further renewal is made within 4 months after the date of that renewal;
- (c) the application for further renewal is refused after that period has elapsed; and
- (d) at the time of refusal—
 - (i) no appearance had been entered for any defendant; and
 - (ii) the plaintiff had not applied to the Court to proceed upon default of appearance under Order 14.

“(4) In this rule—

‘renewal’ includes further renewal.

Removal from List

“30. The Registrar shall remove an action from the List of Inactive Cases if, within 2 months after the date of its entry on the List—

- (a) the originating application is renewed under rule 25;
- (b) an appearance is filed by the defendant;
- (c) the plaintiff applies successfully to the Court to proceed upon default of appearance under Order 14; or
- (d) the Court orders its removal.

Dismissal of action following entry on List

“31. (1) If an action remains on the List of Inactive Cases 2 months after the date of its entry on the List, the action is to be taken to be dismissed for want of prosecution.

- “(2) If an action is taken to be dismissed under subrule (1)—
- (a) that dismissal is no bar to the commencement of fresh proceedings in the same action by the plaintiff; and
 - (b) the Court may reinstate the action in special circumstances.

“Division 4—Evidence

Sealing of originating applications

“32. (1) The production of an originating application bearing the imprint of the seal of the Court under rule 16 or 17 is sufficient evidence of—

- (a) the sealing of the application on the date indicated on the imprint; and
- (b) the application’s being first lodged for filing, or the making of the application orally, as the case may be, on the date endorsed on the application.

“(2) The production of an originating application bearing the imprint of the seal of the Court under rule 26 is sufficient evidence of the sealing and renewal of the application on the date indicated on the imprint.

“ORDER 3

**“UNCONTESTED ACTIONS—
DEBTS AND LIQUIDATED DEMANDS**

Payment of amounts claimed in originating applications

- “1. Where—
- (a) an originating application consists solely of a claim for debt or a liquidated demand;
 - (b) the application includes a statement under rule 11 of Order 2; and
 - (c) the defendant pays the plaintiff the amount claimed, together with any amounts specified for interest and costs, within the time allowed for appearance;

all further proceedings in the action shall be stayed except taxation of costs and execution to recover costs.

Taxation of costs

“2. Where rule 1 applies, the defendant may require costs to be taxed if—

- (a) more than \$619 is claimed in the originating application for costs and disbursements;
- (b) the plaintiff claims taxed costs; or
- (c) the action could properly have been brought in the Magistrates Court.

Taxation of costs—judgment in default of appearance

“3. (1) This rule applies where—

- (a) an originating application consists solely of a claim for debt or a liquidated demand;
- (b) the application includes a statement under rule 11 of Order 2; and
- (c) judgment is entered against the defendant in default of appearance.

“(2) Where this rule applies—

- (a) subject to rule 7A of Order 65, costs shall be allowed without taxation of not more than \$684 for costs and disbursements, together with an additional amount for fees properly paid for service of the application; and
- (b) a claim for more than \$684 for costs and disbursements (other than service fees) shall be subject to taxation.”.

Substitution

7. Rule 1 of Order 25 of the Principal Rules is repealed and the following rules are substituted:

Defence to claims for debt and liquidated demands

“1. (1) A defence to a claim for debt or a liquidated demand shall not merely deny the debt.

“(2) A defence to a claim for debt by way of denial shall deny such matters of fact from which the liability of the defendant is alleged to arise as are disputed.

Defences to motor vehicle and employment personal injuries claims

“1A. (1) This rule applies to a defence to an originating application where the application is accompanied by a statement under rule 12 or 13 of Order 2.

“(2) A defence to which this rule applies shall specifically admit or deny every material allegation of fact in the originating application and statement, including any allegation by way of particulars.

“(3) Where this rule applies—

- (a) the defendant shall not plead a joinder of issue on any question of fact;
- (b) if no admission or denial of an allegation in the originating application or statement is specifically pleaded in the defence, the allegation is to be taken to be admitted; and
- (c) an allegation in the defence that the defendant does not know and therefore cannot admit a fact alleged in the originating application or statement is to be taken to be a denial.

“(4) Where this rule applies and the defendant wishes to prove a version of facts different from that alleged in the originating application or statement, the defendant shall plead that version in the defence.

“(5) In a defence to which this rule applies, the defendant shall plead every ground of defence to be relied upon, together with the facts necessary to establish each such ground.”.

Substitution

8. Rule 1 of Order 42 of the Principal Rules is repealed and the following rule substituted:

Judgment Book

“1. (1) The Registrar shall maintain a Judgment Book for the purposes of these Rules.

“(2) The Judgment Book may be maintained in electronic form.

“(3) Each judgment shall be entered by the Registrar in the Judgment Book in accordance with the applicable form.”.

Substitution

9. Forms 1 to 7 (inclusive) in the First Schedule to the Principal Rules are omitted and the Forms in Schedule 1 to these Rules substituted.

Substitution

10. Forms 9 and 10 in the First Schedule to the Principal Rules are omitted and the Form in Schedule 2 to these Rules is substituted.

Consequential and formal amendments

11. The Principal Rules are amended as set out in Schedule 3.

Amendment of Supreme Court Rules (Amendment) (Subordinate Law No. 15 of 1995)

12. Rule 13 of Subordinate Law No. 15 of 1995 is amended by omitting from the new paragraph 4 (2) (b) of Order 84 of the Principal Rules that is to be inserted by that rule “a writ of summons or an originating summons” and substituting “an originating application”.

SCHEDULE 1
NEW FORMS 1-5

Rule 9

FORM 1

O. 1 r. 5

GENERAL HEADING STYLE

FORM [*Number of particular form*]

AUSTRALIAN CAPITAL TERRITORY

[*Title of particular form*]

In the Supreme Court
of the Australian Capital Territory
No. of [*year*]

[*name*]

Plaintiff

[*name(s)*]

Defendant(s)*

* Strike out where inapplicable.

SCHEDULE 1—continued

FORM 2
ORIGINATING APPLICATION
[Heading as in Form 1]

O. 2 r. 4

Application is hereby made to the Court for the plaintiff, against the defendant (if any), and in the action, set out below.

Plaintiff¹

If the plaintiff is a natural person—

Full name:
Occupation:
Residential*/Business* address:

*If the plaintiff is a body corporate—*²

Name:
Australian Company Number*/Australian Registered Body Number*:
Type of body:
Address:

Representative capacity in which plaintiff sues:*

If the plaintiff is represented by a solicitor—

Solicitor's full name:
Solicitor's full business address:
Solicitor's telephone no.:
Name, address & telephone no. of agent solicitor:*

Service of documents—³

Address for service:
Australian Document Exchange Box No.:*
Facsimile machine no.:*

Defendant (insofar as known)*

If the defendant is a natural person—

Full name:
If the defendant's name is unknown to plaintiff—
Defendant's sex:

Occupation:
Residential*/Business* address:

*If the defendant is a body corporate—*⁴

Name:
Australian Company Number*/Australian Registered Body Number*:
Type of body:
Address:

Representative capacity in which defendant is sued:*

Action

Nature of action:⁵

Relief claimed:⁶

Interlocutory relief claimed:*

Summary judgment [is* / is not*] to be applied for.

Supreme Court No. 8, 1997
SCHEDULE 1—continued

Statement of claim: [Attached* / Not attached*].⁷
Other attachments—*

Debt or liquidated demand:*

A Form 3 statement is attached.⁸

Motor vehicle personal injury claim:*

A Form 4 statement is attached.⁹

Employment personal injury claim:*

A Form 5 statement is attached.¹⁰

No defendant to action:*

An affidavit of evidence is attached.

Appearance*

Time within which defendant is required to appear:¹¹

Notice to defendant

If you do not enter an appearance in the Registrar's office within the time specified here—

- **proceedings in this action may be heard in your absence; and**
- **you may become liable to suffer judgment or an order against you.**

Date:

Signature of plaintiff*/plaintiff's solicitor*:

* Strike out where inapplicable.

NOTES

¹ In the case of a relator action, include particulars of relator here.

² See Order 2, rule 5.

³ See Order 2, rule 6.

⁴ See Order 2, rule 5.

⁵ See Order 2, rule 8.

⁶ See Order 2, rule 9.

⁷ See Order 2, rule 10.

⁸ See Order 2, rule 11 and Form 3.

⁹ See Order 2, rule 12 and Form 4. If the claim involves a motor vehicle accident in the course of employment, it is necessary to complete both Form 4 and Form 5.

¹⁰ See Order 2, rule 13 and Form 5. If the claim involves a motor vehicle accident in the course of employment, it is necessary to complete both Form 4 and Form 5.

¹¹ See Order 2, rule 7.

SCHEDULE 1—continued

FORM 3

O. 2 r. 11

CLAIM FOR DEBT OR LIQUIDATED DEMAND
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION

[Heading as in Form 1]

In an originating application dated [date], the plaintiff claims for debt*/makes a liquidated demand* as follows:

- The amount claimed is \$.
- *If interest is claimed*—details of interest claimed are as follows:¹
- Taxed costs [are* / are not*] claimed.
- *If taxed costs are not claimed*—
the amount claimed for costs and disbursements is \$.*

Notice to defendant

Proceedings on this claim will be stayed (under Order 3 of the Rules) if you pay—

- **the amount claimed; and**
- **any amount allowed for interest and costs.**

Date:

Signature of plaintiff*/plaintiff's solicitor*:

* Strike out where inapplicable.

NOTES

¹ See Order 2, paragraph 11 (1) (b).

SCHEDULE 1—continued

FORM 4

O. 2 r. 12

MOTOR VEHICLE PERSONAL INJURY CLAIM
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION

[*Heading as in Form 1*]

In an originating application dated [*date*], the plaintiff claims damages for death or bodily injury in relation to the use of a motor vehicle.

Details of that claim are as follows:

- Time, date, place and circumstances of the use of the motor vehicle (including, where possible, registration details of all vehicles involved):
 - Precise particulars of the defendant's negligence:
 - Injuries and disabilities suffered by the plaintiff:¹
 - Plaintiff's health professionals:²
 - Nature of claims for past or future economic loss:*
- If a claim is made for economic loss—the name and address of each employer of the plaintiff during a reasonable period before and since the use of the motor vehicle:**

Date:

Signature of plaintiff*/plaintiff's solicitor*:

* Strike out where inapplicable.

NOTES

¹ See Order 2, paragraph 12 (c).

² See Order 2, paragraph 12 (d).

SCHEDULE 1—continued

FORM 5

O. 2 r. 13

EMPLOYMENT PERSONAL INJURY CLAIM
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION

[Heading as in Form 1]

In an originating application dated [date], the plaintiff claims damages for death or bodily injury in relation to an employer's negligence.

Details of that claim are as follows:

- Time, date, place, circumstances and acts or omissions constituting negligence:
 - *If the claim is based on the defendant's vicarious liability—**
 - particulars of any person for whose negligence the defendant is vicariously liable:
 - particulars of the claim for vicarious liability:
 - *If the action is based on a breach of statutory duty—**
 - particulars of the statutory provision:
 - acts or omissions constituting the breach:
 - Injuries and disabilities suffered by the plaintiff:¹
 - Plaintiff's health professionals:²
 - Nature of claims for past or future economic loss:*
- If a claim is made for economic loss—the name and address of each employer of the plaintiff during a reasonable period before and since the acts constituting the negligence:**

Date:

Signature of plaintiff*/plaintiff's solicitor*:

* Strike out where inapplicable.

NOTES

¹ See Order 2, paragraph 13 (d).

² See Order 2, paragraph 13 (e).

**SCHEDULE 2
NEW FORM 9**

Rule 10

FORM 9

O. 13 r. 2

MEMORANDUM OF APPEARANCE

[*Heading as in Form 1*]

1. The defendant¹ set out below appears in this action.
2. Particulars of the defendant, the defendant's solicitor* and the defendant's address for service are as set out below.
3. In an action for the recovery of land, note the particulars set out below.² *
4. The defendant does* / does not* submit to the orders of the Court, except as to costs.³

Particulars of defendant

Full name:

If the particulars of the defendant set out in the originating application are incorrect—

The correct particulars are as follows:

If the defendant is represented by a solicitor—

Solicitor's full name:

Solicitor's full business address:

Solicitor's telephone no.:

Name, address & telephone no. of agent solicitor:*

Service of documents—

Address for service:⁴

Australian Document Exchange Box No.:*

Facsimile machine no.:*

Particulars in an action for the recovery of land*

The defendant appears in the capacity of landlord of the property:*

The defence is limited to the following part of the property:⁵*

Date:

Signature of defendant*/defendant's solicitor*:

* Strike out where inapplicable.

NOTES

- ¹ A single memorandum of appearance may be filed for a number of defendants appearing by the same solicitor—see Order 13, rule 9.
- ² In an action for the recovery of land, "defendant" includes a person given leave to appear under Order 13, rule 12.
- ³ See Order 13, subrules 2 (2)-(5).
- ⁴ See Order 13, rule 4.
- ⁵ See Order 13, rule 15.

SCHEDULE 3

Rule 11

CONSEQUENTIAL AND FORMAL AMENDMENTS

Order 8 (heading)—

Omit the heading, substitute the following heading:

“ORDER 8

REPRESENTATION BY SOLICITORS”.

Order 8, Division 1—

Repeal the Division, substitute the following rule:

Right of proceeding in Court

“1. (1) A person may proceed in Court by solicitor or in person, subject to this rule.

“(2) A person under a disability shall proceed by a solicitor.

“(3) A corporation shall proceed in the Court by a solicitor unless the Court grants leave for an officer of the corporation to represent the corporation.

“(4) A relator shall proceed by a solicitor.

“(5) A solicitor shall act for a relator only if the relator has given the solicitor written authority to act in the proceedings, and the authority is filed in the Court.”.

Order 8, Division 2 (heading)—

Omit the heading.

Order 8, subrule 6 (1)—

(a) Omit “the provisions of”.

(b) Omit “accordingly—”, substitute “accordingly”.

Order 8, subrule 6 (1A)—

Omit “subrule (3)”, substitute “paragraph (2) (a)”.

Order 8, rule 7—

Repeal the rule, substitute the following rule:

SCHEDULE 3—continued

Address for service

“7. Rule 6 of Order 2 applies in relation to an address for service referred to in this Order.”.

Order 9—

Repeal the Order.

Order 10, rules 1, 2 and 2A—

Repeal the rules, substitute the following rules:

Acceptance of service of originating application by defendant’s solicitor

“1. Where the solicitor for a defendant endorses on the originating application a statement that the solicitor—

- (a) accepts service of the application on behalf of the defendant; and
- (b) undertakes to enter an appearance to the action;

the application is to be taken to be duly served on the defendant at the time of the endorsement.

Entry of appearance as sufficient proof of service

“2. Where an appearance to an action has been entered for a defendant, the originating application is to be taken to have been duly served on the defendant on the day of the appearance, without any proof of service of the application.

Personal service of applications

“2A. An originating application shall be served personally unless otherwise prescribed by a law of the Territory.”.

Order 10, rules 4 and 5—

Repeal the rules, substitute the following rules:

Infant defendant

“4. Service on an infant defendant may be effected by service—

- (a) on a parent or guardian of the infant;
- (b) if an infant has neither parent nor guardian—on a person who is responsible for the care of the infant, or with whom the infant resides; or

SCHEDULE 3—continued

(c) if the Court so orders—on the infant;
unless the Court orders otherwise.

Defendant otherwise under a disability

“5. Service on a defendant under a disability, other than an infant, may be effected by service—

- (a) on a person who is responsible for the care of the defendant; or
- (b) on a person with whom the defendant resides;

unless the Court orders otherwise.”.

Order 10, rule 7—

- (a) Omit “a writ of summons”, substitute “an originating application”.
- (b) Omit “writ” (last occurring), substitute “application”.

Order 10, rule 8—

Repeal the rule, substitute the following rule:

Plaintiff unable to be found

“8. If a plaintiff sues in person, and no person is able to be found at the address for service specified by the plaintiff in the originating application, any process in the action may be served on the plaintiff by leaving a copy at that address.”.

Order 12, rule 2—

Omit all the words from and including “Service” to and including “whenever,” substitute “On application under rule 4, the Court may allow service of an originating application outside the Commonwealth if”.

Order 12, paragraph 3 (1) (b)—

Omit “any writ of summons in any such action”, substitute “an originating application in such an action”.

Order 12, subrules 3 (2) and (3)—

Omit the subrules, substitute the following subrules:

“(2) Service of an originating application in accordance with paragraph (1) (b) is to be taken to be good and effective service wherever the relevant parties are resident.

SCHEDULE 3—continued

“(3) Where paragraph (1) (a) applies in relation to an action, in the absence of an agreement about service under paragraph (1) (b), on application under rule 4 the Court may allow service of an originating application in that action out of the Commonwealth.”.

Order 12, rule 4—

Omit “Every application for leave to serve a writ of summons, or notice thereof, out of the Commonwealth,”, substitute “An application for leave to serve an originating application out of the Commonwealth”.

Order 12, paragraph 4 (b)—

Add at the end “and”.

Order 12, paragraph 4 (c)—

Omit the paragraph.

Order 12, rule 5—

Repeal the rule.

Order 12, rule 6—

- (a) Omit “Any order giving leave to serve a writ of summons, or notice thereof,”, substitute “An order for the service of an originating application”.
- (b) Omit “or notice” (last occurring).
- (c) Omit “writ is to be served or the notice given”, substitute “application is to be served”.

Order 12, rules 7, 8 and 9—

Repeal the rules, substitute the following rule:

Application of Order to other originating process

“9. This Order applies, with necessary changes, to the service outside the Commonwealth of any originating process of the Court other than an originating application.”.

Order 12, rule 10—

- (a) Before “Where” insert “(1)”.
- (b) Omit “any writ of summons, originating summons, notice or other document”, substitute “a document”.

SCHEDULE 3—continued

(c) Omit “the following procedure”, substitute “the procedure set out in this rule”.

(d) Omit “adopted—”, substitute “adopted.”.

Order 12, subrule 10 (1)—

Omit “(1)”, substitute “(2)”.

Order 12, subrule 10 (2)—

(a) Omit “(2)”, substitute “(3)”.

(b) After “Attorney-General” insert “of the Commonwealth”.

Order 12, subrule 10 (3)—

Omit “(3)”, substitute “(4)”.

Order 12, subrule 10 (4)—

Omit “(4)”, substitute “(5)”.

Order 12, rule 11—

(a) Before “Where” insert “(1)”.

(b) Omit “the following procedures”, substitute “the procedure set out in this rule”.

(c) Omit “adopted:”, substitute “adopted.”.

Order 12, paragraph 11 (a)—

(a) Omit “(a)”, substitute “(2)”.

(b) Omit “process;”, substitute “process.”.

Order 12, paragraph 11 (b)—

(a) Omit “(b)”, substitute “(3)”.

(b) Omit “thereof;”, substitute “thereof.”.

Order 12, paragraph 11 (c)—

(a) Omit “(c)”, substitute “(4)”.

(b) After “Attorney-General” insert “of the Commonwealth”.

(c) Omit “paragraph (b)”, substitute “subrule (3)”.

Order 12, rule 12—

After “Attorney-General” insert “of the Commonwealth”.

SCHEDULE 3—continued

Order 13, rule 1—

Repeal the rule, substitute the following rule:

Entry of appearance

“1. A defendant in an action shall not take any step in the action, except under rule 17, before entering an appearance.”.

Order 13, subrule 2 (1)—

Omit the subrule, substitute the following subrules:

“(1) The defendant in an action shall enter an appearance by giving the Registrar a memorandum in duplicate in accordance with Form 9 in the First Schedule, dated on the day on which it is given, and stating—

- (a) whether the defendant is represented by a solicitor;
- (b) if the defendant is represented by a solicitor—the name of the solicitor;
- (c) in accordance with rule 4—an address for the service of documents related to the proceedings in the action; and
- (d) if any particulars of the defendant stated in the originating application are incorrect—the correct particulars.

“(1A) The Registrar shall seal the duplicate of the memorandum with a seal bearing the words ‘Appearance Entered’ and the date of the appearance, and return the duplicate to the person entering the appearance.

“(1B) The sealed duplicate of the memorandum is evidence that the appearance was entered on the day indicated by the seal.”.

Order 13, rule 3—

Repeal the rule, substitute the following rule:

Notice of appearance

“3. A defendant shall, on the day of entering an appearance, serve the sealed duplicate of the memorandum of appearance on the plaintiff at the plaintiff’s address for service.”.

Order 13, rules 4 and 5—

Repeal the rules, substitute the following rule:

SCHEDULE 3—continued

Defendant’s address for service

“4. (1) If a solicitor appears for a defendant, the address for service included in the memorandum of appearance shall be—

- (a) if the place of business of the defendant’s solicitor is within the Territory—the address of that place; or
- (b) in any other case—the address of a place within the Territory.

“(2) If a defendant appears in person, the address for service included in the memorandum of appearance shall be—

- (a) if the defendant’s residence or place of business is within the Territory—the address of that residence or place; or
- (b) in any other case—the address of a place within the Territory.

“(3) A memorandum of appearance may include in the address for service—

- (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory; or
- (b) a facsimile machine number.

“(4) The Registrar may refuse to file a memorandum of appearance if the address for service included in the memorandum is manifestly inconvenient for the plaintiff or for the Court, notwithstanding whether the address is otherwise in accordance with this rule.”.

Order 13, rule 6—

Omit “such address” (first occurring), substitute “an address for service in accordance with rule 4”.

Order 13, rule 7—

Repeal the rule.

Order 13, rule 9—

Omit “the one”, substitute “a single”.

Order 13, rules 11 to 16 (inclusive)—

Repeal the rules, substitute the following rules:

Late appearances

“11. (1) A defendant may appear at any time before final judgment.

SCHEDULE 3—continued

“(2) If a defendant enters an appearance after the time specified for appearance in the originating application, the defendant is not entitled to any additional time for delivering a defence, or for any other purpose, unless the Court otherwise orders.

Actions for the recovery of land—appearance by person not named in the application

“12. (1) On the filing of an affidavit under subrule (2), the Court may grant leave, in an action for the recovery of land, for a person in possession of the land to enter an appearance and defend, although the person is not named as a defendant in the plaintiff’s originating application.

“(2) For the purposes of subrule (1), an affidavit by the person seeking to appear in the action shall be filed stating the capacity in which the person is in possession of the land.

“(3) Where a Court grants leave under subrule (1) to a person to appear in an action—

- (a) the person is required to enter an appearance under this Order, and to give notice accordingly to the plaintiff, as if the person had been named as a defendant in the action; and
- (b) in all subsequent proceedings in the action, the person is to be taken to be a defendant to the action.

Actions for recovery of land—appearances by persons not in possession

“13. In an action for the recovery of land, the Court may strike out or confine an appearance or defence by a person who is not in possession of the land in his or her own right or by a tenant.

Actions for recovery of land—statement of landlord’s interest

“14. Where a person appearing to defend an action for the recovery of land does so in the capacity of landlord, the memorandum of appearance shall include a statement to that effect.

Actions for recovery of land—limitation of defence to part of land

“15. (1) A person appearing to defend an action for the recovery of land may limit the defence to part only of the property specified in the originating application, in accordance with this rule.

SCHEDULE 3—continued

“(2) In the memorandum of appearance, the defendant shall describe with reasonable certainty the part of the property to which the defence is limited.

“(3) Unless a defence to an action for the recovery of land is limited in accordance with this rule, the defendant’s appearance is to be taken to be an appearance to defend for the whole of the land.”.

Order 13, subrule 17 (1)—

Omit “process” (first occurring), substitute “application”.

Order 13, paragraphs 17 (1) (a) to (e) (inclusive) (wherever occurring)—

Omit “process”, substitute “application”.

Order 13, subrule 17 (2)—

Omit “the application is by a defendant on whom the originating process”, substitute “an application for an order under subrule (1) is made by a defendant on whom the originating application”.

Order 13, paragraph 17 (2) (a)—

Omit “process”, substitute “application”.

Order 13, subrule 17 (3)—

Omit “Application”, substitute “An application for an order under subrule (1)”.

Order 13, subrule 17 (4)—

After “application”, insert “for an order under subrule (1)”.

Order 14, rules 1 to 7 (inclusive)—

Repeal the rules, substitute the following rules:

Interpretation—time for appearance

“1. In this Order, a reference to a failure to enter an appearance to an originating application is to be taken to be a reference to a failure to enter such an appearance within the time specified in the application.

SCHEDULE 3—continued

Affidavit of service

“2. Before taking out proceedings under this Order upon default of appearance, the plaintiff shall file an affidavit of service of the originating application.

Default by defendant under a disability

“3. (1) This rule applies where no appearance is entered to an originating application for a defendant who is under a disability.

“(2) Where this rule applies, the plaintiff shall not proceed with the action unless the Court assigns a guardian by whom the defendant may appear and defend the action.

“(3) On the application of the plaintiff, the Court may appoint a guardian for a defendant if—

- (a) the originating application was served under rule 4 or 5 (as the case requires) of Order 10; and
- (b) after the time has expired for the entry of an appearance to the originating application, notice of the application for the appointment of a guardian has been served under rule 4 or 5 (as the case requires) of Order 10 at least 6 days before the date set down for hearing the application for the appointment of a guardian.

“(4) The Court may dispense with the requirement under paragraph (3) (b) at the time of hearing an application for the appointment of a guardian for a defendant.

Claims for debt and liquidated demands—final judgment

“4. (1) Where an originating application includes a claim for debt or a liquidated demand, the plaintiff may enter final judgment in respect of that claim against any defendant not appearing to the application.

“(2) Final judgment under subrule (1) may be entered for—

- (a) any sum not exceeding the amount specified in the application;
- (b) interest—
 - (i) at the rate specified in the application to the date of judgment; or

SCHEDULE 3—continued

- (ii) if no interest is specified in the application—interest to the date of judgment, or a lump sum in lieu of such interest, determined by the Court; and

(c) costs.

“(3) In determining interest or a lump sum for the purposes of paragraph (2) (b), the Court may have regard to Practice Directions issued by the Court relating to interest up to judgment.

“(4) Where this rule applies, the plaintiff may proceed with the action in respect of a claim for debt or a liquidated demand against any defendant appearing to the application.

Claims for pecuniary damages or for the detention of goods—interlocutory judgment

“5. (1) Where an originating application includes a claim for pecuniary damages or for the detention of goods, or both, the plaintiff may enter interlocutory judgment for damages, or for the value of the goods to be assessed, in respect of that claim against any defendant not appearing to the application.

“(2) Where this rule applies, the plaintiff may proceed with the action in respect of a claim for pecuniary damages or for the detention of goods against any defendant appearing to the application.”.

Order 14, rule 7A—

Omit “this or any other Order”, substitute “these Rules”.

Order 14, rule 8—

(a) Omit “within the time limited for appearance”.

(b) Omit “writ”, substitute “originating application”.

Order 14, rule 9—

Repeal the rule, substitute the following rule:

Recovery of land—mesne profits, damages etc.

“9. In an action for the recovery of land, where the originating application includes a claim for mesne profits, arrears of rent, double value, damages for breach of contract or wrong or injury to premises, the plaintiff may enter judgment in accordance with rule 8, and sign interlocutory judgment in respect of that claim.”.

SCHEDULE 3—continued

Order 14, rule 11—

Repeal the rule, substitute the following rule:

Default of appearance in other cases

“11. Unless otherwise provided for by this Order, if a defendant does not appear to an originating application, the action may proceed as if the defendant had appeared, subject to Order 18.”.

Order 14, rules 12, 13 and 14—

Repeal the rules.

Order 15, heading—

Omit the heading, substitute the following heading:

“ORDER 15

SUMMARY JUDGMENT UPON STATEMENT OF CLAIM”.

Order 15, before rule 1—

Insert the following rule:

Application of Order

“1A. This Order applies where—

- (a) an originating application is accompanied by a statement of claim;
and
- (b) the defendant enters an appearance to the application.”.

Order 15, subrules 1 (1) to (3) (inclusive)—

Omit the subrules, substitute the following subrules:

“(1) Where this Order applies, the plaintiff may apply to the Court for leave to enter judgment whether or not a defence has been delivered.

“(2) An application under subrule (1) shall be accompanied by—

- (a) the originating application; and
- (b) an affidavit or affidavits which—
 - (i) verify the cause of action;
 - (ii) in the case of a claim for debt or a liquidated demand—
verify the amount claimed; and

SCHEDULE 3—continued

- (iii) state that in the belief of the deponent there is no defence to the action except (if relevant) as to the amount of damages claimed.

“(3) A deponent to an affidavit referred to in paragraph (2) (b) who includes in it an item of hearsay evidence shall—

- (a) adduce evidence of the source of the information; and
- (b) state that the deponent believes the information.

“(3A) On an application under this rule, the Court may make such order for the entry of judgment as it considers just having regard to the nature of the remedy or relief claimed, unless the Court is satisfied that—

- (a) there is a good defence to the action on the merits;
- (b) sufficient facts are disclosed to entitle the defendant to defend the action generally; or
- (c) subrule (3B) applies.

“(3B) On an application under this rule, if the Court considers that a statement of claim in relation to a particular claim should not (by virtue of subrule 10 (2) of Order 2) have been attached to the originating application, the Court may—

- (a) amend the originating application to strike out that claim; and
- (b) allow the action to proceed in respect of the remainder of the originating application, subject to these Rules.”.

Order 15, subrule 1 (4)—

Omit “Judge”, substitute “Court”.

Order 15, subrule 3 (1)—

Omit the subrule, substitute the following subrule:

“(1) The defendant may show cause against an application under rule 1—

- (a) by affidavit;
- (b) if the statement of claim relates only to a claim for a debt or liquidated damages—by offering to pay into Court the total amount claimed; or
- (c) with leave of the Court—by the examination on oath of the defendant or any other person.”.

SCHEDULE 3—continued

Order 15, subrule 3 (3)—

Omit “The Judge may, if he or she thinks fit,”, substitute “For the purpose of hearing an application under rule 1, the Court may”.

Order 15, rules 4-7 (inclusive)—

Omit “Judge”, substitute “Court”.

Order 15, subrule 9 (1)—

Omit “Judge”, substitute “Court”.

Order 15, subrule 9 (2)—

Omit “the provisions of this rule shall apply”, substitute “this rule applies”.

Order 15, rule 10—

Repeal the rule.

Order 16, rule 1—

Repeal the rule, substitute the following rules:

Application of Order

“1A. This Order applies where—

- (a) an originating application includes a claim for specific performance of a written contract for the sale or purchase of property (or any estate or interest in property); and
- (b) the defendant enters an appearance to the application.

Summary Judgment

“1. (1) Where this Order applies, the plaintiff may apply to the Court for an order for specific performance of the contract and for any necessary consequential orders.

“(2) An application under subrule (1) shall be accompanied by—

- (a) the originating application; and
- (b) an affidavit or affidavits which—
 - (i) verify the cause of action; and

SCHEDULE 3—continued

- (ii) state that in the belief of the deponent there is no defence to the action except (if relevant) as to the amount of damages claimed.

“(3) A deponent to an affidavit referred to in paragraph (2) (b) who includes in it an item of hearsay evidence shall—

- (a) adduce evidence of the source of the information; and
- (b) state that the deponent believes the information.

“(4) On an application under this rule, the Court may make such order for the entry of judgment as it considers just, unless the Court is satisfied that—

- (a) there is a good defence to the action on the merits; or
- (b) sufficient facts are disclosed to entitle the defendant to defend the action generally.”.

Order 16, subrule 3 (1)—

Omit the subrule, substitute the following subrule:

“(1) The defendant may show cause against an application under rule 1—

- (a) by affidavit; or
- (b) with leave of the Court—by the examination on oath of the defendant or any other person.”.

Order 16, subrule 3 (2)—

Omit “The Judge may, if he or she thinks fit,”, substitute “For the purpose of hearing an application under rule 1, the Court may”.

Order 16, rules 4, 5 and 6—

Omit “Judge”, substitute “Court”.

Order 16, rule 7—

Repeal the rule.

Order 17, rule 1—

Repeal the rule, substitute the following rule:

SCHEDULE 3—continued

Summary judgment

“1. (1) Within 10 days after entering an appearance to an originating application, or at any later time by leave of the Court, a defendant may apply to the Court for summary judgment.

“(2) On an application under this rule, the Court may make an order under subrule (3) if satisfied that—

- (a) the action is frivolous or vexatious;
- (b) there is a good defence to the action on the merits; or
- (c) the action should be finally disposed of summarily, or without pleadings.

“(3) On an application under this rule, the Court may—

- (a) order that judgment be entered for the defendant with or without costs;
- (b) order that the plaintiff shall proceed to trial without pleadings; or
- (c) if all parties consent—make an order disposing of the action finally, without appeal, in a summary manner.”.

Order 17, subrule 2 (2)—

Omit “The Judge may, if he or she thinks fit,” substitute “For the purpose of hearing an application under rule 1, the Court may”.

Order 17, rule 3—

Omit “Judge” (wherever occurring), substitute “Court”.

Order 18, rules 1 and 2—

Repeal the rules, substitute the following rule:

Order for accounts

“1. The Court shall make an order for proper accounts, with all necessary inquiries and directions, if—

- (a) an originating application specifies that an account is to be taken; or
- (b) the defendant—
 - (i) fails to appear; or

SCHEDULE 3—continued

- (ii) at a directions hearing or otherwise, fails to satisfy the Court that there is any preliminary question to be tried.”.

Order 19, rule 12—

- (a) Omit “a writ of summons, or notice,” substitute “an originating application”.
- (b) Omit “writ or notice”, substitute “application”.

Order 19, rule 14—

Omit all the words from and including “, and sue out” to and including “thereof,” substitute “the originating application and serve the new defendant with the application”.

Order 19, rule 49—

Omit “a writ of summons in an action”, substitute “an originating application”.

Order 20, subrule 1 (4)—

Omit all the words after “copy” (first occurring), substitute “of the originating application and of any pleadings”.

Order 20, paragraph 3 (a)—

Omit “a writ”, substitute “an originating application”.

Order 20, rule 5—

Omit “Order 3, rule 6 as if the third party claim were a writ”, substitute “rule 7 of Order 2 as if the claim were an originating application”.

Order 21, rule 5—

Omit “a writ of summons”, substitute “an originating application”.

Order 24, rule 1—

Repeal the rule.

Order 24, rule 3—

Omit “indorsement of the writ”, substitute “originating application”.

Order 25, rule 3—

Repeal the rule.

SCHEDULE 3—continued

Order 25, rule 6—

Repeal the rule, substitute the following rule:

Time for delivery of defence

“6. (1) Where a defendant has entered an appearance to an originating application including a claim for debt or a liquidated demand, the defence to that claim or demand shall be delivered—

- (a) within 14 days after the time limited for appearance in the application; or
- (b) within such extended time as the Court allows.

“(2) No defence need be delivered if the plaintiff applies for entry of judgment under Order 15.”.

Order 25, rule 12—

Omit “a writ of summons”, substitute “an originating application”.

Order 31, rules 2 and 3—

Repeal the rules, substitute the following rule:

Claims for debt and liquidated demands

“2. (1) Where an originating application contains only a claim for debt or a liquidated demand, and a defendant fails to deliver a defence within the time required under these rules, the plaintiff may enter final judgment against the defendant.

“(2) Final judgment under subrule (1) may be entered for—

- (a) any sum not exceeding the amount specified in the application;
- (b) interest—
 - (i) at the rate specified in the application to the date of judgment; or
 - (ii) if no interest is specified in the application—interest to the date of judgment, or a lump sum in lieu of such interest, determined by the Court; and

(c) costs.

“(3) In determining interest or a lump sum for the purposes of paragraph (2) (b), the Court may have regard to Practice Directions issued by the Court relating to interest up to judgment.

SCHEDULE 3—continued

“(4) Where this rule applies in relation to a defendant to an application, the plaintiff may proceed with the action in respect of a claim for debt or a liquidated demand against any other defendant appearing to the application.”.

Order 31, rule 7—

Omit “writ of summons”, substitute “originating application”.

Order 31, rule 8—

(a) Omit “the plaintiff has endorsed”, substitute “an originating application for the recovery of land includes”.

(b) Omit “upon a writ for the recovery of land”.

Order 31, rule 11—

Omit “writ”, substitute “originating application”.

Order 32, subrule 2 (3)—

Omit the subrule.

Order 33, subrule 1 (1)—

Omit “issue of originating process”, substitute “commencement of proceedings”.

Order 34, subrule 1 (1)—

Omit all the words from and including “commenced” to and including “matter,”.

Order 34, rule 17—

Omit “writ”, substitute “originating application (or any accompanying statement)”.

Order 34, rule 18—

Omit “writ”, substitute “originating application (or any accompanying statement)”.

Order 34, subrule 20 (3)—

Omit “writ”, substitute “originating application (or any accompanying statement)”.

SCHEDULE 3—continued

Order 37, rule 9—

Omit “writ issued”, substitute “the action is commenced”.

Order 50, rule 2—

Omit “a writ is sued out”, substitute “an originating application is made”.

Order 50, subrule 3 (1)—

Omit “writs”, substitute “originating applications”.

Order 50, subrule 3 (2)—

Omit “writ of summons”, substitute “originating application”.

Order 50, rule 4—

Omit “a writ is issued against a firm, and is served as provided by”, substitute “an originating application is served against a firm under”.

Order 50, rule 6—

Omit “a writ”, substitute “an originating application”.

Order 50, paragraph 8 (1) (c)—

Omit “writ of summons”, substitute “originating application”.

Order 50, subrule 8 (3)—

Omit all the words after “jurisdiction” (first occurring), substitute “when the action commenced, and has not entered an appearance to the action, unless the member—

- (a) is made a party to the action under the law relating to the service of originating applications out of the jurisdiction; or
- (b) is served with the originating application within the jurisdiction after the action commenced.”.

Order 52, rule 6—

Omit “issue of the writ of summons”, substitute “commencement of the action”.

Order 54, rule 8—

Omit “writ of summons”, substitute “originating application”.

SCHEDULE 3—continued

Order 54, paragraph 13 (1) (b)—

Omit “a writ”, substitute “any document”.

Order 55, rule 18—

Omit “a writ of summons”, substitute “an originating application”.

Order 55, subrule 19 (2)—

Omit “a writ of summons”, substitute “an originating application”.

Order 56—

Repeal the Order.

Order 57 (heading)—

Omit the heading, substitute the following heading:

“ORDER 57

DECLARATIONS”.

Order 57, rules 1 and 2—

Omit “summons”, substitute “application”.

Order 57, rule 3—

Repeal the rule, substitute the following rule:

Service

“3. The Court may order an originating application in an action under this Order to be served on such persons as it thinks fit.”.

Order 57, rule 4—

Before “application” insert “originating”.

Order 57, rule 5—

Repeal the rule.

Order 58, rule 1—

Omit “summons” (wherever occurring), substitute “application”.

Order 58, rule 3—

Omit “summons” (first occurring), substitute “originating application”.

SCHEDULE 3—continued

Order 58, paragraph 3 (A)—

Omit “summons” (first occurring), substitute “originating application”.

Order 58, subparagraph 3 (A) (h)—

Omit “summons”, substitute “application”.

Order 58, paragraph 3 (B)—

Omit “summons”, substitute “originating application”.

Order 58, subrule 4 (1)—

Omit “summons” (wherever occurring), substitute “application”.

Order 58, rule 5—

(a) Omit “summons” (first occurring), substitute “originating application”.

(b) Omit “summons” (last occurring), substitute “application”.

Order 58, rule 6—

Omit “the summons”, substitute “an originating application under rule 4”.

Order 58, rule 7—

Omit “The application”, substitute “An application under rule 4”.

Order 58, rule 8—

Omit “such summons”, substitute “an application under rule 4”.

Order 58, rule 10—

Omit “, whether on summons or otherwise,”.

Order 58, rule 12—

Omit “The issue of a summons”, substitute “The making of an application”.

Order 59, rule 4—

Omit “writ of summons”, substitute “originating application”.

Order 61, paragraph 3 (a)—

(a) Omit “Order 4, rule 1”, substitute “Order 2, rules 24 and 25”.

(b) Omit “Orders 8, 9,”, substitute “Orders 8,”.

SCHEDULE 3—continued

Order 61A, paragraph (1) (i)—

Omit “Order 6”.

Order 61A, rule 2—

Repeal the rule.

Order 65, subrule 7A (1), Table (Column 2, item 2)—

Omit “Order 4, subrule 6 (4)”, substitute “Order 3, subrule 3 (2)”.

Order 65, rule 43—

Omit “indorsement on a writ of summons”, substitute “originating application”.

Order 73, paragraph 8 (1) (a)—

Omit “a writ of summons”, substitute “an originating application”.

Order 73, paragraph 8 (1) (b)—

Omit “the provisions of these Rules relating to the service of a writ of summons”, substitute “law relating to the service of originating applications”.

Order 74, paragraph 1 (2) (b)—

Omit the paragraph, substitute:

“(b) have annexed to it the following documents:

- (i) a copy of the originating application by which the proceedings were instituted, together with any accompanying statement;
- (ii) an affidavit of service of the application on the defendant, or a copy of the memorandum of appearance of the defendant;
- (iii) copies of any pleadings;
- (iv) a statement of the grounds on which the judgment was based;”.

Order 74, subparagraph 2 (a) (i)—

Omit the subparagraph, substitute the following subparagraph:

SCHEDULE 3—continued

“(i) a copy of the originating application by which the proceedings were instituted, together with any accompanying statement;”.

Order 74, subparagraph 2 (a) (iii)—

- (a) Omit “writ of summons, or originating summons,” substitute “originating application”.
- (b) Omit “appeared to the writ or summons,” substitute “entered an appearance.”.

Order 75B, proposed rule 3A—

After rule 3 of Order 75B, insert the following rule:

Application of Order 2

“3A. The Rules apply in relation to an application for the commencement of proceedings under this Order as if the application were an originating application, except as otherwise provided by this Order.”.

Order 75B, subrules 12 (5) and (6), 13 (4) and (5), 20 (6) and (7), 36 (8) and (9) and 78 (3) and (4)—

Omit “Order 2A, rule 8”, substitute “Order 2, rule 21”.

Order 76, subrule 1 (1) (definition of “Director”)—

Omit “appointed under section 7 of”, substitute “under”.

Order 76, rule 3—

Add at the end the following subrule:

“(4) The Rules apply in relation to an application for an adoption order as if the application were an originating application, except as otherwise provided by this Division.”.

Order 79, rule 2—

Omit the rule, substitute the following rule:

Application of Rules

“2. (1) The Rules apply in relation to an application as if the application were an originating application, except as otherwise provided by the Act and this Order.

SCHEDULE 3—continued

“(2) The Rules apply in relation to a reference to the Court under Division 4 of Part XVI of the Act as if a statement under section 276 of the Act setting out a question referred by the Assembly were an originating application, except as otherwise provided by the Act and this Order.”.

Order 83, rule 4—

Omit “originating summons”, substitute “application”.

First Schedule, heading to Form 8—

Omit “WRIT IN FOREIGN COUNTRY”, substitute “ORIGINATING APPLICATION OUTSIDE THE COMMONWEALTH”.

First Schedule, Form 8—

Omit the words “a writ of summons [*or as the case may be, describing the document*]”, substitute “an originating application”.

First Schedule, Form 15—

Omit “Writ issued”, substitute “Originating application filed”.

First Schedule, Form 26—

- (a) Omit “[*plaintiff or defendant*]”, substitute “[*plaintiff or defendant*]”.
- (b) Omit “[*statement of claim, or defence, or affidavit, dated the day of 19*]”, substitute “[*originating application or statement attached to the originating application or statement of claim or affidavit, dated the day of 19*]”.

First Schedule, Forms 66, 67 and 68—

Omit the forms.

NOTES

Principal Regulations

1. Reprinted as at 31 January 1997.

Notification

2. Notified in the ACT Gazette on 23 April 1997.

Rule Headings

On the day on which the Supreme Court Rules are amended by these Rules, in addition to any alteration of rule headings indicated in the text of these Rules, headings to provisions in the Supreme Court Rules are altered as set out in the following table:

Rule	Alteration
Order 8, rule 2	Omit the heading, substitute the following heading: Notice of change of solicitor
Order 8, rule 3	Omit the heading, substitute the following heading: Notice of appointment of solicitor
Order 8, rule 6	Omit the heading, substitute the following heading: Withdrawal of solicitor from the record
Order 10, rule 7	Omit the heading, substitute the following heading: Application to recover vacant land
Order 12, rule 2	Omit the heading, substitute the following heading: Jurisdictional criteria
Order 12, rule 10	Omit the heading, substitute the following heading: Service where a Convention applies
Order 15, rule 3	Omit the heading, substitute the following heading: Defence
Order 15, rule 4	Omit the heading, substitute the following heading: Summary judgment for part of claim
Order 15, rule 5	Omit the heading, substitute the following heading: Multiple defendants
Order 16, rule 3	Omit the heading, substitute the following heading: Defence
Order 17, rule 2	Omit the heading, substitute the following heading: Defence by plaintiff
Order 17, subrule 2 (2)	Omit the subrule heading.
Order 19, rule 14	Omit the heading, substitute the following heading:

Rule	Alteration
	Change of parties—amendment of application
Order 31, rule 6	Omit the heading, substitute the following heading: Claims for debt and liquidated demands—Interlocutory and
final judgments	
Order 54, rule 13	Omit the heading, substitute the following heading: Formal order not required
Order 54, subrules 13 (2) and (3)	Omit the subrule headings.
Order 57, rule 1	Omit the heading, substitute the following heading: Construction of instruments
Order 57, rule 2	Omit the heading, substitute the following heading: Construction of legislation
Order 58, rule 1	Omit the heading, substitute the following heading: Applications for relief without administration
Order 58, rule 2	Omit the heading, substitute the following heading: Applications for administration
Order 58, paragraphs 2 (a), (b) and (c)	Omit the paragraph headings.
Order 58, rule 3	Omit the heading, substitute the following heading: Service—applications for administration
Order 58, rule 4	Omit the heading, substitute the following heading: Applications for foreclosure or redemption
Order 58, rule 5	Omit the heading, substitute the following heading: Service—applications for foreclosure or redemption