



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 35 of 1998¹

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

Dated 30 November 1998.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

K J CRISPIN

Judge

A G TOWILL

Registrar

1. Commencement

- (1) Rules 1, 2, 3, 4, 6, 7 and 8 commence on 15 December 1998.
- (2) The remaining rules commence on 1 February 1999.

2. Principal Rules

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

3. Order for accounts

Rule 1 of Order 18 of the Principal Rules is amended by omitting from paragraph (a) “or” and substituting “and”.

4. Repeal

Rule 8 of Order 36 of the Principal Rules is repealed.

5. Preparation of judgments and orders

Rule 2 of Order 42 of the Principal Rules is amended by adding at the end the following subrules:

“(6) A draft of a judgment or order referred to in this rule and the minute referred to in subrule (5) shall—

- (a) in the case of a draft or minute relating to a judgment, be in accordance with Form 50AA in the First Schedule; or
- (b) in the case of a draft or minute relating to an order, be in accordance with Form 50AB in the First Schedule.

“(7) Where a judgment or order is entered by consent, the draft or minute, referred to in subrule (6), of the judgment or order shall be in accordance with the relevant form and shall include ‘BY CONSENT’ after ‘THE COURT ORDERS’.”.

6. Authority of Master

Rule 1 of Order 61A of the Principal Rules is amended—

- (a) by omitting from paragraph (s) “Part XIX” and substituting “Part XX”; and
- (b) by omitting from paragraph (t) “Part XIXA” and substituting “Part XXI”.

7. Insertion

Order 72 of the Principal Rules is amended by inserting the following rules before the heading “**X—CAVEATS**”:

- (b)** by omitting from Form 24
“In answer to the interrogatories, I, the above-named *E.F.*, make oath and say as follows:”
and substituting
“In answer to the interrogatories, on *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath:”;
- (c)** by omitting from Form 25
“I, the above-named defendant *C.D.*, make oath and say as follows:”
and substituting
“On *(date)* I, *(name)* of *(address)*, *(occupation)*, the above named defendant, say on oath:”;
- (d)** by omitting Form 32 and substituting Form 32 in Schedule 1 to these Rules;
- (e)** by omitting from Form 38 “THAT—” and substituting “THAT:”;
- (f)** by omitting from Form 38 all the words after “*description* 1.”;
- (g)** by omitting from Form 39 “THAT—” and substituting “THAT:”;
- (h)** by omitting from Form 39 all the words after “sent.”;
- (i)** by omitting from Form 40 “THAT—” and substituting “THAT:”;
- (j)** by omitting from Form 40 all the words after “*address* 1.”;
- (k)** by omitting Form 42 and substituting Form 42 in Schedule 1 to these Rules;
- (l)** by inserting Forms 50AA and 50AB in Schedule 1 to these Rules;
- (m)** by omitting Form 56A and substituting Form 56A in Schedule 1 to these Rules;
- (n)** by omitting from Form 57
“I , of , make oath and say that”
and substituting
“On *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath that:”;
- (o)** by omitting from Form 62
“I, , of , the receiver appointed in this cause, make oath and say as follows:”
and substituting
“On *(date)* I, *(name)* of *(address)*, the receiver appointed in this cause, say on oath:”;
and

- (p) by omitting Forms 78A and 78B and substituting Forms 78A and 78B in Schedule 1 to these Rules.

10. Third Schedule

The Third Schedule to the Principal Rules is amended—

- (a) by omitting from Form 6

“I, _____, of _____, in the Territory for the Seat of Government, make oath and say—”

and substituting

“On (date) I, (name) of (address), (occupation), say on oath:”;

- (b) by omitting from Form 6

“Signed and sworn by the above-named deponent, at _____, in the Territory for the Seat of Government, this _____ day of _____, 19 _____, before me—

(Title of person taking affidavit.)”

and substituting

“SWORN at _____)
Before me _____):”;

- (c) by omitting from Form 9

“I, _____, of _____, in the Territory for the Seat of Government, make oath, and say as follows:”

and substituting

“On (date) I, (name) of (address), (occupation), say on oath:”;

- (d) by omitting from Form 9

“Signed and sworn by the above-named deponent, at _____, in the Territory for the Seat of Government, this _____ day of _____, 19 _____, before me—

(Title of person taking affidavit.)”

and substituting

“SWORN at _____)
Before me _____):”;

- (e) by omitting from Form 10

“I, _____, of _____, in the Territory for the Seat of Government, Public Trustee, make oath and say as follows:”

and substituting

“On *(date)* I, *(name)* of *(address)*, Public Trustee, say on oath:”;

(f) by omitting from Form 10

“Signed and sworn by the above-named deponent, at _____, in
the Territory for the Seat of Government, this _____ day of _____,
19 _____, before me—”

and substituting

“SWORN at _____)

Before me _____):”; and

(g) by adding at the end Form 20 in Schedule 2 to these Rules.

11. Eighth Schedule

The Eighth Schedule to the Principal Rules is amended—

(a) by omitting Forms 4, 5 and 9 and substituting, respectively, Forms 4, 5 and 9 in Schedule 3 to these Rules;

(b) by omitting from Form 20

“I, [*full name, address and occupation*] [**make oath/*affirm*] and say:”;

and substituting

On *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath:”; and

(c) by omitting from Form 20

“[**Sworn/*Affirmed*] by the deponent on [*date*] at [*time*]—”

and substituting

“Sworn by the deponent—”.

12. Schedule 12

Schedule 12 to the Principal Rules is amended—

(a) by omitting from Form 81

“On *(date)*, I *(name address and occupation)* say on oath:”

and substituting

“On *(date)*, I *(name)* of *(address)*, *(occupation)*, say on oath:”;

(b) by omitting from Form 84 all the words from and including

“On *(date)*, we:” to and including “And I *(name of managing director or other director)* say on oath:”

and substituting the following:

“On *(date)*, we:

(name and address of company secretary), company secretary; and

(*name and address of solicitor for the company*), solicitor; and
(*name and address of managing director or other director of the company*), managing
director (OR company director),

severally say on oath as follows:

I (*name of company secretary*) say on oath:

1. I am the company secretary of (*name of company*) ('the company').
2. On (*specify date*), I served a copy of the notice annexed and marked 'A' (*annex notice in Form 83*) upon each of the persons whose names, addresses and descriptions appeared in the first column of the list of creditors annexed and marked 'B' (*annex list of creditors from affidavit in Form 81*), referred to in the affidavit of (*name of deponent*) filed on (*date*).
3. I served the copies of the notice by (*specify means of service*).

I (*name of solicitor for company*) say on oath:

4. I am the solicitor for the company.
5. A true copy of a notice, annexed and marked 'C' (*annex notice in Form 82*), was published in the *Gazette* and in (*name of newspaper*), on (*date*).
6. The document annexed and marked 'D' is a list of all claims, the particulars of which were sent to me in response to the notice marked 'A', in relation to persons who claim to be creditors of the company for larger amounts than are stated in the list of creditors marked 'B'.

OR

6. No person has sent to me, in response to the notice marked 'A', a claim to be entered on the list of creditors of the company for a larger amount than is stated in the list of creditors marked 'B'.
7. The document annexed and marked 'E' is a list of all claims which were sent to me in response to the notice marked 'C', in relation to persons who claim to be creditors of the company on (*date*) who do not appear on the list of creditors marked 'B' and who claim to be entered on that list.

OR

7. No claims have been sent to me in response to the notice marked 'C' by persons who do not appear on the list of creditors marked 'B' and claim to be entered on that list.

We (*name of company secretary*) and (*name of managing director or other director*) say on oath:

8. The first part of the document marked 'D' and the document marked 'E' set out:
 - (a) those of the debts and claims which the company admits in their full amount or in part, and the amount which the company admits to be due in respect of each of those debts;
 - (b) those of the debts which the company admits to be due, or admits to be due in part, but does not admit a particular amount to be due; and
 - (c) those of the debts and claims which the company contends are wholly or partly not included in the inquiry in this matter.
9. The second part of the document marked 'D' and the document marked 'E' set out:
 - (a) those of the debts and claims which are wholly disputed by the company; and
 - (b) those of the debts and claims which the company contends would be wholly or partly not included in the inquiry in this matter, even if admitted.

And I (*name of managing director or other director*) say on oath:";

(c) by omitting from Form 93A

"On (*date*), I (*name, address and occupation*) say on oath:

1. I refer to the Notice of Intention to Appear at a Hearing and of Grounds of Opposition to a Winding Up Application dated (date) signed by (signatory to notice).”

and substituting

“On (date), I (name) of (address), (occupation), say on oath:

1. I refer to the Notice of Intention to Appear at a Hearing and of Grounds of Opposition to a Winding Up Application dated (date) signed by (signatory to notice).”;

(d) by omitting Form 95 and substituting the form in Schedule 4 to these Rules; and

(e) by omitting from Form 115

“On (date) I (name and address), official liquidator, say on oath:

1. I am the official liquidator of (name of company) (“the company”).

2. On (date) I made a call of \$ (amount) per share on all of the contributories of the company (or specify the class contributories on whom the call was made). Annexed and marked ‘A’ is a copy of the notice of the call. Each of the contributories whose names are shown in the Schedule marked ‘B’ was duly served with notice of the call in the form annexed and marked ‘A’.”

and substituting

“On (date) I (name and address), official liquidator, say on oath:

1. I am the official liquidator of (name of company) (‘the company’).

2. On (date) I made a call of \$ (amount) per share on all of the contributories of the company (or specify the class contributories on whom the call was made). Annexed and marked ‘A’ is a copy of the notice of the call. Each of the contributories whose names are shown in the Schedule marked ‘B’ was duly served with notice of the call in the form annexed and marked ‘A’.”

SCHEDULE 1

Rule 9 (d), (k), (l), (m) and (p)

NEW FORMS—FIRST SCHEDULE

FORM 32

O. 36 r. 9

FORM OF ORDER, ACCOUNTS AND INQUIRIES

[*Heading as in Form 1*]

THE COURT ORDERS THAT:

1. The following accounts be taken and, (*as the case may be*) inquiries made:
 - (a) an account (*specify it*);
 - (b) (*Specify any other accounts in numbered paragraphs*).
2. The defendant on or before (date) file and serve *[his/her] detailed account (with each item numbered consecutively and verified by affidavit) of all monies received and disbursed by the defendant or any other person on *[his/her] behalf.
3. Such account shall specify in respect of each payment or receipt—
 - (a) the date and amount;
 - (b) the person to whom the payment was made; and
 - (c) the purpose for which or the account to which the amount was paid or received as the case may be.
4. The plaintiff be at liberty to serve notice of objections to the defendant's account within 35 days after service on *[him/her] of copies of the account and affidavit verifying it.
5. (*Such further directions as to interrogatories, oral examination before the Registrar, vouching out of court, access to books and records, interim payment and other appropriate matters as the nature of the case may require*).

*(Delete whichever is inapplicable)

FORM 42

O. 39 r. 24J

**ORDER FOR EXAMINATION
UNDER INTERSTATE OR FOREIGN LETTER OF REQUEST**

[*Heading as in Form 1*]

THE COURT ORDERS THAT:

[*name and address of examiner, or description*] take the examination on oath or affirmation of [*name*] of [*address*] pursuant to the letter of request dated [*date of issue of letter of request*] in connection with the proceeding pending, or instituted, before [*name of foreign or interstate court or tribunal*] between [*name of plaintiff*] and [*name of defendant*].

SCHEDULE 1—continued

FORM 50AA
GENERAL FORM OF JUDGMENT
[Heading as in Form 1]

O. 42 r. 2 (6)

JUDGE:
DATE OF ORDER:
ORIGINATING PROCESS:
HOW OBTAINED:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

- 1.
- 2.

THE JUDGMENT OF THE COURT IS THAT:

- 1.
- 2.

DATE ENTERED

REGISTRAR

SCHEDULE 1—continued

FORM 50AB
GENERAL FORM OF ORDER
[Heading as in Form 1]

O. 42, r. 2 (6)

JUDGE:
DATE OF ORDER:
ORIGINATING PROCESS:
HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

- 1.
- 2.

DATE ENTERED

REGISTRAR

SCHEDULE 1—continued

FORM 56A

O. 43 r. 31 (2)

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR

[Heading as in Form 1]

THE COURT ORDERS THAT:

1. (name) the abovenamed (plaintiff or defendant or as the case may be), the judgment debtor [or, in the case of a company, (name), a director (as the case may be) of the abovenamed (plaintiff or defendant or as the case may be), the judgment debtor] attend before the Registrar at the Supreme Court, Knowles Place, Canberra City in the Australian Capital Territory, on (date) at (time) to be examined as to any and what debts are owing to *[him/her/it] and whether the judgment debtor has any and what other property or means of satisfying the judgment given on (date).
2. He/She then produce any books or documents in *[his/her/its] possession or control relating to the debts and property of the judgment debtor before the Registrar at the time of the examination.

To the abovenamed [name].

Take notice that if you fail to obey the above order to attend for examination at the time and place stated or to produce the books or documents further legal proceedings may be taken against you for your failure to obey the order.

*(Delete whichever is inapplicable)

FORM 78B

O. 74A r. 5

[Heading as in Form 78A]

ORDER FOR REGISTRATION OF MONEY JUDGMENT

THE COURT ORDERS THAT:

1. The judgment dated (insert date of judgment) of the (insert name of court) by which it was ordered that (insert name of respondent) (“the judgment debtor”) pay the sum of (insert amount in foreign currency or in equivalent Australian currency) and interest (if any) to (insert name of applicant) (“the judgment creditor”) be registered under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.
2. The amount that the judgment debtor is required to pay to the judgment creditor is . The amount includes an amount of interest of .
(Insert amounts in foreign currency or in equivalent Australian currency)
3. (Insert any other orders made under the judgment)
4. The reasonable costs of, and incidental to, the application for this order and registration of the judgment (fixed at \$, or to be taxed) are to be paid by the judgment debtor to the judgment creditor.
5. The judgment debtor may, within days after service of the notice of registration, apply to have the registration set aside.

FORM 78C

O. 74A r. 5

SCHEDULE 1—continued

[Heading as in Form 78A]

ORDER FOR REGISTRATION OF NON-MONEY JUDGMENT

THE COURT ORDERS THAT:

1. The judgment dated (*insert date of judgment*) of the (*insert name of court*) by which it was ordered that (*insert name of respondent*) (“the judgment debtor”) (*insert terms of order or injunction*) be registered under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.
2. The reasonable costs of, and incidental to, the application for this order and registration of the judgment (fixed at \$ _____, or to be taxed) are to be paid by the judgment debtor to (*insert name of applicant*).
3. The judgment debtor may, within _____ days after service of the notice of registration, apply to have the registration set aside.

SCHEDULE 2

O. 10 (g)

NEW FORM—THIRD SCHEDULE

FORM 20

O. 72 r. 51B

FORM OF ORDER, ACCOUNTS AND INQUIRIES

THE COURT ORDERS THAT:

1. The following accounts be taken and inquiries made:
 - (a) an account of the property of (*name of deceased*) deceased (“the testator”) not specifically [devised or] bequeathed and received by the defendant the executor of *[his/her] will or by any other person or persons by the order or for the use of the defendant or which without the wilful default of the defendant might have come to *[his/her] hands;
 - (b) an account of the debts of the testator;
 - (c) an account of the funeral and testamentary expenses of the testator;
 - (d) an account of the legacies and annuities (if any) given by the testator’s will;
 - (e) an inquiry as to what parts (if any) of the testator’s personal estate are outstanding or undisposed of [and whether any part of such personal property so outstanding or so undisposed of is subject to any and what encumbrance].
2. The testator’s personal estate not specifically bequeathed be applied in payment of *[his/her] debts and funeral expenses in due course of administration, and then in payment of the legacies and annuities, if any, given by *[his/her] will.
3. The following further inquiries be made and accounts taken:
 - (a) an inquiry as to what real estate the testator was seized of or entitled to at the time of *[his/her] death;
 - (b) an inquiry as to what encumbrances, if any, affect [or did affect] the testator’s real estate and as to what are the priorities of the encumbrances;
 - (c) an account of what was due on (*the date of death*) and what is presently due to encumbrancers;
 - (d) an inquiry as to what real estate was sold by the defendant and an account as to the proceeds of the sale received by the defendant;
 - (e) an account of the rents and profits of the testator’s real estate received by the defendant (*insert details*).
4. [The testator’s real estate be sold (*if appropriate and with any directions, including a requirement for the approval of the Court as may be appropriate*)].
5. Further consideration of this cause be adjourned and any of the parties be at liberty to apply on 2 clear days’ notice as they may be advised.
6. [The plaintiff’s costs of and incidental to this motion be allowed and taxed as between solicitor and client and paid out of the estate of the testator (*or as the case may be*)].

**(Delete whichever is inapplicable)*

SCHEDULE 3

O. 11 (a)

NEW FORMS—EIGHTH SCHEDULE

FORM 4

O. 76 r. 8

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

INTERIM ORDER

In the Supreme Court
of the Australian Capital Territory

No. of [year]

In the matter of the adoption of [full name to be given to the child]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

The Court is satisfied that it could lawfully make an order for the adoption of the child by the proposed adoptive parents.

THE COURT ORDERS THAT:

1. The determination of the application be postponed until [date].
2. [full name of each proposed adoptive parent] have the custody of the child until that date.
3. [Any further orders].

DATE ENTERED

REGISTRAR

Supreme Court No. 35, 1998

SCHEDULE 3—continued

FORM 5

O. 76 r. 9

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

ADOPTION ORDER

In the Supreme Court

of the Australian Capital Territory

No. of [year]

In the matter of the adoption of [full name to be given to the child]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. The child become, by this order, the adopted child of [full name of each adoptive parent].
2. The child bear, by this order, the following name: [full name to be given to adopted child].
3. [Any further orders].

DATE ENTERED

REGISTRAR

SCHEDULE 3—continued

FORM 9

O. 76 r. 13

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

ORDER FOR DISPENSING WITH CONSENT TO ADOPTION

In the Supreme Court

of the Australian Capital Territory

No. of [year]

In the matter of the adoption of [full name to be given to the child]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. The requirement for [full name] to consent to the adoption of [full name in which the birth of the child to be adopted is registered] be dispensed with for the purposes of an application by or on behalf of [full name of each proposed adoptive parent] for the adoption of that child.
2. [Any further orders].

DATE ENTERED

REGISTRAR

SCHEDULE 4

Rule 12 (d)

NEW FORM—SCHEDULE 12

FORM 95

AFFIDAVIT THAT DEBT REMAINS UNPAID

(Order 75B, subrule 38 (1))

(Heading in Form 75)

On (date), I (name) of (address), (occupation), say on oath:

1. I am the (specify) of the applicant herein.

(If the debt is not a judgment debt)

2. I refer to my earlier affidavit made on (date on which affidavit under paragraph 37 (4) (b) was made) and filed in these proceedings. As at the date of the affidavit, the respondent was indebted to the applicant in the amount of (specify amount).

(OR)

(If the debt is a judgment debt)

2. On the date on which the application for a winding up order was filed by the applicant in these proceedings, the respondent was indebted to the applicant in the amount of (specify amount) by reason of the judgment of (specify Court) in proceedings number (number) given on (date of judgment). Annexed and marked "A" is a copy of the Court order giving rise to the judgment debt.

3. As at the date of this affidavit, the respondent is indebted to the applicant in the amount of (specify amount). The respondent has failed to pay the amount or to secure or compound it to the reasonable satisfaction of the applicant.

SWORN at:)

before me:)

.....

A Justice of the Peace

NOTES

Principal Rules

1. Reprinted as at 2 February 1998. See also Subordinate Law No. 23, 1998.

Notification

2. Notified in the ACT Gazette on 9 December 1998.