



Australian Capital Territory

Supreme Court Rules Amendment

Subordinate Law 1999 No 26

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

Dated 19 October 1999.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

A G TOWILL

Registrar



Australian Capital Territory

Supreme Court Rules Amendment

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made under the

Supreme Court Act 1933

CONTENTS

Rule		Page
	PART 1—PRELIMINARY	
1	Commencement.....	1
	PART 2—AMENDMENTS OF SUPREME COURT RULES	
2	Rules amended	1
3	Interpretation	1
4	Form of originating application.....	2
5	Repeal.....	2
6	Insertion—	
	18A Personal service of originating applications generally required	3
	18B Service of application to recover unoccupied land	3
	18C Defendant taken to be served by entering appearance	3

Supreme Court Rules No 26, 1999

CONTENTS—continued

Rule		Page
	18D Service on partners sued in firm name	3
7	Notice of change of solicitor	4
8	Repeal.....	4
9	Substitution—	
	ORDER 10	
	SERVICE OF DOCUMENTS IN AUSTRALIA	
10	Mode of appearance	8
11	Repeal.....	9
12	Definitions.....	9
13	Substitution—	
	32A Service of subpoenas.....	9
14	Expert's reports admissible as evidence of facts	10
15	Insertion—	
	<i>Division 8A—Evidence of expert witnesses</i>	
	49A Application of Division.....	10
	49B Court may direct manner that experts give evidence	10
16	Insertion—	
	3 Service of judgment or order to be enforced by attachment.....	11
17	Substitution—	
	7 Changing of address for notices.....	11
	8 Service by post.....	12
18	Dispensing with service of notice of judgment or order.....	12
19	Repeal.....	12
20	Repeal.....	12
21	Citations	12
22	Repeal.....	12
23	Substitution—	
	12 Service of subpoenas.....	12
24	Consequential and miscellaneous amendments.....	12
	PART 3—AMENDMENTS OF SUBORDINATE LAW 1995	
	No 15	
25	Subordinate Law amended	13
26	Substitution—	
	4 Heading to Order 10.....	13
	4A Application of Order 10.....	13
27	Insertion.....	13
28	Insertion.....	13
29	Repeal.....	13
30	Insertion.....	13
31	Schedule	14

Supreme Court Rules No 26, 1999

CONTENTS—continued

Rule		Page
	PART 4—AMENDMENT OF SUBORDINATE LAW 1998	
	No 35	
32	First Schedule.....	14
	SCHEDULE	
	CONSEQUENTIAL AND MISCELLANEOUS	
	AMENDMENTS	15

PART 1—PRELIMINARY

1 Commencement

- (1) This Part and Part 3 commence on the day on which these rules are notified in the *Gazette*.
- (2) Part 4 is taken to have commenced immediately before the commencement of rule 9 of Subordinate Law No 35 of 1998.
- (3) Part 2 commences on 1 November 1999.

PART 2—AMENDMENTS OF SUPREME COURT RULES

2 Rules amended

This Part amends the *Supreme Court Rules*.

3 Interpretation

Rule 4 of Order 1 is amended by inserting in subrule (1) the following definitions:

“*address for service* means—

- (a) for a person represented by a solicitor—
 - (i) if the solicitor has a place of business in the Territory—the address of the place of business and any other address provided in accordance with these rules; or
 - (ii) in any other case—the address of a place in the Territory; or
- (b) for a plaintiff, defendant or anyone else acting in person—
 - (i) if the person has a residence or place of business in the Territory—the address of the residence or place of business; or
 - (ii) in any other case—the address of a place in the Territory.

body corporate—see the Corporations Law, section 9.

company—see the Corporations Law, section 9.

contributory—see the Corporations Law, section 9.

corporation—see the Corporations Law, section 57A.

officer—see the Corporations Law, section 82A.

official liquidator—see the Corporations Law, section 9.

personal service, of a document on a person, means—

- (a) giving to the person—
 - (i) if the original of the document is sealed with the seal of the court—a sealed copy of the document; or
 - (ii) in any other case—a copy of the document; or
- (b) if the person refuses to accept it—putting the copy of the document down in the person’s presence and telling the person the nature of the document.

person with a mental disability, in relation to a proceeding, means a person who is not legally competent to be a party to the proceeding, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.”.

4 Form of originating application

Rule 4 of Order 2 is amended—

- (a) by omitting from subrule (1) “the First Schedule” and substituting “Schedule 1”;
- (b) by omitting from paragraph (4) (d) “sues” and substituting “is represented”;
- (c) by omitting paragraph (4) (e) and substituting the following paragraph:
 - “(e) an address for service of documents for the proceeding;”;
 - and
- (d) by inserting after subrule (4) the following subrule:
 - “(4A) If a person is represented by a solicitor, the address for service stated in the originating application may also include any of the following for the solicitor:
 - (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory;
 - (b) the number of a postbox at a post office in the Territory;
 - (c) a fax number.”.

5 Repeal

Rule 6 of Order 2 is repealed.

6 Insertion

Order 2 is amended by inserting after rule 18 the following rules:

“18A Personal service of originating applications generally required

An originating application must be served personally, unless otherwise expressly provided by these rules or any other law of the Territory.

“18B Service of application to recover unoccupied land

Service of an originating application in an action to recover unoccupied land may be made by attaching a copy of the application to a door of a house, or to something else at another conspicuous place, on the land.

“18C Defendant taken to be served by entering appearance

“(1) This rule applies to a defendant in a proceeding if the defendant has not been served with the originating application, but enters an appearance to the action.

“(2) The defendant is taken to have been served with the originating application on the day the defendant enters the appearance.

“18D Service on partners sued in firm name

“(1) If persons are sued as partners in the name of their firm, the originating application must be served—

- (a) on at least 1 of the partners; or
- (b) at the partnership’s principal place of the business in the Territory on someone having the control or management of the partnership’s business.

“(2) Service under subrule (1) is taken to be service on the firm, even if some of its members are outside the Territory.

“(3) However, if the plaintiff knows that the partnership has been dissolved before the commencement of the action, the originating application must be served on everyone in the Territory sought to be made liable.

“(4) A person served with an originating application under this rule must be told by written notice, given at the time of service, of the capacity in which the person is served.

“(5) If the notice is not given to the person served, the person is taken to be served as a partner.”.

7 Notice of change of solicitor

Rule 2 of Order 8 is amended—

(a) by omitting from subrule (1) “A party suing or defending by a solicitor shall, subject to Order 19, rule 34, be at liberty to” and substituting “A party represented by a solicitor may”; and

(b) by adding at the end the following subrule:

“(3) A notice under this rule must include the name of the new solicitor and the new address for service of the party.”.

8 Repeal

Rule 7 of Order 8 is repealed.

9 Substitution

Orders 10 and 11 are repealed and the following Order is substituted:

“ORDER 10

SERVICE OF DOCUMENTS IN AUSTRALIA

“1 Application

This Order applies to the service in Australia of a document.

“2 Documents not generally required to be served personally

Personal service of a document is necessary only if it is expressly required by these rules or any other law of the Territory.

“3 Acceptance of service by solicitor

“(1) A solicitor may accept service of any document for a person (including a document required to be served personally on the person).

“(2) The solicitor must—

(a) make a note on a copy of the document to the effect that the solicitor accepts service on behalf of the person; and

(b) give the copy to the person serving the document.

“(3) The person is taken to have been served with the document on the day that the solicitor accepts service of the document.

“4 **Non-personal service of documents**

“(1) If personal service of a document on a person in a proceeding is not necessary, the document may be served on the person—

- (a) by leaving a copy at the person’s address for service; or
- (b) by sending a copy by prepaid post addressed to the person at the person’s address for service; or
- (c) if the person’s address for service includes a reference to a postbox at a post office in the Territory—by sending a copy by prepaid post addressed to the person at the postbox; or
- (d) if the person’s address for service includes a reference to an Australian Document Exchange Pty Ltd exchange box—by leaving a copy of the document addressed to the person in the exchange box or at a collection point of that company for transmission to the exchange box; or
- (e) if the person’s address for service includes a reference to a fax number—by sending it by fax to the number; or
- (f) if the document to be served is from the registrar’s office, the person has a solicitor, and the solicitor has a collection box in the office—by leaving a copy of the document in the solicitor’s collection box.

“(2) Service is taken to have been made—

- (a) if the document is sent by prepaid post in accordance with paragraph (1) (b) or (c)—2 days after the copy is posted, unless the contrary is proved; or
- (b) if the document is left or sent in accordance with paragraph (1) (a), (e) or (f)—
 - (i) if the document is left or sent before 4 pm on a day—on that day; or
 - (ii) if the document is left or sent at or after 4 pm on a day—on the next day; or
- (c) if the document is left in accordance with paragraph (1) (d)—the next day.

“5 Service on defendant by filing if no appearance or address

“(1) If an appearance has not been entered by a defendant, or an address for service has not been given by a defendant, a document for which personal service is not necessary may be served on the defendant by—

- (a) filing it; and
- (b) sending a copy by prepaid post addressed to the defendant at his or her last-known address.

“(2) A document filed under this rule must have endorsed on its first page a statement that it is filed under this rule.

“6 Service if no-one found at plaintiff’s address for service

“(1) This rule applies to a plaintiff in a proceeding if the plaintiff acts in person, and no-one can be found at the plaintiff’s address for service.

“(2) Any document in the proceeding (including a document for which personal service is otherwise necessary) may be served on the plaintiff by leaving a copy at the plaintiff’s address for service.

“7 Service on defendants who are children

“(1) This rule applies to a defendant in a proceeding who is a child.

“(2) Unless the court otherwise orders, any document in the proceeding (including a document for which personal service is necessary) may be served on the defendant by serving it on—

- (a) a parent or guardian of the defendant; or
- (b) if the defendant does not have a parent or guardian—
 - (i) a person who is responsible for the defendant’s care; or
 - (ii) a person with whom the defendant lives.

“(3) A document may be served on a child only if the court so orders, whether before or after the service of the document on the child.

“8 Service on other defendants who are under a disability

“(1) This rule applies to a defendant who is an adult and is under a disability.

“(2) Unless the court otherwise orders, any document in the action (including a document for which personal service is necessary) may be served on the defendant by serving it on—

- (a) a person who is responsible for the defendant’s care; or

(b) a person with whom the defendant lives.

“(3) A document may be served on the defendant only if the court so orders, whether before or after the service of the document on the person.

“9 **Service of documents on both spouses**

If both spouses in a relationship are defendants in a proceeding, both spouses must be served with any document to be served on them in the proceeding, unless the court otherwise orders.

“10 **Service on a corporation—Companies Ordinance 1962 or Companies Act 1981**

“(1) This rule applies to the service of a document for proceedings about a corporation—

- (a) incorporated under the *Companies Ordinance 1962*; or
- (b) within the meaning of the *Companies Act 1981* of the Commonwealth.

“(2) Service of a document may be made on the corporation, or the official manager or liquidator of the corporation, in any way in which service of a document is permitted to be made on the corporation, official manager or liquidator under the applicable law mentioned in subrule (1).

“(3) A document may also be served as follows:

- (a) if, in relation to the corporation, a notice has been lodged for subsection 202B (1) of the ordinance or subsection 340 (1) of the Act—by serving the document personally on the official manager named in the last notice so lodged;
- (b) if, in relation to the corporation, a notice has been lodged for subsection 280 (1) of the ordinance or subsection 421 (1) of the Act—by serving the document personally on the liquidator named in the last notice so lodged;
- (c) if, in relation to the corporation, no notice has been lodged for subsection 202B (1) or 280 (1) of the ordinance, or subsection 340 (1) or 421 (1) of the Act, in relation to the corporation—by serving the document personally on a director, manager or secretary of the corporation.

“(4) In this rule, a reference to a **corporation** includes, so far as applicable, a reference to a body to which Division 6 of Part XII of the *Companies Act 1981* of the Commonwealth applies.

“11 Service on a corporation—Corporations Law

“(1) Service of a document may be made on a company, or the liquidator or administrator of a company, in any way in which service of a document is permitted to be made on the company, liquidator or administrator under section 109X of the Corporations Law.

“(2) A document may also be served on a company by—

- (a) leaving a copy of the document with someone apparently an officer or employee of the company and apparently at least 16 years old—
 - (i) at the company’s registered office; or
 - (ii) if there is no registered office—at the company’s principal place of business or principal office; or
- (b) serving the document personally on—
 - (i) a member of the company charged with the management of the corporation’s affairs; or
 - (ii) a manager, secretary or similar officer of the company; or
 - (iii) if a company is constituted by 1 person—that person.

“12 Substituted service

“(1) If, for any reason, it is impracticable to serve a document in a way required or permitted by these rules, the court may make an order substituting another way of serving the document.

“(2) The court must, if practicable, state in the order a way of serving the document the court considers reasonably likely to bring the document to the attention of the person to be served.

“(3) The court may, in the order, state that the document is to be taken to have been served on the happening of a stated event or at the end of a stated time.

“(4) The court may make an order under this rule even though the person to be served is not in the Territory or was not in the Territory when the proceeding started.

“(5) An application for an order under this rule must be supported by an affidavit setting out the grounds of the application.

“13 Affidavit of service

An affidavit of service must state when, where, how and by whom service was made.

“14 Inconvenient address for service

The registrar may refuse to file a document if the address for service stated in the document is manifestly inconvenient for a party or the court.

“15 Change of address for service

If a person has given the court an address for service in a proceeding and the person’s address for service changes in any respect before the proceeding is finally disposed of, the person—

- (a) must file a notice stating the new address; and
- (b) must, on the day the notice is filed, serve on the plaintiff and every other party who has entered an appearance a copy of the notice endorsed with a statement that the notice has been filed.”.

10 Mode of appearance

Rule 2 of Order 13 is amended—

- (a) by omitting from subrule (1) “the First Schedule” and substituting “Schedule 1”;
- (b) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) an address for service of documents for the proceeding; and”;
- (c) by inserting after subrule (1) the following subrule:
 - “(1AA) If a person is represented by a solicitor, the address for service stated in the memorandum may also include any of the following for the solicitor:
 - (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory;
 - (b) the number of a postbox at a post office in the Territory;
 - (c) a fax number.”.

11 Repeal

Rule 4 of Order 13 is repealed.

12 Definitions

Rule 1A of Order 39 is amended by inserting the following definition:

“*expert* means a person who—

- (a) has specialised knowledge based on the person's training, study or experience; and
- (b) gives, or it is proposed should give, evidence of an opinion that is entirely or substantially based on that knowledge.”.

13 Substitution

Rule 32A of Order 39 is repealed and the following rule substituted:

“32A Service of subpoenas

- “(1) A subpoena in a proceeding must be served personally.
- “(2) However, if the person to whom the subpoena is directed is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's consent, be served on the person by leaving it at his or her address for service.
- “(3) A subpoena is taken to be served personally on a medical expert if, at the place where the expert's practice is carried on—
 - (a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or
 - (b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person's presence and the person is told of the nature of the subpoena.
- “(4) If a subpoena requires a medical expert to attend to give evidence, it may be served later than 6 weeks before the date fixed for the hearing of the proceeding only if—
 - (a) the subpoena is a subpoena served in accordance with leave given under subrule (5); or
 - (b) the court otherwise orders.
- “(5) If a medical expert to whom a notice has been delivered in accordance with rule 32B fails to attend the court on the date and at the time stated in the notice, the court may give leave for the service of a subpoena on the medical expert requiring the attendance of the medical expert.”.

14 Expert's reports admissible as evidence of facts

Rule 48 of Order 39 is amended by omitting “consent is given” and substituting “the parties give their consent”.

15 Insertion

Order 39 is amended by inserting after rule 49 the following heading and rules:

“Division 8A—Evidence of expert witnesses

“49A Application of Division

“(1) This Division applies if 2 or more parties to an action call, or intend to call, expert witnesses to give opinion evidence about the same, or a similar, question.

“(2) This Division does not apply to expert evidence to be given before a jury.

“49B Court may direct manner that experts give evidence

The court may, on its own initiative or at the request of a party, direct—

- (a) that the expert witnesses confer; or
- (b) that the expert witnesses produce for the court’s use a document identifying—
 - (i) the matters and issues about which their opinions agree; and
 - (ii) the matters and issues about which their opinions differ; or
- (c) that—
 - (i) the expert witnesses give evidence at the trial after all or certain factual evidence relevant to a question has been given; and
 - (ii) each party intending to call 1 or more expert witnesses close the party’s case in relation to a question, subject only to presenting the evidence of the expert witnesses later in the trial; or
- (d) that, after all or certain factual evidence has been given, a party who called an expert witness file and serve on each other party an affidavit or statement by the expert witness stating—
 - (i) whether the expert witness adheres to any opinion given earlier; or

- (ii) whether, in light of factual evidence given at the trial, the expert witness wishes to modify any opinion given earlier; or
- (e) that—
 - (i) each expert witness be sworn one immediately after another; and
 - (ii) when giving evidence, an expert witness occupy a position in the courtroom (not necessarily in the witness box) that is appropriate to the giving of evidence; or
- (f) that each expert witness give an oral explanation of his or her opinion, or opinions, on a question; or
- (g) that each expert witness give his or her opinion about the opinion, or opinions, given by another expert witness; or
- (h) that the expert witnesses be cross-examined, or re-examined, in a certain way or sequence, including, for example, by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination, or re-examination, of all the witnesses is finished.”.

16 Insertion

Order 45 is amended by adding at the end the following rule:

“3 Service of judgment or order to be enforced by attachment

A judgment or order may be enforced against a person by writ of attachment only if the judgment or order has been served personally on the person.”.

17 Substitution

Rules 7 and 8 of Order 47 are repealed and the following rules are substituted:

“7 Changing of address for notices

A person mentioned in rule 6 may change the address for notices by serving a notice of the change of address on the company.

“8 Service by post

A notice is taken to have been served on a person who gives a notice under rule 5, whether the person is living or not, if it is sent by prepaid post addressed to the person at the address stated—

- (a) in accordance with rule 6; or
- (b) if the address has been changed in accordance with rule 7—the changed address.”.

18 Dispensing with service of notice of judgment or order

Rule 23 of Order 58 is amended by omitting all the words after “service” (second occurring).

19 Repeal

Rule 7 of Order 64 is repealed.

20 Repeal

Order 67 is repealed.

21 Citations

Rule 35 of Order 72 is amended by omitting subrule (3).

22 Repeal

Rule 68 of Order 72 is repealed.

23 Substitution

Rule 12 of Order 80 is repealed and the following rule substituted:

“12 **Service of subpoenas**

“(1) A subpoena must be served personally.

“(2) A subpoena is taken to be served personally on a medical expert if, at the place where the expert’s practice is carried on—

- (a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or
- (b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person’s presence and the person is told of the nature of the subpoena.”.

24 Consequential and miscellaneous amendments

The rules are further amended as set out in the Schedule.

PART 3—AMENDMENTS OF SUBORDINATE LAW 1995 No 15

25 Subordinate Law amended

This Part amends Subordinate Law 1995 No 15.

26 Substitution

Rule 4 is repealed and the following rules are substituted:

“4 Heading to Order 10

The heading to Order 10 is omitted and the following heading substituted:

ORDER 10

**SERVICE OF DOCUMENTS IN AUSTRALIA—
OTHER THAN FOREIGN DOCUMENTS**

“4A Application of Order 10

Rule 1 of Order 10 is amended by adding ‘, other than a document to which Part 15 (Service of foreign documents) applies’ after ‘document’.

27 Insertion

Rule 5 is amended—

- (a) by omitting “After Order 11” and substituting “After Order 10”;
and
- (b) by omitting “**ORDER 11A**” and substituting “**ORDER 11**”.

28 Insertion

Rule 1 as inserted by rule 7 is amended—

- (a) by omitting “the Commonwealth” and substituting “Australia”;
and
- (b) by omitting “Order 11A” and substituting “Order 11”.

29 Repeal

Rule 10 is repealed.

30 Insertion

Rule 2, subrule 3 (1) and rules 4 and 5 as inserted by rule 12 are amended by omitting “Order 11A” (wherever occurring) and substituting “Order 11”.

31 Schedule

Schedule 15 as inserted by rule 14 is amended—

- (a) by omitting from the heading to the Schedule “Order 11A” and substituting “Order 11”; and
- (b) by omitting from the heading to Forms 3 to 6 (inclusive) “Order 11A” (wherever occurring) and substituting “Order 11”.

PART 4—AMENDMENT OF SUBORDINATE LAW 1998 No 35

32 First Schedule

Rule 9 of Subordinate Law 1998 No 35 is amended by omitting from paragraph (p) “78A and 78B” (wherever occurring) and substituting “78B and 78C”.

SCHEDULE

(See r 24)

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Order 2, rule 20—

Omit “sues”, substitute “is represented”.

Order 8, rule 3—

Omit “Where a party, after having sued or defended”, substitute “If a party, having acted”.

Order 8, rule 4—

Omit “Where a party, after having sued or defended”, substitute “If a party, having been represented”.

Order 8, subrule 5 (1)—

Omit “a Federal Court”, substitute “the court”.

Order 12—

Omit the heading, substitute the following heading:

“ORDER 12

SERVICE OF DOCUMENTS OUTSIDE AUSTRALIA”.

Order 12, rules 2 and 3—

Omit “the Commonwealth” (wherever occurring), substitute “Australia”.

Order 12, rules 4, 6 and 9—

Omit “the Commonwealth”, substitute “Australia”.

Order 12, subrule 10 (5)—

Omit the subrule.

Order 12, rule 12—

Omit “Upon the application of the Crown Solicitor, with”, substitute “With”.

Order 13, rule 6—

Omit “in accordance with rule 4”.

SCHEDULE—continued

Order 14, paragraphs 3 (3) (a) and (b)—

Omit “rule 4 or 5 (as the case requires) of Order 10” (wherever occurring), substitute “Order 10, rule 7 or 8”.

Order 14, new subrule 4 (1A)—

After subrule 4 (1) insert the following subrule:

“(1A) A plaintiff applying to enter final judgment must file with the registrar—

- (a) an affidavit in accordance with form 10 of Schedule 1 that is sworn, not earlier than 14 days before it is filed by—
 - (i) the plaintiff or, if there are 2 or more plaintiffs, any plaintiff; or
 - (ii) a qualified person; and
- (b) a draft judgment in accordance with form 10A of Schedule 1.”.

Order 14, new subrules 4 (5) and (6)—

After subrule 4 (4) insert the following subrules:

“(5) The plaintiff’s solicitor may make an affidavit under this rule only if the source of the knowledge of the facts deposed is—

- (a) the plaintiff; or
- (b) if there are 2 or more plaintiffs—any plaintiff; or
- (c) another qualified person.

“(6) In this rule—

qualified person means any of the following:

- (a) the plaintiff’s solicitor;
- (b) if the plaintiff is a person under a disability—the person’s guardian or next friend;
- (c) if the plaintiff is a corporation—a member or officer of the corporation with knowledge of the facts so far as they are known to the corporation;
- (d) if the plaintiff is a corporation for which a receiver or a receiver and manager has been appointed—the receiver or the receiver and manager;
- (e) if the plaintiff is a corporation for which a liquidator, provisional liquidator or administrator has been

SCHEDULE—continued

appointed—the liquidator, provisional liquidator or administrator;

- (f) if the plaintiff is a body of persons that can sue and be sued in its own name or in the name of an officer or someone else—a member or officer of the body with knowledge of the facts so far as they are known to the body;
- (g) if the plaintiff is the Commonwealth, a State or a Territory—an officer or employee of the Commonwealth, State or Territory with knowledge of the facts so far as they are known to the Commonwealth, State or Territory;
- (h) in any other case—an officer or employee of the plaintiff having knowledge of the facts so far as they are known to the plaintiff.”.

Order 14, rule 7A—

Omit the rule.

Order 14, rule 8—

Omit “a judgment”, substitute “final judgment”.

Order 14, rule 9—

Omit all the words after “may enter”, substitute “final judgment against any defendant not appearing to the application for the possession of the land and interlocutory judgment for the claim”.

Order 14, new rules 9A and 9B—

After rule 9 insert the following rules:

“9A Trial of action after entry of interlocutory judgment

Unless the court otherwise orders, after entry of an interlocutory judgment against a defendant in an action, the plaintiff may proceed to trial on 1 or more of any claims for damages only, another form of pecuniary relief only or the value of goods only, or on 2 or more of these issues, as the case may be.

“9B Form of interlocutory or final judgment

An interlocutory or final judgment must be in accordance with form 10A of Schedule 1.”.

Order 17, subrule 2 (1)—

Omit “*viva voce*”, substitute “oral”.

SCHEDULE—continued

Order 19, rule 17—

Omit the rule, substitute the following rule:

“17 Persons with a mental disability

A person with a mental disability may—

- (a) sue as plaintiff in an action by his or her guardian, manager or next friend; and
- (b) defend an action by his or her guardian, manager or a litigation guardian appointed for the purpose.”.

Order 19, subrule 21 (2)—

Omit the subrule, substitute the following subrule:

“(2) Any consent as between a person with a mental disability and any person acting on his or her behalf is effective only if the consent is sanctioned by the court.”.

Order 19, rule 41—

- (a) Omit “*cestuis que trustent*”, substitute “beneficiaries”.
- (b) Omit “*cestui que trust*”, substitute “beneficiary”.

Order 19, rule 43—

Omit “*cestui que trust*”, substitute “beneficiary”.

Order 20, rule 3—

Omit “ Order 10 (except rule 7) and Order 11”, substitute “Order 2, rules 18A to 18D (inclusive) and Order 10”.

Order 21, rules 6 and 7—

Repeal the rules, substitute the following rules:

“6 Discharge or variation of order

A person who is served with an order under rule 4 may apply to the court for the discharge or variation of the order—

- (a) if the person is under a disability and has no guardian *ad litem*—within 12 days after the appointment of a guardian *ad litem*; or
- (b) in any other case—within 12 days after service of the order on the person.

SCHEDULE—continued

“7 Enforcement of order—person under disability

If an order under rule 4 is served on a person who is under a disability and has no guardian *ad litem*, the order does not have effect while the person may apply to the court under rule 6 for the discharge or variation of the order.”.

Order 23, rule 13—

Omit “infant, lunatic, or person of unsound mind not so found by inquisition”, substitute “infant or a person with a mental disability”.

Order 31, rule 7—

After “may enter”, insert “final”.

Order 31, rule 8—

Omit all the words after “may enter”, substitute “final judgment against any defendant not appearing to the application for the possession of the land and interlocutory judgment for the claim, and proceed with the action against the others”.

Order 31, new rules 9A and 9B—

After rule 9 insert the following rules:

“9A Application for final judgment—debt or liquidated amount

“(1) A plaintiff applying to enter final judgment for a debt or liquidated demand under rule 2, 6 or 9 must file with the registrar—

- (a) an affidavit in accordance with form 10 of Schedule 1 that is sworn, not earlier than 14 days before it is filed by—
 - (i) the plaintiff or, if there are 2 or more plaintiffs, any plaintiff; or
 - (ii) a qualified person; and
- (b) a draft judgment in accordance with form 10A of Schedule 1.

“(2) The plaintiff’s solicitor may make an affidavit under this rule only if the source of the knowledge of the facts deposed is—

- (a) the plaintiff; or
- (b) if there are 2 or more plaintiffs—any plaintiff; or
- (c) another qualified person.

“(3) In this rule—

qualified person means any of the following:

SCHEDULE—continued

- (a) the plaintiff's solicitor;
- (b) if the plaintiff is a person under a disability—the person's guardian or next friend;
- (c) if the plaintiff is a corporation—a member or officer of the corporation with knowledge of the facts so far as they are known to the corporation;
- (d) if the plaintiff is a corporation for which a receiver or a receiver and manager has been appointed—the receiver or the receiver and manager;
- (e) if the plaintiff is a corporation for which a liquidator, provisional liquidator or administrator has been appointed—the liquidator, provisional liquidator or administrator;
- (f) if the plaintiff is a body of persons that can sue and be sued in its own name or in the name of an officer or someone else—a member or officer of the body with knowledge of the facts so far as they are known to the body;
- (g) if the plaintiff is the Commonwealth, a State or a Territory—an officer or employee of the Commonwealth, State or Territory with knowledge of the facts so far as they are known to the Commonwealth, State or Territory;
- (h) in any other case—an officer or employee of the plaintiff having knowledge of the facts so far as they are known to the plaintiff.

“9B Trial of action after entry of interlocutory judgment

Unless the court otherwise orders, after entry of an interlocutory judgment against a defendant in an action, the plaintiff may proceed to trial on 1 or more of any claims for damages only, another form of pecuniary relief only or the value of goods only, or on 2 or more of these issues, as the case may be.”.

Order 31, new rule 13A—

After rule 13 insert the following rule:

“13A Form of interlocutory or final judgment

An interlocutory or final judgment must be in accordance with form 10A of Schedule 1.”.

SCHEDULE—continued

Order 34, rule 12—

Omit “*viva voce*”, substitute “oral”.

Order 36, rule 2—

Omit “examined *viva voce*”, substitute “orally examined”.

Order 38, rule 13—

Omit “coverture,”.

Order 39, rule 1—

Omit “examined *viva voce*”, substitute “orally examined”.

Order 40, rule 24, proviso—

Omit “*viva voce*”, substitute “orally”.

Order 42, paragraph 2 (6) (a)—

Omit the paragraph, substitute the following paragraph:

“(a) for a draft or minute for—

- (i) an interlocutory or final judgment mentioned in Order 14 (Default of appearance) or Order 31 (Default of pleading)—be in accordance with form 10A of Schedule 1; or
- (ii) any other judgment—be in accordance with form 50AA in Schedule 1.”.

Order 42, paragraph 2 (6) (b)—

Omit “in the case of”, substitute “for”.

Order 46, subrule 1 (2)—

Omit “or his or her solicitor,”.

Order 46, subrule 1 (3)—

Omit the subrule.

Order 50, rules 3 and 4—

Repeal the rules.

Order 50, rule 6—

Omit “rule 3 upon”, substitute “Order 2, rule 18D on”.

SCHEDULE—continued

Order 50, rule 7—

Omit “rule 3”, substitute “Order 2, rule 18D”.

Order 55, rule 10—

Omit “Clerk”, substitute “registrar”.

Order 55, rule 32—

Omit all the words after “direct”, substitute “the judicial tribunal to which the writ of prohibition was issued to hear or determine the matter in question or proceed as if the writ had not been issued”.

Order 55, rule 45—

Omit “as provided for by Order 11”.

Order 58, rule 1—

Omit “*cestui que trust*” (wherever occurring), substitute “beneficiary”.

Order 58, paragraph 3A (g)—

Omit “*cestuis que trustent*”, substitute “beneficiaries”.

Order 61, paragraph 3 (a)—

Omit “Orders 8, 10, 12, 13, and 14”, substitute “Orders 8, 10 (other than rule 12), 12, 13 and 14”.

Order 65, subrule 58 (3)—

Omit “in accordance with Order 67 rule 2”.

Heading to Order 69A—

Omit “**UNDER PART XIX**”, substitute “**TO TRANSFER PROCEEDINGS UNDER PART 20**”.

Order 72, rule 1—

Omit “the Third Schedule” (wherever occurring), substitute “Schedule 3”.

Order 72, rule 51B—

Omit “the Third Schedule”, substitute “Schedule 3”.

Order 75B, subrule 2 (1)—

Omit the definitions of “body corporate”, “company”, “contributory”, “corporation”, “officer” and “official liquidator”.

SCHEDULE—continued

Order 75B, subrules 37 (9) and (10)—

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

Order 75B, rule 41—

Add at the end the following subrule:

“(3) The substituted applicant must serve the respondent personally with the order.”.

Order 76, subrule 1 (3)—

Omit “the Eighth Schedule”, substitute “Schedule 8”.

Order 76, rule 25—

Repeal the rule, substitute the following rule:

“25 Service of notice of applications

“(1) A notice of an application for an order under the Act must be served personally.

“(2) However, a notice may be served on—

- (a) the director by giving the notice to a member of the staff of the director’s office; and
- (b) the principal officer of a private adoption agency by giving the notice to a member of the staff of the agency.

“(3) An affidavit of service must be in accordance with form 20.”.

Order 80, rule 2—

Omit “the Eleventh Schedule” (wherever occurring), substitute “Schedule 11”.

Order 80, rule 14—

Repeal the rule.

Order 81, subrule 2 (1)—

(a) Insert after item 2 in the table:

“2A	Discrimination Tribunal	<i>Discrimination Act 1991</i> section 108D”;
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(b) Insert after item 6 in the table:

“6A	Residential Tenancies Tribunal	<i>Residential Tenancies Act 1997</i> section 126”; and
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(c) Omit item 7, substitute:

SCHEDULE—continued

“7 Small Claims Court *Magistrates Court (Civil Jurisdiction) Act 1982*
Part 21”.

Order 81, subrule 8 (2)—

Omit “the Second Schedule”, substitute “Schedule 2”.

Order 81A, rule 6—

Omit “the Second Schedule”, substitute “Schedule 2”.

Order 82, subrule 3 (3)—

Insert “personally” before “served”.

Heading to the Schedules—

Omit the heading:

“**THE SCHEDULES**”.

Heading to First Schedule—

Omit the heading, substitute the following heading:

“**SCHEDULE 1**”.

First Schedule, form 2—

- (a) Insert after “Service of documents—³”, on a new line, “*If represented by a solicitor, the following information may be provided:*”.
- (b) Insert after “Australian Document Exchange Box No.:*”, on a new line, “*Postal address (if different from above):**”.
- (c) Omit “Facsimile machine”, substitute “Fax”.
- (d) Omit from note 3 “Order 2, rule 6”, substitute “Order 1, subrule 4 (1), definition of *address for service* and Order 2, paragraph 4 (4) (e) and subrule 4 (4A)”.

First Schedule, form 8—

Omit “THE COMMONWEALTH”, substitute “AUSTRALIA”.

First Schedule, form 9—

- (a) Insert after “Service of documents—”, on a new line, “*If represented by a solicitor, the following information may be provided:*”.
- (b) Insert after “Australian Document Exchange Box No.:*”, on a new line, “*Postal address (if different from above):**”.
- (c) Omit “Facsimile machine”, substitute “Fax”.
- (d) Relocate the reference to note 4 from after “Address for service:” to after “Service of documents—”.

SCHEDULE—continued

- (e) Omit from note 4 “Order 13, rule 4”, substitute “Order 1, subrule 4 (1), definition of *address for service* and Order 13, paragraph 2 (1) (c) and subrule 2 (1AA)”.

First Schedule, new forms 10 and 10A—

After form 9 insert the following forms:

FORM 10 O 14 r 4, O 15, r 1 and O 31 r 10A
 AFFIDAVIT IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT FOR DEBT
 [Heading as in Form 1]

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

- 1 [Set out the facts entitling you to make this affidavit.]
- = [Set out the source of your knowledge of the facts deposed.]
- = I believe that the defendant is indebted to me/the plaintiff* for the cause of action set out in the originating application (dated) for \$ _____, plus costs and interest accruing from the date of this affidavit to the date of judgment*, made up as follows:

Amount claimed in originating application: \$ _____
 Less payments made or credit accrued: \$* _____

[If applicable: insert date and amount of any payments or credits made since the beginning of the proceeding that reduces the amount for which judgment is sought.]

Total of claim: \$ _____

[If applicable: explain any discrepancy between this amount and the amount claimed in the statement accompanying the originating application claiming for a debt or liquidated demand (form 3)]

Plus interest of: \$* _____

[If applicable: insert the amount on which interest is calculated, the rate of interest and the period for which the rate is applicable. Repeat for each change in the amount or rate of interest.]

TOTAL AMOUNT CLAIMED: \$ _____
 (excluding costs and interest accruing from the date of this affidavit to the date of judgment.)

- = No payment has been made, and no credit has accrued, since the beginning of the proceeding that reduces the amount for which judgment is sought.*
- = I am/the plaintiff* is entitled to claim interest on the total amount claimed mentioned above at the rate of \$ _____ per day until the date of judgment.*
 [If applicable: the interest is to be calculated in accordance with O 14, r 4 (3) or O 31, r 2(3).]
- = I am/the plaintiff* is entitled to judgment for costs of \$ _____ made up as follows:
 [Insert particulars of how costs are made up.]

Sworn by the deponent—

Signature:

Witness: _____ [Signature, name and title of person before whom affidavit is sworn or affirmed]

* Strike out where inapplicable.	=	Number as appropriate.
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Supreme Court Rules No 26, 1999

SCHEDULE—continued

SCHEDULE—continued

FORM 10A
DEFAULT JUDGMENT
[Heading as in Form 1]

O 14 r 9B and O 31 r 13A

DATE OF JUDGMENT:
ORIGINATING APPLICATION: [Insert date.]
HOW OBTAINED: In default of appearance/defence.*
AFFIDAVITS READ: Affidavit of service/nondelivery of defence* sworn by
(name) of (address) on (date).
OTHER MATTERS: Appearance entered on (date).*

THE JUDGMENT OF THE COURT IS THAT:

= The plaintiff recover against the defendant \$.*

= The plaintiff recover possession of the property described in the originating application/statement of claim* and known as block (number), section (number) of (suburb) contained in Certificate of Title Volume (number), Folio (number) (and known as (street address)).*

= The plaintiff recover against the defendant damages to be assessed.*

= The plaintiff recover against the defendant costs of \$ /costs as taxed.*

DATE ENTERED: (Date to be inserted by court.)

REGISTRAR

* Strike out where inapplicable.	=	Number as appropriate.
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First Schedule, form 19A—

- (a) Omit “of the Australian Capital Territory his or her successors and assigns for the sum of \$ of lawful money of Australia to be paid to the Registrar, his or her successors and assigns.”, substitute “for \$ ([Insert amount in figures]) to be paid to the Registrar”.
- (b) Omit all the words after “CONDITIONS”, substitute the following:
“This obligation remains in effect unless:
 - (a) the defendant fails to pay into court the amount accepted by the plaintiff within 14 days after the acceptance;
 - (b) the Supreme Court orders otherwise; or
 - (c) all parties to the action consent to the discharge of the bond by a notice signed by or on behalf of the parties that is filed in the Office of the Registrar.”.

First Schedule, form 19B—

Omit “the First Schedule”, substitute “Schedule 1”.

SCHEDULE—continued

Heading to Third Schedule—

Omit the heading, substitute the following heading:

“**SCHEDULE 3**”.

Schedule 4, item 34, column 2—

Omit “Facsimile copy”, substitute “Fax copy”.

Heading to Eighth Schedule—

Omit the heading, substitute the following heading:

“**SCHEDULE 8**”.

Eighth Schedule, forms 1 to 3 (inclusive), 6 to 8 (inclusive) and 10 to 18 (inclusive)—

Omit “[*Address of a place not more than 10 kilometres from the office of the Registrar*]”.

Heading to Eleventh Schedule—

Omit the heading, substitute the following heading:

“**SCHEDULE 11**”.

Schedule 12, form 93—

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

Schedule 12, form 93C—

Insert “and Investments” after “Securities” (wherever occurring).

Schedule 12, form 127—

Insert “and Investments” after “Securities” (wherever occurring).

Schedule 12, form 128—

- (a) Insert “and Investments” after “Securities”.
- (b) Omit “ASC office”, substitute “Commission’s office”.

Schedule 13A, subrules 36 (5), (7) and (8) and 37 (5), (7) and (8)—

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

Further amendments

The following provisions are amended by omitting “the First Schedule” (wherever occurring) and substituting “Schedule 1”:

Order 1, rule 5

SCHEDULE—continued

- Order 2, subrule 11 (1) and rules 12 and 13
- Order 12, subrule 10 (2)
- Order 19, rules 18 and 48
- Order 23, rule 5
- Order 25, rule 12
- Order 26, subrules 1 (3) and (4), 2 (1) and 4 (2)
- Order 28, subrule 3 (1)
- Order 34, paragraph 11 (a), rules 14 and 18 and subrule 19 (5)
- Order 34B, rule 3
- Order 35, subrule 2 (1), paragraphs 3 (1) (a) and (2) (a) and subrule 8 (1)
- Order 36, rule 9
- Order 37A, rule 1
- Order 38, rule 24
- Order 39, rules 12 and 24B, subparagraph 24C (1) (b) (ii), rule 24J, paragraph 24P (a) and subrules 31 (4), 50 (2), 51 (2), 52 (2) and 53 (2)
- Order 42, subrule 14 (3)
- Order 43, rules 10 and 12 and subrule 31 (2)
- Order 47, rule 5
- Order 49, rule 2
- Order 52, paragraph 19 (3) (b)
- Order 55, rules 14, 17 and 33
- Order 59, rule 16
- Order 61, paragraph 5 (1) (ba)
- Order 61A, paragraph 5 (c)
- Order 82, subrule 3 (1)

Endnotes

Rules amended

1 Republished as in force on 1 February 1999.

Notification

2 Notified in the *Gazette* on 27 October 1999.

Changes to rule headings

3 The following changes to rule headings are made on the commencement of rule 2 of these rules:

Rule	Change
Order 1, rule 5	Omit from the heading First Schedule and substitute Schedule 1 .
Order 19, rule 41	Omit the heading, substitute the following heading: Beneficiaries .
Order 25, rule 22	Omit the heading, substitute the following heading: Existence of record .
Order 34A, rule 5	Omit the heading, substitute the following heading: Discovery to identify right to obtain relief .
Order 55, rule 32	Omit the heading, substitute the following heading: Direction to proceed .