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ADELAIDE, THURSDAY, 27 JULY 2006

CONTENTS

RULES OF THE SUPREME COURT

BY virtue and in pursuance of section 72 of the Supreme Court Act 1935 and all other enabling powers, We, the Judges of the Supreme Court of South Australia, make the following Rules:

Contents

1. **Short Title**

These Rules may be cited as the '*Terrorism (Preventative Detention) (Supreme Court) Rules 2006*'.

2. **Interpretation**

In these Rules—

Act means the *Terrorism (Preventative Detention) Act 2005*;

issuing authority means an issuing authority as defined in section 4 of the Act;

Preventative Detention Order means such an order made pursuant to Part 2 of the Act.

3. **Review pursuant to section 17 of the Act**

A review pursuant to section 17 of the Act of a preventative detention order shall be conducted in accordance with these Rules.

4. **Request for review**

(a) Before bringing the subject before the Court for the purpose of such review, the police officer detaining the subject shall make a request in writing addressed to the Chief Justice, to which is to be annexed the originals of all the documents and other materials which were before the issuing authority, including the order for preventative detention.

(b) The request shall state where the subject is being detained and whether the police officer seeks any and, if so, what order or orders under section 18 of the Act.

5. **Delivery of the request**

The request and accompanying documents shall be delivered to the Chief Justice or if he is not available, the most Senior Judge available in a sealed envelope marked 'Strictly Confidential. Application under the Terrorism (Preventative Detention) Act 2005. Not to be opened other than by Justice .....'.

6. **Appointment for hearing of review**

The Chief Justice or other Judge dealing with the matter may direct when, where and before whom the application is to be heard.

7. **Conduct of hearing of review**

The hearing of the review:

(a) will be strictly in camera;

(b) will be recorded in transcript; and

(c) shall otherwise be conducted in accordance with such directions as may be given by the Chief Justice or such other Judge of the Court dealing with the matter, including a direction excluding any member of the public from the hearing of the review. Such directions may include a direction that the review proceedings be conducted by audio visual link or audio link pursuant to section 17 (2) of the Act.

8. **Confidentiality**

On the conclusion of any such review, all papers or other records associated with the same:

(a) shall be placed in the custody of the Registrar who shall keep them in a secure place, where no other person shall have access to them other than in accordance with an order of a Judge;

(b) shall otherwise be dealt with in accordance with such directions as may be given by the Court to ensure that they remain confidential to the parties to the review.

GIVEN under our hands and the Seal of the Supreme Court of South Australia this 7th day of July 2006.

(L.S.) J. DOYLE, CJ
J. W. PERRY, J
K. P. DUGGAN, J
M. J. NYLAND, J
D. J. BLEBY, J
T. A. GRAY, J
J. R. SULAN, J
A. M. VANSTONE, J
J. ANDERSON, J
R. C. WHITE, J
R. A. LAYTON, J

RULES OF THE SUPREME COURT

BY virtue and in pursuance of section 72 of the Supreme Court Act 1935 and all other enabling powers, We, the Judges of the Supreme Court of South Australia, make the following Rules:

Contents

1. **Short title**

These Rules may be cited as the '*Terrorism (Police Powers) (Supreme Court) Rules 2006*'.

2. **Interpretation**

In these Rules:

Act means the *Terrorism (Police Powers) Act 2005*;

regulations means the Terrorism (Police Powers) Regulations 2006;

relevant authority means the Commissioner of Police or such other person as is referred to in section 3 (3) of the Act;

relevant judicial officer means a Judge of the Supreme Court;

special area declaration means a special area declaration issued pursuant to section 13 (1) of the Act;

special powers authorisation means a special powers authorisation issued pursuant to section 3 of the Act.

3. **Applications for confirmation that the relevant authority has or had proper grounds for issuing a special powers authorisation**

An application to a relevant judicial officer seeking confirmation that the relevant authority has or had proper grounds for issuing a special powers authorisation:

(a) must conform to the requirements set out in clause 4 of the regulations; and

(b) must be lodged, together with any supporting documents, in a sealed envelope with the Judge nominated by the Chief Justice to hear the application and must not be filed or lodged in the Registry or entered in the records of the Court.

4. **Applications for confirmation that the issuing of a special area declaration is appropriate**

Applications by the Commissioner of Police to a relevant judicial officer seeking confirmation that the issuing of a special area declaration is appropriate in the circumstances:

(a) must conform to the requirements set out in clause 5 of the regulations; and

(b) must be lodged, together with any supporting documents, in a sealed envelope with the Judge nominated by the Chief Justice to hear the application and must not be filed or lodged in the Registry or entered in the records of the Court.

5. **Secure storage of documents**

(a) Following the hearing of an application for confirmation of the issue of a special powers authorisation or for confirmation of a special area declaration, the application and all other documents put before the Judge who dealt with the application and any other document used or referred to in relation to the hearing of the application must be placed in a sealed envelope and lodged with the Registry.

(b) The sealed envelope:

(i) is to be kept in such secure place as may be directed by the Registrar for the period written on the face of the envelope by the Judge who heard the application; and

(ii) is not to be opened except by and in accordance with the order of a Judge of the Court.

GIVEN under our hands and the Seal of the Supreme Court of South Australia this 7th day of July 2006.

(L.S.) J. DOYLE, CJ
J. W. PERRY, J
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R. A. LAYTON, J

South Australia

Supreme Court Civil Rules 2006

BY virtue and in pursuance of Section 72 of the Supreme Court Act 1935 and all other enabling powers, We, The Judges of the Supreme Court of South Australia, make the following Supreme Court Civil Rules 2006.

Contents

Chapter 4—Documents and service

Part 1—Documents

Division 1—Approved forms

Division 2—Filing of documents in Court

Division 3—Amendment

Part 2—Service

Division 1—Address for service

Division 2—Service of documents related to action

Division 3—Service on certain parties

Division 4—Cases where personal service required

Division 5—Non-personal service

Division 6—Presumptive service

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These rules may be cited as the *Supreme Court Civil Rules 2006*.

2—Commencement

These rules will commence on 4 September 2006.

Part 2—Objects

3—Objects

The objects of these rules are—

(a) to establish orderly procedures for the just resolution of civil disputes; and

(b) to facilitate and encourage the resolution of civil disputes by agreement between the parties; and

(c) to avoid all unnecessary delay in the resolution of civil disputes; and

(d) to promote efficiency in dispute resolution so far as that object is consistent with the paramount claims of justice; and

(e) to minimise the cost of civil litigation to the litigants and to the State.

Part 3—Interpretation

4—Interpretation

In these rules, unless the contrary intention appears—

action—see rule 28;

address for service—see rule 58;

adversarial action means an action in which a claim made by a plaintiff is contested by a defendant;

appellate proceeding means—

(a) an appeal; or

(b) a reservation or reference of a question of law;

appropriate fee means a fee fixed by regulation under the *Supreme Court Act 1935*;

approved document exchange means the Adelaide Document Exchange or another document exchange approved by the Registrar, at the request of the Law Society of South Australia, for the service of documents under these rules;

approved form—a document is in an approved form if—

(a) it is in the appropriate form for a document of the relevant kind prescribed by practice direction; or

(b) it is in electronic form capable of being converted to hard copy by the Court's electronic case management system and, when so converted, is in the appropriate form for a document of the relevant kind prescribed by practice direction;

arbitrator means a person appointed by the Court as an arbitrator;

business day means a day on which the Registry is ordinarily open for business;

carriage—for responsibility for the carriage of an action, see rule 114;

cause of action—see rule 30;

child means a person under the age of 18 years;

claim—see rule 30;

class—a class of persons may consist of a single person and may consist of or include a person or persons yet to be born;

class representative means a person appointed by the Court to represent a class;

closure of pleadings—pleadings close when the right to file further pleadings in the action is exhausted or expires without being exercised;

commencement date means the date on which these rules came into operation;

company means any body corporate (including a corporation sole);

composite action—if an action consists of a primary action and one or more secondary actions, the action as a whole may be referred to as the composite action (see rule 28);

computer data means an ordered series of electromagnetic particles from which intelligible information can be produced or reproduced by a computer;

conduct money—see rule 171;

contempt includes—

(a) a contempt in the face of the Court;

(b) disruption of the proceedings of the Court;

(c) obstruction or perversion of the course of justice—

(i) by intimidation of or interference with a witness; or

(ii) by making statements or publishing material that could prejudice the fair and impartial determination of proceedings before the Court; or

(iii) in any other way;

(d) obstruction or interference with the proper performance of official duties by an officer of the Court;

(e) deliberate non-compliance with a judgment or order of the Court;

(f) an attempt to do anything that would, assuming the attempt had been carried successfully to conclusion, have constituted a contempt under any of the above paragraphs;

costs includes interest on costs;

Court means the Supreme Court of South Australia;

cross action—see rule 29;

defendant—a defendant to an action is a party against whose interest the action lies or who is entitled to be heard in opposition to the plaintiff's claim;

Examples—

1 A person against whom contribution or indemnity is sought is a defendant to the claim for contribution or indemnity.

2 If a counterclaim is brought by a defendant, the plaintiff on the claim is defendant to the counterclaim. (In a composite action, a person may be defendant in one or more of the constituent actions and plaintiff in another or others).

Deputy Registrar means a person holding or acting in the office of Deputy Registrar of the Court and includes any officer of the Court assigned by the Chief Justice to carry out the functions of a Deputy Registrar under these rules;

disability—each of the following is a person under a disability—

(a) a child;

(b) a person whose affairs are administered (wholly or in part) under a law for the protection of persons suffering from mental or physical disabilities;

(c) a person who is not physically or mentally able—

(i) to manage his or her own affairs; or

(ii) to make rational decisions about taking, defending or settling proceedings (or to communicate decisions to others);

document—anything that records information is a document;

Examples—

1 Material in written or symbolic form.

2 A visual image, such as a map, graph, drawing or picture.

3 A photographic plate, film or microfilm from which writing or visual images can be reproduced.

4 A disc, tape, or other medium from which writing, visual images or sounds can be produced.

electronic communication means the transmission or reception of computer data by means of the internet;

electronic form—a document is in electronic form if it exists in the form of computer data capable of electronic transmission from which a document can be produced in intelligible form;

email address means an address from which an electronic communication may be transmitted, or at which an electronic communication may be received, by means of the internet;

email address for service means an email address entered, or to be entered, in the records of the Court as a party's email address for service;

Note—

Non-personal service of a document on a party may be effected by transmitting the document in electronic form to the party at the party's email address for service (see rules 45(2) and 68(3)).

evidentiary material means any document, object or substance of evidentiary value in an action and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

expert report means a report in written or electronic form by a medical or other expert on a question involved in an action (including a report by a medical or other expert on another expert report);

file—a document is filed in the Court—

(a) if the document has been lodged with the Registrar or transmitted in electronic form to the Registrar for filing in the Court; and

(b) the Registrar has accepted the document for filing and, in the case of a document transmitted in electronic form, issued a receipt for the document;

film includes any photographic, magnetic or electromagnetic record of visual images;

guardian of a person under a disability includes—

(a) if the person is a child—a parent of the child;

(b) a person who is authorised to act for the person under an enduring power of attorney;

(c) a person who is authorised to act for the person under a law for the protection of persons suffering from mental or physical disabilities;

hard copy of a document is the written form of a document that exists in electronic form;

interlocutory proceeding means a proceeding of any of the following kinds in which an order or direction of the Court is sought—

(a) a proceeding that is preliminary or ancillary to an action or appellate proceeding, or an intended action or appellate proceeding, in the Court;

Examples—

1 An application to require production of evidentiary material that may assist in the formulation of an action.

2 An application for a Mareva order.

(b) a proceeding for an order or direction about the course or conduct of an action or appellate proceeding;

Example—

An application for extension of time to take a step in an action.

(c) a proceeding related to the enforcement of a judgment;

Example—

An application for an order or direction under the *Enforcement of Judgments Act 1991*.

investigative film means a film (other than an X-ray film) containing images of a party to an action showing the range of the party's physical movements or giving some other indication of the extent of the party's physical capacity;

judgment includes an order or direction;

lawyer means a legal practitioner entitled to practise as a barrister or solicitor in South Australia;

mediation means a process by which a person (the ***mediator***) assists the parties to a dispute to reach an agreement to settle the dispute;

Example—

Mediation may (for example) involve—

(a) conciliation;

(b) suggestion of a possible basis for agreement or further negotiation.

mediator means a person appointed by the Court to be a mediator;

medical examination means an examination by a medical expert;

medical expert means—

(a) a medical practitioner; or

(b) a dentist; or

(c) a psychologist; or

(d) a physiotherapist; or

(e) a podiatrist (or chiropodist); or

(f) a chiropractor; or

(g) any other professional person qualified to diagnose or treat illness or injury;

officer of the Court includes—

(a) a person whom the Court has appointed to carry out a particular function;

(b) a person who serves or executes process or a judgment of the Court;

old rules means the *Supreme Court Rules 1987*;

physical address of a person means—

(a) an address at which the person resides or carries on business; or

(b) if the person is a party—an address recorded in the Court's records as a physical address for service (see rule 58);

plaintiff—the party that seeks relief in a primary or secondary action is the plaintiff (and, in the case of a composite action, a person may be defendant in one or more of the individual actions and plaintiff in another or others);

pleading is a formal statement of the basis of a party's case (see rule 90);

Note—

For use of affidavit as a substitute pleading, see rule 96.

possession—a person is taken to be in possession of a document or object if—

(a) the document or object is in the person's custody or control; or

(b) it lies within the person's power to obtain immediate possession of the document or object or to control its disposition (whether or not the power is one that would be recognised at law or in equity);

postal address of a person means—

(a) the person's last known postal address; or

(b) if the person is a party—an address recorded in the Court's records as a postal address for service,

(see rule 58);

premises includes a part of premises;

primary action—see rule 28;

primary originating process means the originating process for commencing a primary action;

procedural irregularity includes—

(a) failure to comply with a procedural obligation (whether arising under these rules, a practice direction or an order of the Court);

(b) unnecessary delay;

(c) prolixity in the statement of the party's case;

(d) the unnecessary, vexatious or otherwise improper commencement of, or an unnecessary, vexatious or otherwise improper step in, a proceeding;

(e) unreadiness to proceed with the hearing of a proceeding, or the taking of any other step in a proceeding, at the time fixed by or under these rules;

proceeding includes—

(a) an action, interlocutory proceeding or appellate proceeding; and

(b) any step in an action, interlocutory proceeding or appellate proceeding;

proper officer means—

(a) in relation to the Court—an officer of the Court assigned under section 110 of the *Supreme Court Act 1935* to exercise the function with reference to which the expression is used;

(b) in relation to another court or a tribunal—an officer assigned under a relevant law to exercise the function with reference to which the expression is used;

property means real or personal property (including intellectual property) and includes anything of value;

provisional costs order—see rules 276 and 277;

receiver includes a receiver and manager;

referee means a person to whom a question arising in an action is referred by the Court for investigation and report under section 67(1) of the *Supreme Court Act 1935*;

Registrar—references to the Registrar are (unless the contrary intention appears) to be read as extending to a Deputy Registrar;

secondary action means a cross action, a third party action or an action that is in part a cross action and in part a third party action (see rules 29 and 37);

secondary originating process means the originating process for commencing a secondary action;

shadow expert—see rule 161;

statement of loss—see rule 106;

statutory action means an action that arises under a cause of action conferred by statute or to enforce a right conferred by statute (see Chapter 15);

suppressed file—a suppressed file is part of the Court's record of an action kept in a way to prevent it from coming to the attention of the trial judge until the action has been determined;

teleconference means a hearing at which the Court and a party or the party's representative communicate by telephone, videolink or other electronic means;

third party action—see rule 29;

transitional proceeding means an action or an appellate proceeding commenced but not determined before the commencement date;

unincorporated association includes any form of unincorporated association except a partnership;

writing—a document in electronic form from which a written document can be produced is to be regarded as a document in writing;

written instrument includes a statute, regulation, proclamation or other statutory instrument.

5—Calculation of periods of time

(1) A period of time within which something is required or permitted to be done under these rules or a judgment runs from the end of the day from which the calculation is made.

Example—

Suppose that at 10am on 1 March, the Court orders a party to file a document within 14 days and the party files the document at 3pm on 15 March. In this case, the party has complied with the order because time does not begin to run against the party until midnight on 1 March.

(2) If a period of time within which something is required or permitted to be done under these rules or a judgment is fixed at 7 days or less, the reference is to a period made up of the stated number of business days together with any intervening non-business days.

(3) When a period of time within which something is required or permitted to be done under these rules or a judgment ends on a day on which the Registry is closed, the period is extended so that it ends on the next day on which the Registry is open for business.

(4) A reference to a month in these rules or a judgment is a reference to a calendar month.

(5) During the period fixed by practice direction as the Christmas vacation—

(a) pleadings and other documents may be filed on any day on which the Registry is open for business and, if filed electronically, whether the Registry is open for business or not; but

(b) subject to any contrary direction by the Court, time for filing a pleading or taking any other step in a proceeding does not run during the Christmas vacation.

Part 4—Application of rules

6—Application of rules

(1) These rules do not affect rules of procedure laid down by statute unless they are expressed to apply to the exclusion of inconsistent statutory rules.

(2) These rules do not apply to proceedings for which special rules have been made.

Example—

These rules are not intended to affect proceedings governed by the *Corporations Rules 2003* (South Australia).

(3) These rules do not derogate from the Court's inherent jurisdiction.

Part 5—Repeal and transitional provisions

7—Repeal

The *Supreme Court Rules 1987* (the ***old rules***) are repealed.

8—Transitional provision

(1) The general principle is that the old rules continue to apply to—

(a) a primary action commenced before the commencement date; and

(b) a secondary action introduced into a primary action commenced before the commencement date; and

(c) appellate proceedings commenced before the commencement date.

(2) The general principle is, however, subject to the following exceptions and qualifications—

(a) Chapter 12 (Costs) applies, from the commencement date, to an action or appellate proceedings commenced before, on or after the commencement date unless proceedings for the taxation of costs in the relevant action or proceedings had been commenced before the commencement date; and

(b) the Court may, in a particular case, give a direction displacing the general principle to the extent the Court thinks fit.

(3) The Court may give directions to resolve uncertainty about which rule applies to a transitional proceeding or a particular step in a transitional proceeding.

Chapter 2—General procedural rules and allocation of Court business

Part 1—Public access to hearings

9—Public access to hearings

(1) All proceedings before the Court are, as a general rule, to be held in a place open to the public.

(2) This general rule is, however, subject to the following exceptions—

(a) a non-contentious interlocutory proceeding may be heard in private;

(b) a contentious interlocutory proceeding may, if the Judge or Master who is to hear it thinks fit, be heard in private;

(c) the Court has a general discretion to direct, if there is good reason to do so, that a proceeding be heard wholly or partly in private or that the public be excluded from the whole or a particular part of a hearing.

Part 2—Court's control of procedure

10—Power of Court to control procedure

(1) The Court may, on its own initiative or on application by a party, give directions about the procedure to be followed in a particular proceeding.

(2) A direction may be given under this rule—

(a) to resolve uncertainty about the correct procedure to be adopted; or

(b) to achieve procedural fairness in the circumstances of a particular case; or

(c) to expedite the hearing or determination of a particular case or to avoid unnecessary delay or expense.

(3) A direction may be given under this rule irrespective of whether it involves some departure from these rules or the established procedures of the Court.

(4) A direction may be given under this rule superseding an earlier direction but a step taken in a proceeding in accordance with a direction that has been superseded is to be regarded as validly taken.

11—Practice directions

(1) The Court may make any practice direction contemplated by these rules or necessary for the regulation of proceedings in the Court.

(2) A practice direction is distinguished from other directions given by the Court in that its operation is not confined to particular proceedings in the Court but applies in relation to proceedings generally, or to a particular class of proceedings, according to its terms.

(3) A practice direction is to be made by the Chief Justice (or the Chief Justice's nominee).

(4) A practice direction—

(a) must be available at the Court's website so that it can be inspected at, and downloaded from, that site; and

(b) must be published in any other way directed by the Chief Justice.

Part 3—Enforcement of procedural obligations

12—Power to enforce compliance with procedural obligations

(1) A procedural irregularity does not make an action or proceeding void.

(2) If a party commits a procedural irregularity in bringing or in the conduct of an action or proceeding, the Court may, on its own initiative or on application by a party—

(a) dismiss the action or proceeding; or

(b) set aside a particular step in the action or proceeding.

Example—

The Court might in the exercise of this power strike out a party's statement of claim or defence.

(3) An application for an order dismissing an action or proceeding or setting aside a particular step in an action or proceeding under this rule must be made within 28 days after the date when the procedural irregularity should have become apparent to the applicant.

13—Power to deal with procedural irregularity by order for costs

(1) If a party commits a procedural irregularity, the Court may—

(a) limit the party's right or potential right to costs; or

(b) order the party to pay costs resulting from the irregularity.

(2) If the Court is satisfied that a lawyer is responsible for a procedural irregularity, the Court may—

(a) disallow costs between the lawyer and the client; or

(b) order the lawyer to indemnify the client for costs (including costs the client is liable to pay to another party) to an extent determined by the Court; or

(c) order the lawyer to indemnify a person other than the lawyer's client for costs to an extent determined by the Court.

(3) Before the Court makes an order against a lawyer under this rule, the Court—

(a) must direct that notice be given to the lawyer allowing the lawyer a reasonable opportunity to make representations on the matter; and

(b) may direct that notice be given to the lawyer's client.

(4) The Court may order the payment into Court of costs awarded against a party or lawyer under this rule.

Part 4—Distribution of Court's business

Division 1—General

14—Distribution of Court's business

(1) The judicial functions of the Court are to be exercised by the Judges and Masters.

(2) Administrative functions of the Court are to be exercised by the Registrar and other administrative officers of the Court.

(3) Certain minor judicial functions are delegated to the Registrar and other administrative officers under these rules.

Division 2—Jurisdiction of Masters

15—Jurisdiction of Masters

(1) Subject to this rule, a Master may exercise the same jurisdiction as a single Judge of the Court.

(2) An action involving the liberty of the subject cannot be tried by a Master.

(3) An action (other than one involving the liberty of the subject) can only be tried by a Master if—

(a) the Chief Justice (or a Judge nominated by the Chief Justice to give directions under this paragraph) directs that it is to be tried by a Master; or

(b) the action involves only the assessment of damages (or damages and interest) and incidental or consequential questions; or

(c) all parties consent to trial by a Master.

(4) An application for an interlocutory injunction, or proceedings for the confirmation of an interlocutory injunction, are not to be heard and determined by a Master if a party notifies the Registrar as soon as practicable, and before the time appointed for the hearing, that the party wants the proceedings heard by a Judge.

(5) A Master cannot punish a contempt of the Court.

16—Power to refer matter to Judge or Full Court

(1) A Master may refer a matter for consideration by—

(a) the Court constituted of a single Judge; or

(b) the Full Court.

(2) If a matter involving a possible contempt of the Court arises before a Master, the Master must refer the matter to be dealt with by the Court constituted of a single Judge.

(3) However, a Master may make any interim order that may be necessary in the circumstances of the case.

17—Appeal to Full Court

(1) An appeal lies, as of right, from a final judgment of a Master to the Full Court.

(2) An appeal lies, as of right, from any other judgment of a Master to a single Judge of the Court.

Division 3—Administrative functions

18—Registrar's functions

(1) The Registrar is the Court's principal administrative officer.

(2) The Registrar's functions include the following—

(a) to establish and maintain appropriate systems—

(i) for filing documents in the Court; and

(ii) for issuing the Court's process as provided by these rules or as directed by the Court;

(b) to ensure that proper records of the Court's proceedings are made and to provide for the safe keeping of the Court's records;

(c) to take custody of documents and objects produced to the Court in response to a subpoena, and of all exhibits tendered in proceedings before the Court, and to deal with them—

(i) if they have not become, and it is apparent that they will not become, exhibits in proceedings—as authorised by these rules; or

(ii) if they have become exhibits in proceedings—as directed by the Court;

(d) to ensure that judgments and orders of the Court are properly entered in the records of the Court.

(3) The Registrar may, with the approval of the Chief Justice, delegate functions under these rules to another officer of the Court.

(4) No record is to be taken out of the Registrar's custody without the Court's authorisation.

Division 4—Minor judicial functions

19—Ancillary jurisdiction

(1) The Registrar may, subject to the supervision of a Master, exercise the jurisdiction of the Court—

(a) for the taxation of costs; or

(b) for the examination of a judgment debtor or the exercise of interlocutory powers under section 4 or 5 of the *Enforcement of Judgments Act 1991*.

(2) The Registrar may, subject to any direction of the Court to the contrary, exercise all of the powers of the Court incidental to the relevant jurisdiction but does not have power to punish a contempt of the Court.

Division 5—Directions and review

20—Registrar may seek directions from Judge or Master

(1) The Registrar may refer to a Judge or Master any question arising in the course of—

(a) the exercise of minor judicial functions by the Registrar; or

(b) the carrying out of administrative functions by any of the Court's administrative officers.

(2) The Judge or Master may—

(a) give directions he or she considers appropriate; or

(b) assume control of the matter.

21—Review of decision or act of Registrar or other administrative officer

(1) The Court may, on application by a person with a proper interest in the matter, review a decision or act of the Registrar or any other administrative officer of the Court made in or in relation to a proceeding in the Court.

(2) A person has a proper interest in the matter if the person is—

(a) a party to the relevant proceeding; or

(b) directly affected in some other way by the decision or act.

(3) An application for review must be made within 7 days after the applicant receives notice of the decision or act.

(4) Unless the Court directs to the contrary, the review will be carried out by a Master.

(5) On the review, the Court may confirm, vary or reverse the decision or act under review.

Part 5—Representation

Division 1—General principles of representation

22—General principles of representation

(1) A person may only be represented in proceedings before the Court by a lawyer.

Exception—

The Court may, however, authorise representation of a company by a director who is a non-lawyer (see rule 27).

(2) A party who appears personally in proceedings before the Court may, with the Court's permission, be assisted in court in the presentation of his or her case by a person approved by the Court.

Division 2—Solicitors

23—Solicitor acting for party

(1) A solicitor is to be recorded in the Court's records as the solicitor acting for a party if—

(a) the solicitor's name appears on the first document to be filed in the Court on behalf of the party as the name of the party's solicitor; or

(b) the solicitor gives notice to the Court, in an approved form, that the solicitor is acting for the party.

(2) The Court will alter its records so that a particular solicitor no longer appears as the solicitor for a party if—

(a) the party files in the Court a notice, in an approved form, to the effect that the party is no longer represented by a solicitor; or

(b) a solicitor files a notice, in an approved form, to the effect that the solicitor is to be recorded as the solicitor acting for the party in place of the solicitor previously recorded as the solicitor acting for the party; or

(c) the Court orders on its own initiative, or on the application of a party or a solicitor, that the Court's records be altered so that the solicitor no longer appears as the solicitor acting for the party.

(3) If the Court makes an order under subrule (2)(c), it may make ancillary orders—

(a) requiring that notice be given of the order; and

(b) providing that the order is not to take effect until notice has been given as required in the order.

24—Solicitor's presumptive authority

A solicitor who appears in the Court's records as the solicitor for a party is taken to have authority to represent the party as the party's solicitor and to accept, on behalf of the party, service of documents related to the proceedings unless the contrary is established.

25—Representation by two or more solicitors

(1) A party may, with the Court's permission, be represented by two or more solicitors.

(2) The Court may give its permission on terms defining the respective spheres of responsibility of each solicitor.

(3) If a party is represented by two or more solicitors—

(a) a document may be served on the party by serving it on any one of the solicitors; and

(b) subject to the terms on which the Court allowed representation by two or more solicitors, they may act jointly or individually on behalf of the party; and

(c) unless the Court otherwise orders, there is to be no increase in the liability to costs of other parties.

26—Orders for account etc between solicitor and client

(1) The Court may, on application by a client or former client of a solicitor, order the solicitor—

(a) to deliver to the applicant an account of money and property received, disbursed or held by the solicitor on behalf of the applicant; or

(b) to deliver up to the applicant money or property (or both) held by the solicitor on behalf of the applicant; or

(c) to pay into the Court money held by the solicitor on behalf of the applicant; or

(d) to deliver up the solicitor's file relating to work done for the applicant.

(2) On an application under this rule, the Court may make any order it considers appropriate to secure payment of the solicitor's costs.

Division 3—Representation of company

27—Representation of company

(1) The Court may, on application by a director of the company, authorise representation of a company by the applicant or some other director of the company.

(2) The Court must be satisfied that a director who is to represent the company has power to bind the company in relation to the conduct of the proceeding.

(3) If a company lodges originating process for filing, and it does not appear from the process that a solicitor is acting for the company, the Registrar will accept it provisionally subject to the grant of an authorisation under subrule (1).

Chapter 3—Elements of action at first instance

Part 1—Nature of action

28—Nature of action

(1) An ***action*** is a proceeding in the Court (other than an interlocutory or appellate proceeding) in which a person (the ***plaintiff***) asks the Court to make a final determination of a justiciable issue or to exercise any other power vested in the Court.

(2) An action that is (when commenced) separate from other actions in the Court is called a ***primary action*** and an action that is commenced in the context of an existing action (that is, a cross action or a third party action) is called a ***secondary action***.

(3) A reference in these rules to an ***action*** extends, according to context, to a primary or secondary action, or to the action as a whole.

(4) However, if an action consists of two or more actions (one being the primary action and the other or others being secondary actions) and it is necessary to distinguish between the action as a whole and the constituent elements of the action, the action as a whole is referred to as a ***composite action***.

29—Secondary actions

(1) Secondary actions are of two classes—

(a) cross actions; and

(b) third party actions.

(2) A ***cross action*** is an action introduced into an existing action by a party against another party.

(3) A ***third party action*** is an action introduced into an existing action by a party against a person who is not already a party (irrespective of whether the person introduced into the action as a party is the third, fourth, fifth or a subsequent party to the action).

(4) An action introduced into an existing action by a party against another party and a person who is not already a party is—

(a) insofar as it lies against a party—a ***cross action***;

(b) insofar as it lies against a person who is not already a party—a ***third party action***.

30—Subject matter of action

(1) An action is based on a claim.

(2) A ***claim*** is an assertion that grounds exist on which the Court should or may in its discretion determine a justiciable issue, or exercise any other power, in the plaintiff's favour (and includes a cross claim and a third party claim).

(3) A claim is based on a ***cause of action*** (that is, some basis in law and fact on which the plaintiff asks the Court for a remedy).

(4) An action may include claims based on more than one cause of action.

(5) The claims may be made by a plaintiff in the same or different capacities.

(6) The claims may be made against the defendant in the same or different capacities.

(7) However, a plaintiff may not make different claims against different defendants in the same action unless—

(a) the claims are based on the same cause of action; or

(b) the claims arise out of the same facts or there is some other common element; or

(c) the Court gives permission for the claims to be included in the same action.

(8) In exercising its discretion under subrule (7), the Court will give effect to the principle that multiplicity of actions should be avoided as far as that object is consistent with the proper administration of justice.

31—Consolidation and division of actions

(1) The Court may, on its own initiative or on application by a party, order the consolidation of separate actions into a single action.

(2) The Court may, on its own initiative or on application by a party, order the division of an action into separate actions.

(3) The Court may give directions consequential on the consolidation of actions or the division of an action into separate actions.

Examples—

1 The Court might give directions assigning responsibility for the carriage of a consolidated action or one or more of the actions resulting from division of an action.

2 The Court might give directions about the extent evidence taken in an action before consolidation is to be available for resolving questions that were not in issue when the evidence was taken.

Part 2—Proceedings in anticipation of action

Division 1—Investigation

32—Investigation

(1) If the Court is satisfied, on application by a person (the ***plaintiff***) that the plaintiff may have a good cause of action and requires further information—

(a) to determine whether a cause of action exists; or

(b) to formulate the claim properly; or

(c) to determine against whom the claim lies,

the Court may exercise the investigative powers conferred by this rule in anticipation of an action.

(2) The Court may, if satisfied that a person may be in possession of evidentiary material relevant to the possible cause of action, make an order imposing one or more of the following requirements—

(a) to disclose to the Court whether the person is or has been in possession of relevant evidentiary material and, if so, to disclose full particulars of relevant evidentiary material that is, or has been, in the person's possession;

(b) if the person is in possession of relevant evidentiary material—to produce it to the Court;

(c) to verify the person's response to the order by affidavit.

(3) After considering a person's response (or failure to respond) to an order under subrule (2), the Court may require the person to appear before the Court for cross-examination.

(4) Subject to any direction by the Court to the contrary, a person against whom an order is made under this rule is entitled to reasonable compensation from the plaintiff for the time and expense involved in complying with the order.

(5) The compensation is to be fixed by agreement between the plaintiff and the person entitled to the compensation or, in default of agreement, by the Court.

Division 2—Offers of settlement before action

33—Offers of settlement before action

(1) This rule applies to a primary action based on a monetary claim, other than—

(a) an action in which urgent relief is sought; or

(b) an action brought in circumstances where the plaintiff—

(i) reasonably believes there is a risk that the defendant will take action to remove assets from the jurisdiction; and

(ii) intends to seek an injunction to prevent the defendant from removing assets from the jurisdiction; or

(c) an action excluded from the application of this rule by direction of the Court.

(2) A plaintiff must, at least 90 days before commencing an action to which this rule applies, give the defendant written notice containing or accompanied by—

(a) an offer to settle the plaintiff's claim on a basis set out in the notice; and

(b) sufficient details of the claim, and sufficient supporting material, to enable the defendant to assess the reasonableness of the plaintiff's offer of settlement and to make an informed response to that offer; and

(c) if the plaintiff is in possession of expert reports relevant to the claim—copies of the expert reports.

(3) If the plaintiff believes the defendant to be insured against the relevant liability by an insurer whose identity is known to the plaintiff, the plaintiff must send a copy of the notice and the accompanying materials to the insurer.

(4) The defendant must, within 60 days after receiving the notice, respond in writing to the notice by—

(a) accepting the plaintiff's offer of settlement; or

(b) making a counter-offer; or

(c) stating that liability is denied and the grounds on which it is denied.

(5) If the defendant is in possession of expert reports relevant to the claim, the defendant's response must be accompanied by copies of the expert reports.

(6) When an action to which this rule applies is commenced—

(a) the originating process must include an endorsement stating whether the plaintiff has complied with the requirements of this rule and, if not, why not; and

(b) the plaintiff's notice to the defendant and the defendant's response (if any) to the notice must be filed in the Court in a suppressed file.

(7) In awarding costs of the action, the Court may take into account—

(a) whether the parties have complied with their obligations under this rule; and

(b) the terms of any offer or counter-offer, or of any response to an offer or counter-offer, made under this rule and the extent to which it was reasonable or unreasonable in the circumstances.

(8) A plaintiff may commence a primary action in anticipation of obtaining an exclusionary order under subrule (1)(c).

(9) If an action is commenced under subrule (8) but the court decides against making an exclusionary order, the action is stayed until the plaintiff complies with the requirements of this rule.

Part 3—Commencement of action

Division 1—How action is commenced

34—Commencement of primary action

(1) A primary action is commenced by filing primary originating process in the Court.

(2) Primary originating process is to be in the form of a summons.

(3) A summons is to be in an approved form.

(4) This rule applies to the exclusion of an inconsistent statutory rule.

35—Commencement of cross action

(1) A cross action is introduced into an action if a defendant to the primary action or an existing secondary action files in the Court secondary originating process against an existing party to the action.

(2) Originating process for a cross action is to be in an approved form.

Examples—

1 A cross action based on a counterclaim by the defendant in the primary action against the plaintiff might be commenced by adding a statement of the counterclaim to the defence. In this case, originating process for the cross action would be the defence with the addition of the statement of the counterclaim.

2 A cross action based on a claim by one party against another for an indemnity or contribution might be commenced by a notice, in an approved form, given by the defendant who claims the indemnity or contribution to the party against whom the contribution or indemnity is claimed.

Note—

Where contribution is claimed, the notice does not need to contain, or be supported by, a statement of claim (see rule 91(3)(b)).

(3) Originating process for a cross action is to be filed and served within the time allowed for filing and serving a defence.

36—Commencement of third party action

(1) A third party action is introduced into an action if a defendant to the primary action or an existing secondary action files in the Court originating process for a claim against a person who is not already a party to the action.

(2) A third party action must be based on a claim for contribution or indemnity or related in some other way to the subject matter of the action as it existed before the introduction of the third party action.

(3) Originating process for a third party action must be in an approved form.

(4) Originating process for a third party action is to be filed and served within the time allowed for filing and serving a defence.

(5) On the filing of originating process for a third party action, the person against whom the third party action lies becomes a party to the action.

37—Actions that are in part cross actions and in part third party actions

(1) A party to an action claiming to have a right of action that lies against another party and also against a person who is not a party to the action may commence an action against them as follows—

(a) insofar as the action lies against another party—according to the procedure appropriate to a cross action;

(b) insofar as the action lies against a third party—according to the procedure appropriate to a third party action.

(2) If the defendants are to file a defence to such an action, the relevant time limit is the one appropriate to the third party action.

38—Originating process

(1) Originating process in an approved form is to be used in place of any other form of originating process prescribed by law.

(2) Subrule (1) applies despite any statutory rule to the contrary.

(3) Originating process must bear the following endorsements—

(a) any endorsement required by statute or these rules;

Examples—

1 If an extension of time to bring the action is sought under section 48 of the *Limitation of Actions Act 1936*, the originating process must contain the endorsement required under section 48(4) of that Act.

2 If the plaintiff brings an action relying on the Court's jurisdiction under the *Jurisdiction of Courts (Cross-vesting) Act 1987*, the originating process must contain a statement to that effect.

3 One or more of the following endorsements may be required under these rules—

(a) an endorsement indicating whether the plaintiff has made an offer of settlement and, if not, why not (see rule 33(6));

(b) if the plaintiff sues in a business name—the name and address of the person carrying on the business (see rule 85(2));

(c) if partners sue in the partnership name—the names and addresses of the partners at the time the cause of action is alleged to have arisen (see rule 86(2)).

(b) in the case of originating process for a primary or third party action—the time allowed for serving the originating process and any extension of the time that has been allowed under these rules;

(c) if the full name of a party is not known—an endorsement, in an approved form, to that effect;

(d) if the action is brought in a representative capacity—an endorsement of the capacity in which the plaintiff brings the action.

Division 2—Service of originating process

39—Service of originating process initiating primary or third party action

(1) Originating process for a primary or third party action must be served on the defendant—

(a) if it is to be served within the State—within 6 months after it is filed in the Court; or

(b) if it is to be served outside the State—within 6 months after it is filed in the Court or a longer period fixed by the Court.

(2) The Court may, from time to time, extend the period for serving originating process for a primary or third party action for a period of up to 6 months.

(3) The Court's discretion to extend the time for serving originating process may be exercised—

(a) even though the time allowed for service by or under this rule has expired; and

(b) even though the time for commencing an action against the defendant has expired.

40—Service of originating process outside Australia

(1) Originating process may be served outside Australia without the Court's permission if—

(a) the claim relates to—

(i) real or personal property in the State; or

(ii) the interpretation of an instrument or the terms of a transaction affecting real or personal property in the State; or

(iii) the enforcement of rights or liabilities affecting real or personal property in the State; or

(b) a remedy is sought against a person domiciled or resident in the State or the estate of a person who died domiciled or resident in the State; or

(c) the action is brought against a person duly served within or outside the State and a person outside the State is a necessary or proper party to the action; or

(d) the action is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain any other remedy in respect of a breach of contract, where the contract is—

(i) made within the State; or

(ii) made by or through an agent trading or residing in the State on behalf of a principal trading or residing out of the State; or

(iii) governed by the law of the State; or

(iv) contains a clause to the effect that the Court is to have jurisdiction in claims relating to the contract; or

(e) the action is brought in respect of a breach committed in the State of a contract made in or outside the State; or

(f) the action is founded on a tort and—

(i) the tort was committed in the State; or

(ii) damage was sustained in the State as a result of the tort; or

(g) the action is brought to enforce a trust that is governed by the law of the State; or

(h) the action is brought for the administration of the estate of a person who died domiciled in the State; or

(i) the action is brought in a probate action relating to the will or testamentary intentions of a person who died domiciled in the State or who made a will or expressed testamentary intentions in circumstances governed by the law of the State; or

(j) the action is brought to enforce a judgment of a foreign court or an arbitral award; or

(k) the action is brought under a statute of the Commonwealth or the State; or

(l) the action is brought against a person who has submitted or agreed to submit to the jurisdiction of the Court.

(2) Originating process for an action of any other kind may only be served outside Australia with the Court's permission.

(3) Originating process that is to be served outside Australia must be in the appropriate form for such originating process.

41—Special rules for service outside Australia

(1) Subject to the law of the country in which service is to be effected, originating process is to be served outside Australia in the same way as if it were served within Australia.

(2) The Court may give any direction as to service outside Australia that may be appropriate—

(a) to avoid conflict with the law of the country in which service is to be effected; or

(b) for any other reason.

Chapter 4—Documents and service

Part 1—Documents

Division 1—Approved forms

42—Approved forms

(1) The responsibility for designing forms for use for commencing proceedings before the Court and for taking any step in the proceedings is assigned to a committee to be established by the Chief Justice for the purpose.

(2) Each form is to be submitted for the approval of the Chief Justice and, if approved, will be promulgated in the form of a practice direction.

(3) On approval of a form, it is to be published on the Court's website.

Division 2—Filing of documents in Court

43—Form of documents for filing in Court

(1) A document to be filed in the Court must be in an approved form.

(2) The Court may, in a particular action, give directions—

(a) about the form in which documents are to be filed in the Court; and

(b) imposing additional requirements about the filing or form of documents.

44—Filing and safe-keeping of documents

(1) The Registrar is responsible for establishing and maintaining appropriate systems for—

(a) filing documents in the Court; and

(b) the safe-keeping of the Court's records.

(2) Documents should be filed, and the Court's records should be kept, as far as practicable, in electronic form.

(3) To that end, any of the following requirements may be imposed by practice direction on a person seeking to file a document in the Court—

(a) a requirement that the document be filed in electronic form;

(b) a requirement that there be produced to the Court on the filing of a document in the form of a hard copy a computer disc containing, in a specified format, computer data from which the document was produced;

(c) a requirement that the person producing the document for filing pay a fee, calculated in accordance with a specified scale, for scanning the document to reproduce the document in electronic form.

45—Electronic case management system

(1) The Registrar is responsible for maintaining an electronic case management system—

(a) to enable a registered user—

(i) to file documents in electronic form in the Court; and

(ii) to serve documents in electronic form by means of the system; and

(b) to enable a notice or other communication to be given to a registered user, or a person represented by the registered user, in electronic form; and

(c) to facilitate the hearing and determination of proceedings by enabling the Court to call up documents and information about the filing and service of documents in readable form.

(2) If a person on whom the Registrar is to serve a notice or other document under these rules is a registered user, or a party represented by a registered user, the Registrar may serve the notice or other document by transmitting it, in electronic form, to the registered user's email address.

46—Registered users

(1) A lawyer or a firm of lawyers may be admitted by the Registrar as a registered user of the Court's electronic case management system.

(2) A lawyer or firm of lawyers seeking admission as a registered user of the Court's electronic case management system must enter into arrangements with the Registrar for the prompt payment of fees that become due in respect of electronic transactions.

47—Filing of documents in electronic form where document requires particular signature or authentication

(1) If a document requires a particular signature or authentication, and is to be filed in electronic form, the person proposing to file the document must, before doing so—

(a) bring into existence a hard copy of the document; and

(b) ensure that it is signed or authenticated as required.

(2) The person filing the document in electronic form—

(a) must keep the signed or authenticated hard copy of the document so as to be available—

(i) for production to the Court; and

(ii) for inspection at the request of a party or an officer of the Court; and

(b) must comply with any requirements imposed by practice direction with regard to the preservation, production or inspection of the document; and

(c) is taken to undertake to the Court that the requirements of this rule have been and will be complied with in relation to the document.

48—Special provision for signature where document transmitted in electronic form

(1) A document that requires the signature of a registered user is taken to have been duly signed by the registered user if—

(a) the document is filed or served, in electronic form, by transmission to the appropriate email address; and

(b) the electronic authentication code of the registered user has been used for transmission of the document; and

(c) when the document is called up in readable form on the Court's electronic case management system—

(i) the registered user's name; or

(ii) an image of the registered user's signature; or

(iii) some other uniquely distinctive identifier approved by the Registrar for use by the registered user,

appears in a position appropriate for the signature.

(2) A document that requires the signature of the Registrar is taken to have been duly signed by the Registrar if—

(a) the document is transmitted to the intended recipient in electronic form; and

(b) the Registrar's electronic authentication code, or the electronic authentication code of an officer of the Court authorised by the Registrar to receive and send documents in electronic form on behalf of the Court, has been used for transmission of the document; and

(c) when the document is called up in readable form on the Court's electronic case management system—

(i) the Registrar's name; or

(ii) an image of the Registrar's signature; or

(iii) some other uniquely distinctive identifier approved by the Registrar,

appears in a position appropriate for the signature.

(3) If a document is transmitted in electronic form and the document when called up in readable form bears the name, or an image of the signature, of a registered user or the Registrar, the document is taken to have been transmitted by the use of an appropriate electronic authentication code as required under this rule in the absence of proof to the contrary.

49—Receipt to be issued for document accepted for filing or service

If a document in electronic form is transmitted for filing or service to the Registrar, the Registrar will, on accepting the document for filing or service, issue a receipt (in electronic form) stating the date and time of receipt of the document for filing or service.

50—Filing of documents

(1) A document is filed—

(a) if filed in the form of a written document—when it is accepted for filing by an officer of the Court at a Court registry;

(b) if filed in electronic form—at the time shown in the receipt issued by the Registrar as the time of receipt of the document.

(2) If a document is received in electronic form for filing at a registry, it will be presumed, in the absence of proof to the contrary, that the registered user whose electronic authentication code was used for transmission of the document authorised the filing of the document in the form in which it is received at the registry.

(3) A registered user who files a document by transmitting it, in electronic form, to the Registrar's email address undertakes to the Court, by so doing, that the requirements of these rules with regard to the document have been, and will be, complied with.

Example—

A registered user who files an affidavit by transmitting it to the Registrar's email address undertakes that a hard copy of the affidavit has been duly sworn by the deponent and will be preserved by the registered user as required under these rules.

(4) If a document is filed in electronic form and is to be served on another party, time for service of a document will not begin to run until the next business day after receipt or, if the document is received on a day that is not a business day, until the second business day after its receipt.

51—Issue of sealed copy

(1) The proper officer of the Court must, at the request of a party, issue a sealed copy of originating process, or another document that has been filed in the Court, that is required for service on another party to the action.

(2) A document in electronic form is taken to bear the Court's seal if, when called up in readable form, a computer-generated image of the Court's seal appears on the document.

(3) If a document is required for service on different parties, the proper officer of the Court must, at the request of a party who is to serve the document, issue different versions of the same document with the variations appropriate to the circumstances in which service is to be effected.

52—Issue of office copy

The proper officer of the Court must, at the request of a party (accompanied by the appropriate fee), issue an office copy of a document filed in the Court.

53—Power to reject documents submitted for filing

(1) A document is an abuse of the process of the Court if it contains matter that is scandalous, frivolous or vexatious.

(2) If it appears to the Registrar that a document submitted for filing is an abuse of the process of the Court, the Registrar must refer the matter to a Judge or Master.

(3) If the Judge or Master so directs, the Registrar will reject the document.

(4) If it appears to the Court that a document that is an abuse of the process of the Court has been filed in the Court, the Court may direct that it be struck from the file.

Division 3—Amendment

54—Amendment

(1) A party may amend a document filed by the party.

(2) An amendment is made by filing in the Court the amended document on which the amendments are to be shown as follows—

(a) material deleted from the previous version of the document is to be shown in erased type (that is, type through which a single line is drawn);

(b) material not previously included is to be distinguished from material previously appearing in the document by underlining or by shaded type.

(3) A party who amends a document must serve copies of the amended document on all other parties as soon as practicable after the amendment is made.

(4) An amendment may be made—

(a) with the Court's permission; or

(b) with the consent of all other parties; or

(c) as authorised by subrule (5).

(5) A party is authorised to amend without the consent of the other parties or the Court's permission if—

(a) the amendment is made within the period allowed for disclosure of documents or a further 14 days from the end of that period; and

(b) the party has not exercised the right to amend under this subrule on an earlier occasion.

(6) However, an amendment cannot be made without the Court's permission or the consent of the other parties if the effect of the amendment is—

(a) to withdraw an admission; or

(b) to add or substitute a cause of action that is statute barred; or

(c) to introduce a defendant against whom a fresh action would be statute barred.

(7) The Court's power to grant permission for amendment under subrule (6) is subject to the following qualifications—

(a) the Court may only grant permission for the addition or substitution of a cause of action that is statute barred if the new cause of action arises out of substantially the same facts as the original cause of action;

(b) the Court may only grant permission for the introduction of a defendant against whom a fresh action would be statute barred if satisfied that the plaintiff's failure to joint the defendant arose from a genuine mistake.

(8) The following documents cannot be amended under this rule—

(a) an affidavit;

(b) a judgment or order.

55—Amendment of pleadings

(1) This rule applies to an amendment to a pleading.

(2) If a party amends a pleading, the opposing party may respond to the amendment within 14 days after the amended pleading is filed.

(3) If the opposing party has already filed a pleading and makes no response to an amendment, the opposing party is taken to rely on the pleading already filed as a response to the amendment.

(4) However, if an amendment is made by permission of the Court, the Court may when granting its permission make any other provision it considers appropriate for the response of other parties to an amendment.

56—Power to disallow amendment

(1) If a party has made an amendment without the Court's permission, the Court may, on its own initiative or on application by another party, disallow the amendment in whole or part.

(2) An application under this rule must be made within 14 days after notice of the amendment is given to the applicant.

57—Court's power to amend

(1) The Court may at any stage of proceedings—

(a) order the amendment of any document; or

(b) itself amend a document.

(2) The Court may make an amendment, or an order for amendment, on its own initiative or on application by a party.

(3) An amendment, or an order for amendment, may be made on conditions the Court considers appropriate.

Part 2—Service

Division 1—Address for service

58—Address for service

(1) The ***address for service*** of a party is an address recorded (or to be recorded) in the Court's records as an address at which documents may be served on the party.

(2) A party must submit a physical address as an address for service.

(3) A ***physical address*** for service is an address of premises at which service may be effected on the party—

(a) by leaving the document for the party; or

(b) if there is no separate postal address for service—by sending the document by prepaid post in an envelope addressed to the party at that address.

(4) The premises to which a physical address for service relates—

(a) must be in separate occupation; and

(b) must be—

(i) premises at which the party's lawyer practises in South Australia; or

(ii) within 50km of the GPO at Adelaide.

(5) A party may submit, in addition to a physical address, one or more of the following as an address for service—

(a) a postal address at which service may be effected on the party by sending the document by prepaid post in an envelope addressed to the party at that address (a ***postal address***);

(b) a box number at an approved document exchange, or a branch of an approved document exchange, at which service may be effected on the party by delivery of the document to the box in an envelope addressed to the party (a ***DX address***);

(c) a fax number at which the party is prepared to accept service of documents transmitted by fax (a ***fax address***);

(d) an address at which the party is prepared to accept service of documents by the transmission of documents, in electronic form, to the relevant address (an ***email address***).

59—Obligation to give address for service

(1) A document filed in the Court by or on behalf of a party must be endorsed with the party's address for service.

(2) The address for service shown on the first document filed in the Court by a party is to be recorded as the party's address for service.

(3) If a defendant does not file in the Court a defence or other document showing the defendant's address for service within 14 days after service of originating process on the defendant, the defendant must, within that period, file in the court a notification (in an approved form) of the defendant's address for service.

(4) A party may change the party's address for service by giving the Registrar notice, in an approved form, of the change.

(5) The Court may strike out an address for service if it appears that documents served at that address are not being received by the party.

(6) If service is effected by means of an address for service, the non receipt of a document by the party to be served does not invalidate service.

(7) However, if a document sent by post is returned unclaimed or the party serving the document has other evidence of non-receipt, the party must bring the relevant facts to the attention of the Court and the Court may direct that a further attempt be made to bring the document to the attention of the party.

Division 2—Service of documents related to action

60—Service of other documents

(1) A party that files a document in the Court after the primary action has been commenced must, as soon as practicable after the document is filed, serve a copy of the document on all other parties for whom a current address for service is on file in the Court.

(2) However, subrule (1) does not apply to—

(a) a document relating to an application that may be made without notice to other parties; or

(b) a request for the issue of a subpoena; or

(c) a document excluded from the application of this rule by practice direction or by specific direction of the Court.

61—Copies of documents to be provided

(1) If—

(a) a party files in the Court a document that refers to some other document; and

(b) the party is in possession of the original or a copy of the document referred to,

the party must, at the request of another party, provide the other party with a copy of the document.

(2) A party who files a secondary originating process introducing a new party to the action must, at the request of the new party, provide the new party with a copy of all documents filed in the action before that party was served with the originating process.

(3) A party who files a document in the Court must, at the request of another party and payment of the appropriate fee, provide the other party with a number of photocopies of the document (not exceeding 10) requested by the other party.

Division 3—Service on certain parties

62—Bodies corporate

A document is to be served on a company—

(a) as authorised by any relevant statutory provision; or

(b) by serving the document on a director, the secretary or the public officer of the company.

63—Persons who require protection

(1) Service on a person under a disability is to be effected—

(a) by service on a guardian, administrator or other person with responsibility for administering the affairs of the person under a disability; or

(b) as directed by the Court.

(2) However, service is to be regarded as valid service on a person under a disability if—

(a) service is effected in the usual way; and

(b) the party effecting service is, at the time of service, unaware that the party is a person under a disability; and

(c) the Court is satisfied that the document came to the attention of someone who could deal with the document in an appropriate way for the person under a disability.

64—Partnership or unincorporated association

(1) If the members of an existing partnership are sued in the partnership name, a document is taken to have been served on all members of the partnership if served on—

(a) any member of the partnership; or

(b) a person who has the management or control of the partnership business.

(2) If, however, a partnership has been dissolved, all members against whom the plaintiff desires to pursue the cause of action must be individually served.

(3) If an unincorporated association is sued in the name of the association, a document is taken to have been served on the association if served on—

(a) any member of the committee of management of the association; or

(b) a person who holds property on trust for the purposes of the association; or

(c) a person who has the management or control of the business of the association.

65—Agent

(1) A document to be served on a person may, if the Court permits, be served on an agent of that person.

(2) A document served on an agent under this rule is taken to have been served on the principal.

Division 4—Cases where personal service required

66—Cases where personal service required

(1) Unless the Court otherwise orders, the following documents must be served personally—

(a) primary originating process;

(b) secondary originating process introducing a new party into an action or introducing an existing party into the action in a different capacity;

(c) a document initiating proceedings for contempt of court or for the attachment of the defendant;

(d) an injunction;

(e) any other document for which personal service is required by statute.

(2) The Court may, by order, require personal service of any document for which personal service is not otherwise required.

67—How personal service effected

(1) Personal service of a document is effected if—

(a) the document is given to, and accepted by, the person to be served; or

(b) the person to be served is offered the document and, if he or she appears unwilling to accept it, is informed orally of the nature of the document; or

(c) a solicitor accepts service of the document on behalf of the person to be served (whether the solicitor is served personally with the document or not) and issues an acknowledgment to that effect; or

(d) the document is served in accordance with an agreement between the parties as to the manner of service.

(2) Personal service of a document will be presumed if—

(a) an answering document is filed in the Court or served on the party required to serve the document; or

(b) it is established in some other way that the document and its contents have come to the attention of the person to be served.

Division 5—Non-personal service

68—Non-personal service

(1) If personal service of a document on a person is not required, the document may nevertheless be served personally or may be served as provided in this rule.

(2) The document may be served on the person (irrespective of whether the person is a party with an address for service)—

(a) by leaving a copy of the document for the person at the person's physical address for service with an adult person who normally resides, works or is present at that address; or

(b) by sending a copy of the document, by prepaid post, in an envelope addressed to the party, at the party's postal address for service; or

(c) in accordance with a method of service agreed by the person on whom service is to be effected; or

(d) in any other way the Court may direct.

(3) If the person to be served is a party with an address for service, the document may be served on the party—

(a) by transmitting the document in electronic form to the party at the party's email address for service; or

(b) by delivering a copy of the document to an approved document exchange, in an envelope addressed to the party at the party's DX address; or

(c) by transmission of a copy of the document to the party's fax address.

(4) If—

(a) a document is served by fax and the document received at the fax address is not clear and legible; or

(b) a document is served by transmission to an email address and the document is not received in a form that is complete and intelligible,

the party required to serve the document must, at the request of the person to be served, comply with a reasonable request to retransmit the document or to give the person a copy of the document personally or by post.

Division 6—Presumptive service

69—Presumptive service

(1) The Court may, on application by a party, make an order for presumptive service of a document.

(2) An order for presumptive service provides that, if the conditions of the order are complied with, service of the document is to be presumed.

Examples—

1 An order for presumptive service might provide for service on a person who might reasonably be expected to bring the document to the attention of the party.

2 An order for presumptive service might provide for the publication notice of the document in a particular newspaper or newspapers.

3 In a case where the plaintiff seeks an order for possession of land and it is not clear who (if anyone) is in occupation of the land, the Court might order that notice of the action be affixed in a prominent position on the land.

(3) It is not necessary for the applicant to establish that the proposed alternative to personal or non-personal service will bring the document to the notice of the person to be served.

(4) If the court orders service on a party's insurer under this rule, the order may be set aside on the application of the insurer if the insurer establishes that—

(a) it is not liable to indemnify the party against the claim; or

(b) it has no right to conduct the proceedings on behalf of the party.

Division 7—Miscellaneous

70—Service of documents on behalf of foreign courts and tribunals

(1) The Court may, on application by an interested person, give directions for the service in South Australia of—

(a) civil process of a foreign court or tribunal; or

(b) any other document that is to be served for the purposes of civil proceedings in a foreign court or tribunal.

(2) The following are interested persons—

(a) the Attorney-General;

(b) the Crown Solicitor;

(c) a party to the proceedings in the foreign court or tribunal.

(3) If service of the process or other document is proved to the satisfaction of the Court, the Registrar will issue a certificate under the seal of the Court certifying service of the document and when and how service was effected.

(4) If attempts to serve the process or other document prove to be unsuccessful, the Registrar will issue a certificate to that effect under the seal of the Court.

71—Time of service etc

(1) A document served by post is taken to have been served when the document would, in the ordinary course of post, reach the address to which it was posted.

(2) A document served by delivery to an approved document exchange is taken to have been served on the next business day after its delivery.

(3) If a document is transmitted to a fax or email address before 5pm on a business day, it is taken to have been served on that day but otherwise is taken to have been served on the next business day after its transmission.

(4) A document transmitted to the Registrar for service by transmission to the email addresses of the parties to be served is taken to have been served on a party at the time of the transmission of the document by the Registrar to the party's email address.

(5) A notice or other communication transmitted by the Registrar to the email address of a registered user is taken to have been given at the time recorded by the Registrar as the time of transmission.

72—Proof of service

(1) Service of a document may be proved by an affidavit made by the person who served the document setting out—

(a) the date, time and place of service; and

(b) how the person to be served was identified; and

(c) how service was effected.

(2) Service of a document outside Australia may also be proved by an official certificate stating how and when service was effected given by—

(a) a foreign court; or

(b) an embassy, high commission, consular or government authority of the country in which service was effected.

(3) The Court may, however, require oral evidence of service.

Chapter 5—Parties and pleadings

Part 1—Parties and non-party participation

Division 1—Parties generally

73—Action may include multiple parties

(1) A single action may be brought by two or more plaintiffs if—

(a) they each claim to have a cause of action against the same defendant arising from the same or similar facts; or

(b) the claim of each involves the determination of a common question of law or fact; or

(c) the Court gives its permission.

(2) A single action may be brought against two or more defendants if—

(a) the claim against each arises out of the same or similar facts; or

(b) the claim against each involves the determination of a common question of law or fact; or

(c) the Court gives its permission.

(3) If a plaintiff is jointly interested in the subject matter of an action with some other person who has not consented to be joined as a plaintiff, the plaintiff must apply to the Court for directions and, on such an application, the Court may exercise one or more of the following powers—

(a) authorise the plaintiff to proceed with the action as representative of any interested person who is not a party to the action;

(b) authorise the plaintiff to proceed with the action in a non-representative capacity despite the other person's non-participation and determine the extent (if any) to which the other person is to be entitled to participate in any proceeds of the action;

(c) give directions the Court considers appropriate in the circumstances.

74—Joinder and disjoinder of parties

(1) The Court may, on application or on its own initiative, order that a person who is not a party to the action be joined as a party if satisfied that—

(a) the person has an interest in the subject matter of the action or in a question of law or fact involved in the action; or

(b) the Court may require the person's cooperation in order to enforce a judgment; or

(c) the person has a right to joinder as a party under an Act or rule; or

(d) the person should be joined as a party to ensure that all matters in dispute in the action are determined; or

(e) the person should be joined as a party in order to enable determination of a related dispute and thus avoid multiplicity of proceedings.

(2) The Court may, on application or on its own initiative, order the disjoinder of a party if satisfied that it is in the interests of the efficient administration of justice to do so.

(3) Before the Court makes an order for the joinder or disjoinder of a party, the Court must ensure that all parties to the action and, if appropriate, the person who may be joined as a party, have had notice of the application or proposal for joinder or disjoinder and an opportunity to be heard on the question.

(4) The Court may make an order for the joinder or disjoinder of a party on conditions the Court considers appropriate.

(5) The Court cannot join a person as a defendant to an action under this rule if, because of the expiration of a period of limitation, an action based on the relevant cause of action could not be commenced against the person at the date of the order for joinder.

(6) However—

(a) the Court may treat an application to join a person as a defendant as originating process for an action against the person sought to be joined and may exercise any statutory power to extend the period of limitation accordingly; or

(b) the Court may, after the expiration of a relevant period of limitation, join a person as a defendant to an action if satisfied that the plaintiff genuinely intended to bring the action against that person but, as a result of a genuine mistake, failed in the action as originally formulated to identify that person, or to identify that person correctly, as a defendant.

75—Substitution or addition of party where interest or liability passes

(1) If an interest or liability of a party to an action passes from the party to another person by assignment, transmission, devolution or in some other way, the Court may—

(a) substitute the other person as a party in place of the party from whom the interest or liability has passed; or

(b) add the other person as an additional party to the action.

(2) If the other person is already a party to the action in some other capacity, an order under this rule makes the person a party in the additional capacity.

(3) An order under this rule must be served on—

(a) any person who is introduced as a party into the action by the order; and

(b) all existing parties to the action.

76—Death of party

(1) If a party is dead when an action is commenced apparently by or against the party, the action is irregular but not invalid.

(2) If a party dies after an action commences but before it is finally determined, the action is not invalidated by the party's death.

(3) The Court may deal with the action in any of the following ways—

(a) the Court may substitute the party's personal representative for the party (irrespective of whether probate or administration has been granted or re-sealed in the State);

(b) the Court may appoint a representative of the estate for the purposes of the action;

(c) if provision is made by statute for the action to be brought or continued by or against an insurer in the event of the party's death—the Court may substitute the insurer.

Example—

See section 113 of the *Motor Vehicles Act 1959*.

(4) However, if the action is based on a cause of action that does not survive the party's death, the Court must dismiss the action.

(5) If a representative of an estate is appointed under this rule for the purposes of an action, a judgment of the Court given in the action is, subject to any contrary order of the Court, binding on the estate, the administrators and beneficiaries of the estate.

77—Misjoinder or non-joinder not to affect validity of action

(1) The validity of an action is not affected by the misjoinder or non-joinder of a particular person as a party.

(2) In the case of misjoinder or non-joinder, the Court may determine the issues in dispute so far as they affect the persons who have been properly joined as parties.

Division 2—Representation of party under disability

78—Representation of party under disability

(1) As a general rule, a person under a disability (a ***protected person***) may only take or defend proceedings through a guardian who has authority to represent the interests of the protected person (a ***litigation guardian***).

Exception—

The Court may, however, permit a protected person to act personally in bringing, or taking any step in, proceedings.

(2) The litigation guardian is responsible for the conduct of the proceedings on behalf of the protected person and may take any step in the proceedings and do anything else that the protected person might have done if of full age and capacity.

(3) A party who becomes aware that another party is a protected person and is not represented by a litigation guardian as required by this rule must inform the Court of that fact.

(4) A judgment or proceeding of the Court is not invalid because a party was not represented by a litigation guardian as required by this rule, but the Court may set aside the judgment or proceeding if satisfied that the party has been substantially prejudiced through the lack of such representation.

79—Litigation guardians

(1) Any of the following may be the litigation guardian of a protected person—

(a) a parent or guardian;

(b) a person who holds an enduring power of attorney authorising the person to act on the person's behalf;

(c) a person who has some other lawful authority to manage or administer the person's affairs;

(d) a person permitted or appointed by the Court to represent the interests of the protected person.

(2) However—

(a) if a person's authority would not (apart from these rules) extend to representing the protected person in proceedings before the Court—the person requires the Court's permission to act as litigation guardian in the proceedings; and

(b) a person who has an interest in proceedings before the Court (apart from his or her interest as representative of the protected person) cannot act as the protected person's litigation guardian in the proceedings unless the Court directs to the contrary.

(3) The Court may, on application by an interested person or on its own initiative, permit or appoint a suitable person to be a protected person's litigation guardian.

(4) The Court may remove the litigation guardian of a protected person (whether or not appointed by the Court) on any reasonable ground and may permit or appoint some other person to be the litigation guardian.

(5) The Court may require the solicitor for a protected person to inquire into, and give it an assurance about, the suitability of a proposed litigation guardian.

Division 3—Representation of groups etc

80—Bringing of representative action where common interest exists

(1) If a group of persons has a common interest in the subject matter of an action or proposed action and a member of the group is authorised in writing by the other members of the group to bring or defend the action as representative of the group, the person may bring or defend the action as representative of the group.

(2) A person who brings an action as representative of a group under this rule must file in the Court the written authorisation to represent the group when filing originating process.

(3) A person who defends an action under this rule as representative of a group must file in the Court the written authorisation to represent the group as soon as practicable after the authorisation is given.

(4) The written authorisation must contain a list of the names and addresses of the persons authorising the person bringing or defending the action to act on their behalf.

(5) The Court may, at any time, terminate the right of a representative plaintiff or defendant under this rule to represent the relevant group of plaintiffs or defendants.

81—Court's power to authorise representative actions

(1) The Court may authorise a plaintiff to bring an action as representative of a group with a common interest in questions of law or fact to which the action relates.

(2) If a plaintiff intends to apply for an authorisation under this rule, the action may be commenced in the ordinary way but the originating process must bear an endorsement in the approved form stating that the plaintiff proposes to apply for the authorisation.

(3) An application for an authorisation under this rule must be made within 28 days after the time allowed for the defendant to file a defence.

(4) An authorisation under this rule is not to be refused on the ground that—

(a) damages which would require individual assessment are sought by way of remedy; or

(b) the action is based on separate contracts or transactions between individual members of the group and the defendant.

(5) An order authorising a plaintiff to proceed with an action as a representative action under this rule must—

(a) define the group on whose behalf the action is brought; and

(b) define the nature of the claim or claims made on behalf of the members of the group and specify the remedy sought; and

(c) define the common questions of law or fact that are to be determined in the action; and

(d) give directions about the determination of other issues raised in the action that are not common to all members of the group.

(6) The Court may vary the order at any time before the Court gives final judgment in the action.

82—Appointment of representative party in case of multiple parties

(1) If an action is commenced by or against two or more plaintiffs or defendants who have a common interest in the action, the Court may appoint one or more of the plaintiffs or defendants to represent the whole body of plaintiffs or defendants (as the case may require).

(2) The Court may, at any time, terminate an appointment under this rule.

83—Representative actions by or against executors, administrators and trustees

(1) An action may be brought by or against the executors or administrators of the estate of a deceased person as representatives of all persons interested in the estate.

(2) An action may be brought by or against trustees as representatives of all persons interested in a trust.

(3) However, the Court may, on its own initiative or on application, join a person with a beneficial interest or potential beneficial interest as a party to such an action.

(4) The Court may appoint a person to represent the estate of a deceased person in an action.

84—Appointment of representative parties for class of beneficiaries etc

(1) This rule applies to an action about—

(a) the administration of the estate of a deceased person; or

(b) the administration of a trust; or

(c) the construction of a written instrument.

(2) The Court may appoint a person to represent the interests of a class of persons in the action if—

(a) the class cannot be readily ascertained; or

(b) the class can be ascertained but its members, or some of its members, cannot be found; or

(c) the appointment should be made in order to minimise costs.

(3) A person appointed under subrule (2) becomes a party to the action.

Division 4—Special rules for businesses, partnerships and unincorporated associations

85—Use of business name

(1) A person who carries on business in a business name may sue and be sued in that name.

(2) A person who sues in a business name must endorse on the originating process the name and address of the person carrying on that business.

(3) A person who is sued in a business name must, on taking its first step in the action, file in the court a notice setting out the name and address of the person carrying on business under that name at the time the cause of action is alleged to have arisen.

86—Use of partnership name

(1) A partnership may sue or be sued in the partnership name.

(2) A partnership that sues in the partnership name must endorse on the originating process the names and addresses of the partners at the time the cause of action is alleged to have arisen.

(3) A partnership that is sued in the partnership name must, on taking its first step in the action, file in the Court a notice setting out the names and addresses of the partners at the time the cause of action is alleged to have arisen.

(4) The Court may, on application by a person claiming not to be liable to the plaintiff's action as a member of a partnership—

(a) if the Court upholds the claim—order that the applicant is no longer to be regarded as a party to the action; or

(b) order that the question of the applicant's liability to the action be reserved until the hearing of the action,

and give any directions that may be appropriate in the circumstances.

87—Unincorporated associations

(1) An unincorporated association may bring or defend an action in the name of the association.

(2) An unincorporated association that brings an action in the name of the association must file in the Court with the originating process a list of the members of the association at the time the cause of action is alleged to have arisen.

(3) An unincorporated association that defends an action in the name of the association must, on taking its first step in the action, file in the Court a list setting out the names and addresses of the persons who were members of the association at the time the cause of action is alleged to have arisen.

88—Actions by and against partnerships and other unincorporated associations

(1) A person may bring an action against a partnership or an unincorporated association even though the person is, or was at a material time, a member of the partnership or association.

(2) A partnership or unincorporated association may bring an action against a person even though the person is, or was at a material time, a member of the partnership or association.

Division 5—Non-party intervention

89—Non-party intervention

(1) The Court may, on application by a person who wants to intervene in an action, permit intervention on conditions determined by the Court.

(2) An application for permission to intervene must be supported by an affidavit stating—

(a) the nature of the applicant's interest in the action (which need not be a legal or equitable interest); and

(b) the applicant's object in seeking permission for intervention; and

(c) the extent of the proposed intervention.

(3) A copy of the application and the supporting affidavit must be served on all parties to the action.

(4) The Court may permit intervention on conditions it considers appropriate.

(5) The Court may, on application or on its own initiative, vary or revoke an order allowing non-party intervention under this rule.

Part 2—Defining issues

Division 1—Formal definition of basis of parties' respective cases

90—Definition of issues in action

(1) The issues to be resolved in an action are defined by the pleadings.

(2) A ***pleading*** is a formal statement of the basis of a party's case filed in the Court.

(3) The principal pleadings are—

(a) the statement of claim; and

(b) the defence; and

(c) the reply.

(4) The principal pleadings are applicable to an action irrespective of whether it is a primary action, a cross action or a third party action.

91—Statement of plaintiff's claim

(1) Originating process for a primary or secondary action must include, or be accompanied by, a statement of the plaintiff's claim.

Note—

It may be appropriate in some cases for the statement of the plaintiff's claim to be made by way of affidavit (see rule 96).

(2) However, if the originating process is endorsed with a statement to the effect that the plaintiff seeks an exemption from the obligation to file formal pleadings and files the application for exemption together with the originating process, the originating process need not be accompanied by a statement of the plaintiff's claim but the following provisions apply—

(a) if the application is unsuccessful—the plaintiff must file and serve a statement of claim within a time fixed by the court on hearing the application;

(b) if the application is successful—the plaintiff must comply with any alternative requirements fixed by the Court on hearing the application.

(3) If a secondary action is based on a claim for contribution by a party to an action against a person who is, when the secondary action is commenced, already a party to the same action—

(a) the secondary originating process may take the form of a contribution notice in an approved form; and

(b) the contribution notice need not be accompanied by a statement of claim.

92—Statement of defendant's defence

(1) A defendant who proposes to resist the plaintiff's claim must file in the Court the defendant's defence to the plaintiff's claim.

Exception—

The defendant to a secondary action commenced by contribution notice need not file a defence to the claim for contribution. The defendant may nevertheless challenge the claim to contribution at the trial on any reasonable ground.

(2) The defence must be filed within 28 days after service of the plaintiff's statement of claim.

(3) The filing of a defence does not prevent the defendant from—

(a) challenging the jurisdiction of the Court; or

(b) raising any question about the validity or regularity of the proceedings.

93—Right of third party to file defence to antecedent claims

(1) A third party may, as well as, or instead of, filing a defence to the secondary action introducing the party into the action, file a defence to any claim, relevant to the party's ultimate liability, made in the primary action or an antecedent secondary action that forms part of the action as a whole.

(2) A defence under subrule (1) is to be filed and served within the time allowed for filing and serving a defence to the secondary action introducing the party into the action.

94—Plaintiff's reply

(1) A plaintiff may file in the Court a reply to the defendant's (or a third party's) defence.

(2) The reply must be filed within 14 days after service of the defence.

95—Supplementary pleadings

(1) A party may, with the Court's permission, file a supplementary pleading and, if a supplementary pleading is filed, an opposing party may file a response to the supplementary pleading.

(2) The time limit for filing a supplementary pleading and the response to it are to be fixed by the Court.

(3) Costs will not be allowed for a supplementary pleading unless the Court so directs.

96—Affidavit may substitute for pleading in certain cases

(1) An affidavit is, subject to this rule, an acceptable substitute for a pleading.

(2) If the practice directions require that a case proceed on affidavits rather than pleadings, affidavits must, unless the Court orders to the contrary, be used as substitute pleadings.

(3) The Court may order that an action, begun on pleadings, continue on affidavits or that an action begun on affidavits continue on pleadings.

(4) Subject to the practice directions and any order under subrule (3), an action begun on affidavit must continue on affidavits and an action begun on pleadings must continue on pleadings.

97—Court's power of exemption

(1) The Court may, on its own initiative or on application by a party, exempt a party from the obligation to file pleadings (or affidavits in substitution for pleadings).

(2) The Court may grant an exemption under this rule on conditions the Court considers appropriate.

Example—

The Court might exempt the parties to an action from the obligation to file pleadings on condition that they file in the Court an agreed statement of issues.

Division 2—General rules about pleadings

98—General rules of pleading

(1) A pleading—

(a) must be in an approved form; and

(b) must—

(i) if the party is represented by a solicitor whose name appears on the Court's record as the solicitor representing the party—be endorsed with a certificate by the solicitor certifying that the pleading has been prepared in accordance with the party's instructions and conforms with these rules; or

(ii) if the party is not represented by a solicitor—be signed by the party.

(2) A pleading—

(a) must be as brief as the nature of the case allows; and

(b) must state only material facts relied on and not the evidence or arguments by which the facts are to be proved; and

(c) must not contain matter that is—

(i) scandalous; or

(ii) evasive or ambiguous; or

(iii) frivolous or vexatious; or

(iv) an abuse of the process of the Court in some other respect.

(3) If a claim or defence is based wholly or in part on a document or conversation, the effect rather than the actual words of the document or conversation should be pleaded unless there is good reason to state the actual words.

Exception—

In a case of defamation, it is necessary to plead the words alleged to give rise to the defamation and, if a defamatory innuendo is alleged to arise from the words or the circumstances in which they were used, the defamatory innuendo as well.

(4) If a question of liability has been decided by agreement between the plaintiff and the defendant, a party relying on the agreement must refer to the agreement and its effect in the relevant pleading but not the facts giving rise to the question except to the extent necessary to describe the effect of the agreement.

(5) It is not necessary to identify a person referred to in a pleading by the person's full name—any conventional form of identification that identifies the person with reasonable particularity is sufficient.

(6) Allegations of fact in a pleading must be mutually consistent.

(7) However, a party may make inconsistent allegations of fact in the alternative.

(8) If a party makes a claim or defence that assumes the fulfilment of a condition precedent, the party is taken to allege fulfilment of the condition precedent without specifically pleading it.

99—Requirements for statement of claim

(1) A statement of claim—

(a) must state each cause of action; and

(b) must state the basis of each cause of action (including reference to any statutory provision on which the plaintiff relies); and

(c) must contain a short statement of the material facts on which each cause of action is based; and

(d) must state any remedy for which the plaintiff asks; and

(e) if the plaintiff seeks an ancillary remedy (such as an extension of a period of limitation or a temporary injunction)—must state the nature of the remedy and the basis on which it is sought.

(2) If the plaintiff relies on separate causes of action, the statement of material facts must differentiate between—

(a) facts that are common to both or all causes of action; and

(b) facts that are relevant only to a particular cause of action.

(3) If a plaintiff claims damages for personal injury, the statement of claim must state—

(a) the general nature of the injury and any resulting disability; and

(b) the general nature of treatment received; and

(c) the general effect of the injury and any resulting disability on the plaintiff's—

(i) capacity to work; and

(ii) enjoyment of life; and

(d) the kinds of economic and non-economic loss suffered by the plaintiff,

(but is not to contain details of treatment and loss that are required for the statement of loss).

100—Requirements for defence

(1) A defence—

(a) must raise any preliminary issue; and

(b) must indicate which (if any) allegations of fact in the plaintiff's statement of claim the defendant admits or does not propose to challenge at the trial; and

(c) must specifically raise any special defence on which the defendant relies; and

(d) must state the basis of each special defence on which the defendant relies (including reference to any statutory provision on which the defendant relies); and

(e) must contain a short statement of the material facts on which each special defence is based.

(2) A ***preliminary issue*** is—

(a) a challenge to the jurisdiction of the Court; or

(b) a challenge to the validity of an action on the ground—

(i) that no cause of action is apparent from the plaintiff's pleadings; or

(ii) that a procedural irregularity affecting the validity of the action has occurred; or

(c) a challenge to the appropriateness of the Court as a forum for hearing the action.

(3) A ***special defence*** is a defence other than a denial of facts alleged by the plaintiff, or a denial that facts alleged by the plaintiff give rise to a cause of action.

Examples—

1 An assertion that the plaintiff is estopped from maintaining the claim.

2 An assertion that the plaintiff's claim is statute barred.

(4) A claim for a set off may be raised as a defence (or a partial defence) to a claim.

(5) If a statement of claim contains an allegation of fact, the defendant is to be taken to deny the allegation unless the defence indicates that the allegation is admitted or that the defendant does not propose to challenge it at the trial.

101—Requirements for reply

(1) A reply—

(a) must indicate which (if any) allegations of fact in the defendant's defence the plaintiff admits or does not propose to challenge at the trial; and

(b) must outline the plaintiff's answer to each special defence raised by the defendant (with a short summary of any material facts on which the plaintiff's answer is based).

(2) A reply and a defence to a counter-claim may be included in the same document if they are differentiated by separate headings.

(3) If a defence contains an allegation of fact, the plaintiff is to be taken to deny the allegation unless the reply indicates that the allegation is admitted or that the plaintiff does not propose to challenge it at the trial.

102—Power to order further particulars of party's case

(1) The Court may, on its own initiative or on application, order a party to file further particulars of its case.

(2) The further particulars are, however, to be confined to facts that are material to the party's action.

(3) The Court will only make an order for further particulars if satisfied that—

(a) the pleadings do not give fair notice of the party's case; and

(b) the order is necessary to avoid substantial prejudice to the party in whose favour the order is to be made.

(4) Unless the Court directs to the contrary, the further particulars are to be provided by substituting for an existing pleading a new pleading incorporating the further particulars required by the Court.

(5) No pleading is defective for want of particularity unless the missing particulars would be ordered under this rule.

103—Effect of pleadings

(1) A party must not, without the Court's permission—

(a) introduce at the trial of an action evidence of facts that should have been, but were not, alleged in the party's pleadings; or

(b) raise at the trial of an action issues of which notice should have been, but were not, given in the party's pleadings.

(2) However—

(a) the Court's permission is not required to introduce evidence, or to raise issues, relevant to credit; and

(b) the Court will not exercise its discretion to exclude relevant evidence, or to prevent relevant issues from being raised, unless satisfied that—

(i) the default was deliberate; or

(ii) the default was in the circumstances so prejudicial or embarrassing to another party that permission should be refused in the interests of the proper administration of justice.

(3) In deciding whether its permission is required under subrule (1) and, if so, how to exercise its discretion to grant or refuse that permission, the Court should—

(a) avoid captious or unduly technical interpretation of pleadings; and

(b) have regard to material that was available to the parties apart from the pleadings; and

(c) seek to achieve substantial justice between the parties.

(4) A party is bound, at the trial of an action, by—

(a) an assertion of fact made in a pleading filed by or on behalf of the party; or

(b) an admission of fact the party makes in a pleading filed by or on behalf of the party,

unless the Court gives the party permission to withdraw or amend the assertion or admission.

104—Court's power to strike out pleading

The Court may strike out a pleading in whole or part if the pleading—

(a) does not comply with these rules; and

(b) is an abuse of the process of the Court or prejudices the proper conduct of the action.

Example—

If a statement of claim discloses no reasonable cause of action, or a defence discloses no reasonable ground of defence, the Court may strike it out as an abuse of the process of the Court.

105—Court's permission required if pleading raises later cause of action

(1) A pleading may refer to events occurring before or after the date of the commencement of the action to which the pleading relates.

(2) However, a pleading cannot raise a new cause of action based on events occurring after the commencement of the action unless the Court—

(a) is satisfied that the new cause of action can be included without injustice to another party; and

(b) gives its permission.

Division 3—Cases where damages claimed for personal injury

106—Cases where damages claimed for personal injury

(1) If a plaintiff claims damages for personal injury, the plaintiff must, as required under subrule (5), file in the Court a statement of the plaintiff's injury and loss (a ***statement of loss***).

(2) The statement must contain the following information—

(a) full details of special damages up to the date of the notice, including an itemised list showing—

(i) each amount paid or payable for treatment or rehabilitation; and

(ii) the person or body to which the amount has been paid or is payable;

(b) if the plaintiff claims damages for loss of earning capacity—

(i) the plaintiff's date of birth; and

(ii) the nature of the plaintiff's occupation (or occupations) at the time of the injury and during the previous 3 years; and

(iii) the period for which the plaintiff was engaged in each of the above occupations and, if any of them was a period of employment, the name and address of the employer; and

(iv) the plaintiff's gross income for—

(A) the 3 financial years preceding the financial year in which the injury occurred; and

(B) the part of the financial year in which the injury occurred up to the date of the injury; and

(v) the amounts of income tax paid or payable for each of the above periods; and

(vi) the periods for which the plaintiff has been wholly incapacitated for work since the date of the injury and the reasons for the incapacity; and

(vii) the periods for which the plaintiff has been partially incapacitated for work since the date of the injury, the nature and extent of the incapacity and the reasons for it; and

(viii) the periods for which the plaintiff has been engaged in remunerative work since the date of the injury, the nature and location of the work, the name and address of any employer, and the gross and net income derived from any such work; and

(ix) the amount of income lost up to the date of the notice (expressed both as a gross figure and net of income tax); and

(x) if the plaintiff has been getting a pension from the Department of Social Security or compensation from an employer—the amount of the pension or compensation and the period to which it relates; and

(xi) whether the plaintiff has made any attempt to obtain employment or alternative employment since the injury and, if so, the nature of each such attempt, when it was made, the name and address of the person from whom employment was sought, the nature of any work attempted and the outcome of the attempt;

(c) any physical or mental disability the plaintiff has suffered or is suffering as a result of the injury and the effect of each such disability on normal enjoyment of life;

(d) whether the plaintiff has sustained any other injury in an incident occurring before or after the date of the injury to which the action relates and, if so—

(i) the date and place of each such incident; and

(ii) the nature of each such incident; and

(iii) the nature of the injury sustained in each such incident; and

(iv) the nature of the disabilities (if any) the plaintiff now suffers as a result of each such injury.

(3) If a period is to be specified under this rule, the commencement date and the termination date are to be specified.

(4) Information need not be included in a statement of loss if the defendant has notified the plaintiff in writing that the information is not required.

(5) A statement of loss must be filed under this rule—

(a) within 28 days after service of the defence; and

(b) if more than 6 months have elapsed since the last statement was filed and the defendant files a request for a further statement—within 28 days after the date of the request.

(6) If a statement of loss has already been filed under this rule, a later statement need only update the earlier statement by referring to relevant changes occurring since the date of the earlier statement.

Part 3—Discontinuance of action or part of action

107—Discontinuance of action etc

(1) A plaintiff may discontinue an action by filing a notice of discontinuance.

(2) A party may discontinue a claim or defence by—

(a) filing a notice of discontinuance identifying a claim or defence previously asserted by the party that the party now wants to abandon; or

(b) making an appropriate amendment to the party's pleadings.

(3) If the Court has ordered that the action proceed to trial, a plaintiff may only discontinue the action or a claim in the action with the Court's permission or the written consent of all other parties.

(4) Unless the parties agree or the Court orders to the contrary, the party against whom the action, or a claim or defence in the action, is discontinued is entitled to costs arising from the action, or the claim or defence (as the case may require) up to the time of receiving notice of the discontinuance.

108—Discontinuance not generally bar to future action

Subject to the following exceptions, a party who discontinues an action or a claim is not prevented from bringing a further action based on the same or substantially the same claim.

Exceptions—

1 If a party to the later action is entitled to costs in relation to the earlier action, the Court may, on the application of that party, stay an action based on the same or substantially the same claim until the costs have been paid.

2 The Court may order that the discontinuance of an action or a claim is to have the same effect as a final judgment against the party discontinuing.

Part 4—Transfer or removal of actions between courts

109—Remission of action to Court by High Court

If an action is remitted to the Court by the High Court—

(a) each party must, within 14 days, file and serve on the other parties a notification of address for service in South Australia; and

(b) the plaintiff must, within 14 days, apply to the Court for directions about how the action is to proceed in the Court.

110—Orders for removal or transfer of action into Court

(1) If the Court orders the removal or transfer of an action from another court or a tribunal into the Court, the Registrar will notify the registrar or other proper officer of the other court or tribunal.

(2) If an action is to be transferred or removed into the Court from another court or a tribunal by order of the Court or by order of the other court or tribunal, the registrar or other proper officer of the court or tribunal from which the action is to be transferred must forward to the Registrar of the Court—

(a) a file containing all documents filed in the court or tribunal in the action; and

(b) a transcript of evidence taken before the court or tribunal in the action; and

(c) copies of all orders made by the court or tribunal in the action.

(3) The action is taken to be removed or transferred into the Court on a date recorded by the Registrar as the date on which the materials referred to in subrule (2) were received by the Registrar.

111—Removal or transfer of action into Court

(1) If an action is transferred or removed into the Court from another court or a tribunal, the action continues in the Court under a description assigned to the action by the Registrar.

(2) The Court may order the consolidation of an action transferred or removed from another court or a tribunal with some other action in the Court.

(3) Subject to any direction by the Court—

(a) a step taken in the action before its transfer or removal into the Court is taken to be the equivalent step in an action in the Court; and

(b) the time for taking the next step in the action runs from the date of the transfer or removal of the action; and

(c) any monetary limit that applied because of monetary limitations on the jurisdiction of the court or tribunal from which the action is transferred or removed ceases to apply to the action.

(4) The party responsible for the carriage of an action transferred or removed into the Court must, within 14 days after transfer or removal, apply to the Court for directions about how the action is to proceed in the Court.

(5) On transfer or removal of the action into the Court, the title to the action changes to conform to the form appropriate to the Court.

112—Orders for transfer of action to another court or tribunal

(1) If the Court orders the transfer of an action in the Court to another court or a tribunal, the Registrar will notify the registrar or other proper officer of the other court or tribunal of the order.

(2) The Registrar must forward to the registrar or other proper officer of the court or tribunal to which the action is to be transferred—

(a) a file containing all documents filed in the Court in the action; and

(b) a transcript of evidence taken before the Court in the action; and

(c) copies of all orders made by the Court in the action.

Chapter 6—Case management

Part 1—Duty of parties

113—General duty of parties

(1) The parties to a proceeding, and their lawyers, have a duty to the Court to assist in the orderly progress of the proceeding from its commencement until it has been finally dealt with by the Court.

Note—

The powers to enforce compliance, or to penalise non-compliance, with this rule, and indeed the rules generally, conferred by rules 12 and 13 should be noted.

(2) In particular, the parties have a duty to the Court to ensure that—

(a) they comply with the Court's directions as to the conduct of the proceeding; and

(b) they are ready to proceed with each interlocutory hearing at the time appointed under these rules; and

(c) all interlocutory proceedings are completed by the time the case is referred for trial and, in particular, the pleadings properly reflect the case that is to be presented at trial; and

(d) the trial can proceed, as far as practicable without interruption, from the time appointed for its commencement.

114—Responsibility for carriage of proceedings

(1) The plaintiff in a primary action has, subject to this rule, the primary responsibility for ensuring the orderly progress of the litigation.

(2) This is called responsibility for the ***carriage*** of an action.

(3) The Court may, by order, assign (or re-assign) responsibility for the carriage of an action, or any part of an action, to any party.

Example—

The Court might, on making an order for consolidation of proceedings, assign responsibility for the consolidated proceedings to a particular party.

Part 2—Assignment of special classification to action

115—Assignment of special classification to action

(1) The Chief Justice (or the Chief Justice's delegate) may, if satisfied that an action is sufficiently complex to warrant a special classification, assign such a classification to the action.

(2) If a special classification is assigned to an action, the Chief Justice (or the Chief Justice's delegate)—

(a) may assign a particular Judge to supervise conduct of the action to the point of trial; and

(b) may assign the same or a different Judge to conduct the trial.

(3) A Judge to whom the supervision of a particular action is assigned under this rule may determine (as a matter of administrative discretion) whether to deal personally with a particular interlocutory matter arising in the course of the action or to leave it for determination by another Judge or Master.

(4) The Chief Justice (or the Chief Justice's delegate) may cancel a classification assigned under this rule.

Part 3—Court's powers to manage and control litigation

Division 1—General powers of management and control

116—Court's power to manage litigation

(1) The Court has the power to manage litigation to the extent necessary to ensure that it is conducted—

(a) fairly; and

(b) as expeditiously and economically as is consistent with the proper administration of justice.

(2) The Court may, at any time, review the progress of a case in the Court and, on a review, may—

(a) exercise its power under subrule (1) by giving directions appropriate to the circumstances of the case; and

(b) make any other order that may be appropriate in the circumstances (including orders imposing penalties for non-compliance with these rules).

117—Power to make orders controlling conduct of litigation

(1) The Court may make any order it considers necessary for the proper conduct of a proceeding or otherwise in the interests of justice.

Note—

In addition to the powers specifically mentioned in this rule, the Court's powers to enforce compliance with the rules (rule 12) and the Court's powers to penalise procedural irregularities in costs (rule 13) should be noted.

(2) The Court may (for example)—

(a) dispense with compliance with a rule;

(b) extend or reduce the time for taking any step in a proceeding;

(c) fix the time for taking a step in a proceeding if the time is not otherwise fixed;

(d) permit a party to withdraw a pleading or other document;

(e) strike out a document or proceeding if the Court considers it frivolous, vexatious or an abuse of the process of the Court;

(f) require the parties to state issues in a particular way;

Example—

In cases where there may be numerous issues for determination by the Court, the Court may require preparation of a schedule, in tabular form, listing each item for determination by the Court and the contentions of the plaintiff and the defendant in relation to each item (for example, the so-called Scott schedule used in cases of building disputes).

(g) require the parties to prepare a joint or separate statement of the issues in contention between them for the Court's use;

(h) require each party to file in the Court affidavits sworn by the witnesses the party proposes to call at the trial setting out the substance of the evidence the party proposes to adduce from each witness;

(i) require the parties to file in the Court statements of the documents they propose to tender at the trial;

(j) deal with the form in which evidence is to be taken at the trial;

(k) dispense with compliance with the rules of evidence in relation to a particular issue or range of issues;

(l) fix the time and place of trial.

(3) The Court may exercise its power to extend a time limit even though the relevant time limit has already expired.

(4) An order under this rule may vary or revoke an earlier order.

(5) An order under this rule prevails, to the extent of any inconsistency, over any rule relevant to the subject matter of the order.

118—Court may inform itself without formal proof

The Court may exercise a discretion or make an order under this Part on the basis of information the Court considers reasonably reliable without requiring formal proof.

Example—

The Court might obtain the assistance of an engineer, accountant or other expert to determine a matter on which the exercise of its discretion is dependent.

Division 2—Urgent cases

119—Urgent cases

(1) The Court may, on its own initiative or on application by a party, make an order for the urgent determination of a proceeding, or an issue in a proceeding.

(2) An application under this rule may (but need not) be endorsed on the originating process.

(3) An application under this rule must be supported by an affidavit setting out the reasons for the urgency.

(4) On the hearing of the application for urgent determination, the Court may make orders the Court considers necessary and appropriate to ensure the determination of the relevant proceeding or issue as a matter of urgency.

(5) The Court may (for example) exercise one or more of the following powers—

(a) establish a special case management program for the action;

(b) dispense with formal pleadings and order that the issues be defined in some other way approved by the Court;

(c) order that a party file in the Court affidavits sworn by the party's proposed witnesses setting out the evidence the party intends to introduce at the trial;

(d) dispense with an interlocutory proceeding or reduce the time for taking a particular interlocutory proceeding.

Part 4—Listing of actions for trial

120—Order that action proceed to trial

(1) An action is not to proceed to trial unless the Court orders that it proceed to trial.

(2) The Court may order that an action proceed to trial if satisfied that the action is ready for trial.

(3) Before the time appointed for the hearing of an application for an order under subrule (1), the parties must certify to the Court in an approved form that the action is ready to proceed to trial.

(4) The certificate is to consist of a check-list, in an approved form, signed by the party or the party's lawyer.

(5) A party is required to review the adequacy of its pleadings before giving the certificate and, after the certificate has been given, a party will not be permitted to amend a pleading—particularly if the amendment would cause a postponement or adjournment of the trial—unless the Court is satisfied that special circumstances exist justifying the giving of permission in the interests of justice.

(6) If the Court is of the opinion—

(a) that one or more of the parties are not ready for trial because of their own default; but

(b) that the action should nevertheless proceed to trial,

the Court may, on its own initiative or on application by a party, order that the action proceed to trial.

(7) If, after the Court has ordered that an action proceed to trial, the action is settled or discontinued in whole or part or a party becomes aware of other circumstances that might affect the length of the trial, the party must—

(a) notify the Registrar in writing giving full particulars; and

(b) serve a copy of the written notification on the other parties.

121—Delivery of trial book

(1) The party who has the carriage of an action must deliver to the Registrar, at least 7 days before the date fixed for the listing conference, a trial book consisting of indexed copies of the following—

(a) the pleadings of each party to the proceedings;

(b) if a statement of loss has been filed—the statement of loss;

(c) any judgment, order or direction relevant to the conduct of the trial;

(d) any certificate of readiness for trial.

(2) If the court's file is in electronic form, the trial book may be in electronic form.

(3) The party responsible for the carriage of an action must serve a copy of the trial book on each of the other parties to the action.

(4) If the trial book is in electronic form, and the solicitor for the party who is to receive it has facilities for receiving it in electronic form, the responsible party may provide the copy in electronic form but otherwise must provide it in the form of hard copy.

(5) The responsible party may charge an appropriate fee for providing a copy of the trial book to another party.

(6) The Court may resolve any dispute about the contents of the trial book in a summary way.

122—Place of trial

(1) The Court may fix any appropriate place within or outside the State as the place of trial.

(2) The place of trial may change during the progress of the trial from place to place.

(3) Subject to any direction by the Court under subrule (1), the place of trial of an action will be in Adelaide.

Part 5—Inactive actions

123—Inactive actions

(1) An action becomes liable to be entered on the list of inactive cases if 3 months after the end of the time allowed for serving the originating process—

(a) no application for extending the time for serving originating process has been made, or such an application has been made but has been refused; and

(b) no defendant has filed an address for service; and

(c) the plaintiff has not applied for judgment in default of the filing of an address for service or a defence.

(2) An action ceases to be liable to be entered on the list of inactive cases (and if already entered on that list is to be removed from the list) if—

(a) a defence is filed; or

(b) the plaintiff obtains a judgment in default of defence; or

(c) the Court orders that the action is not to be entered, or to remain, on the list of inactive cases.

(3) Before entering an action on the list of inactive cases, the Registrar must send notice to the plaintiff's address for service notifying the plaintiff that the action is to be entered on the list one month after the date of the notice if it then remains liable to be entered on the list.

(4) If an action remains on the list of inactive cases two months after being entered on the list, the action is automatically dismissed for want of prosecution.

(5) The dismissal takes effect at 4pm on the last day of the period.

(6) Despite the dismissal of an action under this rule, the Court may, for special reasons, reinstate the action.

Chapter 7—Pre-trial procedures

Part 1—Status hearing and settlement conferences

124—Application of Part

(1) Subject to the following exceptions, this Part applies to all adversarial actions.

Exceptions—

1 An action governed by the *Corporations Rules 2003* (South Australia).

2 An action brought without notice to another party (and for which such notice is not required).

3 An action for possession of land.

4 An action involving the liberty of the subject.

5 An action for judicial review.

6 An action excluded by practice direction, or specific direction of the Court, from the application of this Part.

(2) The Court may, however, direct that this Part apply to an action that would otherwise fall within the exceptions to subrule (1).

125—Status hearing

(1) A status hearing is to be held on a date fixed by the Registrar.

(2) As a general rule, the date fixed under subrule (1) will be within 7 weeks after a notification of address for service is first filed by or on behalf of a defendant in the action (and in fixing the date the Registrar may consider but is not bound by wishes expressed by a party).

(3) The following matters, and only the following matters, are to be considered at a status hearing—

(a) whether a settlement conference should be held and, if so—

(i) when the conference is to be held; and

(ii) whose attendance is required for the conference;

(b) if the action is an action for damages for personal injury and the plaintiff seeks an extension of time for filing a statement of loss—whether an extension of time should be allowed.

(4) The Court may, at a status hearing—

(a) defer consideration of whether a settlement conference should be held to a later date;

(b) order the parties to file or provide to the Court documents and materials for use at the settlement conference;

(c) direct that a particular person is to be available to participate in the settlement conference personally or by teleconference;

(d) deal with any other question relating to the settlement conference.

(5) The Court may, at a status hearing, refer any issue for alternative dispute resolution if it appears to the Court advantageous to refer the issue for alternative dispute resolution in advance of the settlement conference.

126—Settlement conference

(1) The purpose of a settlement conference is—

(a) to explore the possibility of reaching a settlement of the action; and

(b) if there is no immediate prospect of settlement—to explore the appropriateness of referring the action or certain aspects of it for alternative dispute resolution.

(2) A settlement conference is to be attended by—

(a) the parties and their counsel or solicitors; and

(b) anyone whose instructions are required for settlement of the action; and

(c) any other person whose attendance is directed at the status hearing.

(3) The Court may, for good reason, excuse a person from attendance at a settlement conference.

127—Adjournment

(1) As a general rule, a status hearing or a settlement conference should proceed without adjournment but, where there are very strong reasons to do so, the Court may adjourn such a conference from time to time and from place to place.

(2) A settlement conference should, however, be closed rather than adjourned as soon as it appears that there is no reasonable prospect of reaching agreement on settlement of the action.

(3) If, after the close of a settlement conference it appears that there is a good prospect of settlement of the action, the Court may, on the joint application of all the parties, re-convene the settlement conference.

128—Proceedings at status hearing or settlement conference

(1) Subject to a contrary agreement of the parties or order of the Court, nothing said or done at a status hearing or a settlement conference is to be the subject of evidence at the trial or to be referred to at the trial.

(2) A settlement conference is not to be open to the public unless the Court directs to the contrary.

129—Restrictions on interlocutory proceedings before closure of settlement conference

(1) A party must not make an interlocutory application before closure of the settlement conference unless—

(a) the nature of the application requires that it be made before that time; or

Example—

An application to extend the time for serving originating process.

(b) the nature of the application requires that it be made without delay; or

Example—

An application for a Mareva order.

(c) it is necessary to make the application before closure of the settlement conference in order to avoid prejudice to the applicant.

(2) Before the closure of the settlement conference—

(a) no disclosure of documents is to be made; and

(b) no notice to admit facts or documents is to be filed or served.

130—Directions on further conduct of action

The Court may, on closing a settlement conference, give further directions about the further conduct of the action or set a date for a directions hearing (or both).

Part 2—Interlocutory applications

131—Interlocutory applications

(1) An interlocutory application is to be in an approved form.

(2) The applicant must give the other parties affected by the application written notice of the time and place appointed for hearing the application at least two days before the time appointed for the hearing.

(3) Notice to other parties is not required if—

(a) the application does not affect the interests of other parties; or

(b) the applicant is authorised to make the application without notice to other parties.

(4) The Court may, on conditions the Court considers appropriate, dispense with requirements of this rule—

(a) if the urgency of the case so requires; or

(b) by consent of the parties; or

(c) if for any other reason the Court considers it appropriate to do so.

Example—

The Court might permit a party to make an interlocutory application orally without written notice to the other parties if it considers the application appropriate in the circumstances of the case.

(5) After an action has been referred for trial, an interlocutory application may only be made with the Court's permission.

(6) However, if the application should have been made before the action was referred for trial, the Court will only permit the application if satisfied that special circumstances justify the grant of permission.

132—Determination of interlocutory application without hearing oral submissions

(1) The Court may determine an interlocutory application without hearing oral submissions from the parties if—

(a) the application is not contentious; or

(b) the Court decides on the application of a party to determine the application on the basis of written submissions.

(2) Subject to any contrary direction by the Court, any submissions to be made on an application to which this rule applies are to be forwarded to the Court in electronic form.

133—Setting down application for hearing

(1) Unless the Court decides to determine an interlocutory application without hearing oral submissions, the Registrar will—

(a) appoint a time and place for the hearing of an interlocutory application; or

(b) if the application is to proceed by way of teleconference—fix a time for the teleconference.

(2) If a Judge or Master has given a direction about the time and place of hearing, the setting down should conform with that direction.

(3) Subject to any direction dispensing with or modifying the requirements of this subrule, it is the responsibility of the applicant to ensure that notice of the time and place at which an interlocutory application is to be heard, or an adjourned hearing is to be resumed, is given to any other parties entitled to be heard on the application at least two days before the date appointed for the hearing or the resumption of the hearing.

(4) Even though an interlocutory application has been set down for hearing at a particular time and place, a Judge or Master may hear the application at another time or place, or hear the application by teleconference, if satisfied the parties have received appropriate notice of the change.

(5) Even though an interlocutory application has been set down for hearing by a particular Judge or Master, another Judge or Master may hear the application if satisfied the parties have received appropriate notice of any change in the time or place of hearing.

134—Hearing of application

(1) Unless an interlocutory application is to be determined without hearing oral submissions—

(a) the lawyer for each party must attend the hearing of an interlocutory application and, unless the Court specifically requires the personal attendance of the party, the party is taken to be present through the representative; but

(b) if a party is not represented by a lawyer—the party must personally attend the hearing.

(2) However, attendance is not required under this rule if—

(a) the application does not affect the party's interest; or

(b) all parties consent to the application proceeding in the party's absence; or

(c) the Court excuses the party from attendance.

(3) A party is taken to have failed to attend a hearing of an interlocutory application if the application has been set down for hearing by teleconference and the party's lawyer is not available to participate in the teleconference as required under the relevant practice direction.

135—Interlocutory relief

(1) On an interlocutory application, the Court may make orders and give directions relating to the subject matter of the application irrespective of whether the applicant has asked for them in the application.

(2) If, on an interlocutory application, the Court allows or requires something to be done but does not fix a time within which it is to be done, it is to be done within 14 days from the date of the Court's order or direction.

Part 3—Disclosure and production of documents

136—Obligation to disclose documents

(1) Each party must disclose the documents that are, or have been, in the party's possession and—

(a) are directly relevant to any issue raised in the pleadings; or

(b) are to be disclosed by order of the Court.

(2) The disclosure is made by filing in the Court a list of documents in the approved form.

(3) The disclosure is to be made as follows—

(a) in the first instance, disclosure is to be made within the prescribed period and is to relate to documents that are in the party's possession or have previously been in the party's possession;

(b) if documents come into the party's possession after the initial disclosure—supplementary disclosure is to be made as soon as practicable after they come into the party's possession.

(4) The ***prescribed period*** is the period of 21 days running from the end of the settlement conference or, if there is no settlement conference, from the close of pleadings.

(5) If a document is no longer in a party's possession, the list must state how the document left the party's possession and any information the party may have about where the document might be found.

(6) The following documents need not be disclosed—

(a) an investigative film made for the purposes of the action;

(b) documents that have been filed in the action;

(c) communications between the parties' lawyers or notes of such communications;

(d) correspondence between a party and the party's lawyer or notes of oral communications between a party and the party's lawyer;

(e) opinions of counsel;

(f) copies of documents that have been disclosed or are not required to be disclosed.

(7) If a party required to disclose a document claims that the document is privileged from production, the list must state the nature of the privilege and the grounds on which it is claimed.

(8) If a party who has filed a list of documents later becomes aware that the list is defective or incomplete, the party must file a supplementary list as soon as practicable.

137—Principles governing compilation of list of documents

(1) Subject to the following exceptions, the list of documents for disclosure under this Part is to contain a concise description of each document and a means of identifying it so that it is later practicable to identify the document with certainty and precision.

Exceptions—

1 If a file is listed and the document is part of the file, the document is not to be separately listed.

2 If a document is recorded on a computer disc and the disc is listed, the document is not to be separately listed.

3 If the document is part of a bundle of documents of the same or a similar character, and the bundle is listed with a description of its contents and (if it is not clear from the description) a statement of the number of documents comprised in the bundle, the document is not to be separately listed.

Examples—

- Accounting records for a stated financial year.
- Drafts 1 to 4 of document X.
- Letters from X to Y between 1 January 1999 and 31 December 2000.

(2) However, the Court may, on its own initiative or on application by a party, order a party to file a supplementary list identifying documents disclosed under a general description with greater precision than required under subrule (1).

(3) The list of documents is to be verified on oath if the Court so directs.

138—Power to regulate disclosure by agreement

(1) The parties to an action may, by agreement (a ***document disclosure agreement***) made within 7 days after the close of pleadings—

(a) dispense with disclosure of documents under this Part; or

(b) regulate the extent of disclosure and how it is to be made.

(2) Notice of an agreement under this rule must be filed in the Court before the time limited for making disclosure.

(3) If an agreement is filed under this rule, disclosure is taken to have been completed 21 days after close of pleadings.

139—Court's power to regulate disclosure of documents

(1) The Court may, on application by an interested party—

(a) extend the obligation to disclose to classes of documents specified by the Court; or

Example—

The Court might extend the obligation of disclosure to documents that are only indirectly relevant to a particular issue arising in the action.

(b) relieve a party from the obligation to disclose documents or limit the obligation to documents or classes of documents specified by the Court; or

(c) provide for disclosure of documents in separate stages; or

(d) require a list of documents to be arranged or indexed in a particular way; or

(e) require disclosure in the form of computer readable lists; or

(f) modify or regulate disclosure of documents in some other way.

(2) The Court may, on application by a party to a document disclosure agreement—

(a) make orders for the enforcement of obligations arising under the agreement; or

(b) cancel the agreement and require disclosure of documents in accordance with these rules or the Court's order.

140—Obligation to produce documents for inspection

(1) A party must produce documents disclosed under this Part for inspection.

(2) If a document is not in the party's immediate possession but is obtainable by the party, the party must take all reasonable steps to obtain the document or a copy of it.

(3) A party must nominate a place at which documents disclosed under this Part may be inspected and copied during ordinary business hours.

(4) The place for inspection must be within 50 km of the GPO at Adelaide unless the parties otherwise agree or the Court otherwise orders.

(5) Instead of making documents available for inspection, a party may, with the agreement of the party to whom the documents are to be produced for inspection or by direction of the Court, provide the other party with photocopies of documents at the appropriate fee.

(6) The Court may, on application by a party, relieve the party from the obligation to produce a particular document under this rule.

141—Inspection of documents

(1) Documents produced for inspection must be—

(a) arranged in a logical sequence or according to some logical and readily understandable system; and

(b) indexed so that a particular document can be readily identified and retrieved.

(2) The inspection may be carried out by—

(a) the party for whom they are to be produced personally; or

(b) a lawyer acting for the party; or

(c) a person nominated by the party or the party's lawyer.

(3) The party making the documents available for inspection must—

(a) make available to the person carrying out the inspection reasonable facilities for inspecting the documents; and

(b) at the request of the person carrying out the inspection, make available to that person on reasonable terms as to payment—

(i) facilities for copying the documents; and

(ii) the services of a person who is able and willing to explain the arrangement of the documents and assist in locating documents in which the person carrying out the inspection is specifically interested; and

(iii) if the document is a computer record or requires some other form of processing in order to render its contents intelligible—equipment for obtaining access to the information contained in the document in intelligible form and, if necessary, the services of a person who is experienced in the operation of the equipment.

(4) If a party to whom documents are to be produced for inspection reasonably asks for the documents to be produced in specified stages, the party who is to produce the documents for inspection must comply with the request.

142—Order for production of document

(1) The Court may order a party to produce documents for inspection and copying by another party at a time and place specified in the order.

(2) The Court may make supplementary orders to facilitate the inspection or copying of documents, such as—

(a) an order that the party producing the documents provide specified assistance in locating or identifying documents;

(b) an order that documents be arranged and indexed in a specified way to facilitate their inspection;

(c) an order that the party producing the documents make available equipment for copying the documents at the cost of the party to whom they are produced;

(d) if the document is in the form of a computer record, or requires some other form of processing in order to render its contents intelligible—an order that the party producing the document provide the means of access to information recorded in the document on terms fixed by the Court.

(3) The Court may, instead of, or as well as, ordering the production of a document, order a party—

(a) to provide another party with a photocopy of the document at the appropriate fee; or

(b) if the document is a computer record or in some other form that requires processing in order to render its contents intelligible—to provide a transcript of the contents of the document in an intelligible form.

(4) The Court may decline to make an order under this rule on the ground that the order would be contrary to the public interest.

143—Determination of objection to production

(1) If a party objects to producing a particular document, the Court may order its production to the Court so the Court can determine the objection.

(2) The Court has a discretion, on objection to the production of a document, to relieve the objector from the obligation to produce the document if satisfied that the document neither advances nor prejudices the case of any party to the action.

144—Orders to protect confidentiality of documents

The Court may make orders to protect the confidentiality of documents that are to be disclosed or produced under this Part.

145—Non-compliance with obligations of disclosure and production of documents

(1) If there is reason to doubt whether a party has fully complied with the party's obligations to disclose and produce documents under this Part, the Court may make orders the Court considers appropriate to ensure that the obligations have been fully complied with and, if necessary, to enforce those obligations.

(2) The Court may (for example)—

(a) require the party, or another person who may be in a position to provide relevant information, to appear before the Court for examination; or

(b) require the party to answer written questions relevant to ascertaining whether the party has made full disclosure.

Part 4—Non-party disclosure

146—Non-party disclosure

(1) If the Court is satisfied, on application by a party to proceedings, that a person (the ***respondent***) who is not a party may be in possession of evidentiary material relevant to a question in issue in the proceedings, the Court may order the respondent—

(a) to disclose to the Court whether the respondent is or has been in possession of relevant evidentiary material; and

(b) if the respondent remains in possession of relevant evidentiary material—to produce it to the Court or, if the respondent has been but is no longer in possession of relevant evidentiary material, to give the Court any information in the respondent's possession about the present whereabouts of the material.

(2) Subject to any direction by the Court to the contrary, the respondent is entitled to reasonable compensation from the applicant for the time and expense involved in complying with the order.

(3) The compensation is to be fixed by agreement between the applicant and the respondent or, in default of agreement, by the Court.

Part 5—Gathering of evidentiary material

147—Court may make orders for gathering evidence

(1) The Court may, on its own initiative or on application by a party to proceedings (or proposed proceedings) before the Court, make orders for the gathering of evidentiary material by—

(a) taking samples;

(b) making and recording observations;

(c) taking photographs or making films;

(d) carrying out tests, analyses or experiments.

(2) The Court may, for any good reason, dispense with notice of an application under this rule.

148—Court may authorise party to seize evidentiary material

(1) If the Court is satisfied, on the application of a party, that—

(a) the applicant reasonably believes that evidentiary material relevant to the proceedings is situated on premises specified in the application; and

(b) there is a risk that the evidentiary material may be suppressed or destroyed; and

(c) an order under this rule is justified in the circumstances of the case,

the Court may authorise the applicant, or a person or persons acting on behalf of the applicant, to enter and search the premises and to seize any evidentiary material found in the course of the search.

(2) Unless the Court directs to the contrary, notice of an application under subrule (1) need not be given.

(3) The Court may, on its own initiative or on application by any interested person, make orders for the custody of or access to evidentiary material seized under this rule.

149—Orders for custody and control of evidentiary material

(1) The Court may, on its own initiative or on application by a party to proceedings (or proposed proceedings) before the Court, make orders for—

(a) the custody and control of evidentiary material;

(b) the preservation of evidentiary material.

(2) The Court may make orders for access to evidentiary material in the control of the Court or a person to whom the Court has given the custody or control of the material under subrule (1).

(3) The Court may, for any good reason, dispense with notice of an application under this rule.

Part 6—Pre-trial examination by written questions

150—Pre-trial examination by written questions

(1) The Court may, on application by a party to an action, make an order for the pre-trial examination of another party to the action (that is, an order requiring the other party (the ***respondent***) to supply before the trial written answers to written questions formulated by the applicant).

(2) Before an application for an order under this rule is heard by the Court, the applicant must—

(a) file the written questions in the Court; and

(b) serve a copy of the application and the written questions on the party from whom the answers are required (the ***respondent***).

(3) An application for the pre-trial examination of a party must be made after the close of pleadings but before a date falling 28 days after all parties have made disclosure of documents.

(4) Once the Court has made an order for the pre-trial examination of a party, no further order will be made on the application of the same applicant for the examination of the same respondent unless the Court is satisfied that there are special reasons for the further order.

(5) If the respondent is a company, the questions must be answered by an officer of the company with authority to answer the questions on its behalf and the Court may, if it thinks fit, nominate a particular officer to answer the questions on behalf of the company.

151—Respondent's obligations

(1) The respondent must respond to the questions—

(a) if no period is fixed by the Court for the respondent's response—within 28 days after the Court's order; or

(b) if the Court fixes the time for the respondent's response—within the time fixed by the Court.

(2) The response must set out the text of each question and (subject to subrule (3)) the respondent's answer to it.

(3) The respondent may object to answering a question on any ground on which an objection might be properly made if the question were asked in the course of the trial and, in that event, the respondent must set out in the response the text of the question and the grounds of the objection.

(4) The Court may, on application by a party who has put the questions, within 14 days after the response is filed—

(a) disallow an objection and require the respondent to answer a particular question; or

(b) require the respondent to make a further or better answer to a question.

152—Answers may be tendered at trial

The Court may receive a respondent's response, or part of it, in evidence at the trial.

Part 7—Medical examinations

153—Obligation to submit to medical examination at request of another party

(1) A party whose medical condition is in issue in an action must, at the request of another party to the action, submit to a medical examination, at the cost of the party making the request, by a medical expert nominated by that party.

(2) If a party is asked to submit to a medical examination after the action has been referred for trial, the party is not obliged to comply with the request unless the Court authorises or ratifies the request.

(3) A party who asks another to submit to a medical examination must, at the request of the other party, pay to the other party a reasonable sum to cover the cost of travelling expenses and loss of earnings from attendance at the medical examination.

(4) A medical practitioner who carries out a medical examination at the request of a party must prepare a written report setting out the results of the examination.

(5) A party who asks another party to submit to a medical examination under this rule must give the other parties to the action a copy of the report obtained on the examination.

(6) If the party undergoing the examination does not receive a copy of the medical expert's report within 14 days after the date of the medical examination, that party may ask the medical practitioner for a report on the examination.

154—Non-compliance with obligation to submit to medical examination

(1) If a party fails to comply with an obligation to submit to a medical examination under this Part, the Court may stay the action until the party complies with that obligation.

(2) The Court may order that a party is not to be entitled to damages for a period for which the party is in default of an obligation to submit to a medical examination under this Part.

155—Court's power to direct biological test to establish paternity

(1) If paternity is in issue in an action, the Court may direct—

(a) a party to the action to submit to a relevant biological test; or

(b) a parent or guardian of a child whose paternity is in issue to have the child submit to a relevant biological test.

(2) A ***relevant biological test*** is a test that may provide evidence from which an inference relevant to paternity can be drawn.

(3) A person cannot be compelled to submit to, or to have a child submit to, a relevant biological test under this rule but, if the direction is not complied with, the Court may draw inferences from the non-compliance that it considers proper in the circumstances.

Part 8—Admissions

156—Notice to admit facts or documents

(1) A party may give notice to another party (a ***notice to admit***) asking the other party to admit a particular assertion that the party makes for the purposes of the action.

(2) The assertion may be—

(a) a statement purporting to be a statement of fact; or

(b) an assertion of the authenticity of a particular document; or

(c) an assertion that a particular document is, for stated reasons, relevant to the subject matter of the action; or

(d) an assertion that a particular document is, for stated reasons, admissible in evidence at the trial of the action.

(3) A notice to admit is given by—

(a) filing the notice in the Court; and

(b) serving the notice on the party asked to make the admission.

(4) If a notice to admit asserts the authenticity or relevance of a document, a copy of the document must, unless the Court otherwise directs, be attached to the notice.

(5) A notice to admit cannot be given without the Court's permission under this rule—

(a) more than 28 days after the last party in the action to file a list of documents has done so; or

(b) if the party proposing to give the notice has previously given two or more notices to admit to the same party.

(6) A party to whom a notice to admit is addressed (the ***respondent***) must, within 14 days after the notice is given or a longer time agreed by the parties or allowed by the Court, give a notice (a ***notice of response***) responding to each assertion in the notice to admit—

(a) by admitting the assertion; or

(b) by—

(i) denying the assertion and stating the grounds of the denial; or

(ii) stating that the respondent is not in a position to admit or deny the assertion and explaining why the respondent is not in a position to do so; or

(iii) claiming privilege or some other proper ground for refusing to respond to the assertion.

(7) If the respondent fails to respond to an assertion in a notice to admit as required by subrule (6), the respondent is taken to have admitted the assertion.

(8) A notice of response is given by—

(a) filing the notice in the Court; and

(b) serving the notice on the party who gave the notice to admit.

(9) The Court may, on application made within 21 days after a notice of response is given—

(a) order the respondent to give a further and better notice of response within the time allowed by the Court; or

(b) if satisfied that the respondent has denied or failed to admit an assertion without adequate reasons for doing so—determine the issue raised by the assertion in advance of the trial.

(10) If a party unreasonably denies or fails to admit an assertion, the Court will, unless there are good reasons for not doing so, order the party to pay costs arising from the denial or failure.

(11) If a party unreasonably asks another party for an admission, the Court will, unless there are good reasons for not doing so, order that party to pay the costs arising from the request.

157—Admissions confined to action in which made

An admission made in response to a notice to admit, or a presumptive admission arising from a response or failure to respond to a notice to admit, is effective only for the purposes of the action in which the notice to admit was given.

158—Withdrawal of admissions

A party may not withdraw an admission without the Court's permission.

Part 9—Notice of evidence to be introduced at trial

Division 1—Notice generally

159—Notice generally

The Court may, before ordering that an action proceed to trial, direct a party to an action to file a notice in the Court—

(a) listing the witnesses the party proposes to call at the trial and describing the general nature of the evidence to be given by each witness; and

(b) describing the evidentiary material the party proposes to tender at the trial.

Division 2—Expert reports

160—Pre-trial disclosure of expert reports

(1) A party must, before the relevant time limit—

(a) obtain all expert reports that the party intends to obtain for the purposes of the trial of the action; and

(b) serve on every other party to the action a copy of each expert report in the party's possession relevant to the subject matter of an action (whether the party intends to rely on it at the trial or not).

Exception—

This rule does not apply to reports obtained, or to be obtained from a shadow expert (see rule 161(1)).

(2) The ***relevant time limit*** is the end of a period of 60 days after the time limited for making an initial disclosure of documents.

(3) An expert report should—

(a) set out the expert's qualifications to make the report; and

(b) set out the facts and factual assumptions on which the report is based; and

(c) identify any documentary materials on which the report is based; and

(d) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified; and

(e) comply with any requirements imposed by practice direction.

(4) However, if an expert has provided a previous expert report to a party, a report complies with subrule (3) if it refers to material contained in the previous report without repeating it.

(5) A party who has disclosed an expert report, and proposes to rely on evidence from the expert at the trial, must, at the request of another party, provide the party making the request with—

(a) a copy of documentary material (including material in the form of computer data) on which an expert has relied for making a report; and

(b) details of any fee or benefit the expert has received, or is or will become entitled to receive, for preparation of the report or giving evidence on behalf of the party; and

(c) details of any communications relevant to the preparation of the report—

(i) between the party, or any representative of the party, and the expert; and

(ii) between the expert and another expert.

(6) The Court may, on application by a party, relieve the party from an obligation to disclose an expert report or information relating to it under this rule.

(7) An application under subrule (6)—

(a) must be made before or within 7 days after the time for disclosure of the expert report; and

(b) must be accompanied by a copy of the relevant report enclosed in a sealed envelope (which is only to be opened at the direction of the Court); and

(c) may be made without notice to other parties to the action.

Note—

It should be noted that failure to comply with this rule may result in the exclusion of expert evidence at trial (see rule 214(2)). The expert's report may become in effect the expert's evidence-in-chief at trial (see rule 169).

161—Shadow experts

(1) A shadow expert is an expert who—

(a) is engaged to assist with the preparation or presentation of a party's case but not on the basis that the expert will, or may, give evidence at the trial; and

(b) has not previously been engaged in some other capacity to give advice or an opinion in relation to the party's case or any aspect of it.

(2) An expert will not be regarded as a shadow expert unless, at or before the time the expert is engaged, the expert gives a certificate, in an approved form, certifying that—

(a) the expert understands that it is not his or her role to provide evidence at the trial; and

(b) the expert has not been previously engaged in any other capacity to give advice or an opinion in relation to the party's case or any aspect of it.

(3) Evidence of a shadow expert is not admissible at the trial unless the Court determines that there are special reasons to admit the evidence.

(4) If a party engages a shadow expert, the party must—

(a) notify the other parties of—

(i) the engagement; and

(ii) the date of the engagement; and

(iii) the name, address and qualifications of the relevant expert; and

(b) serve copies of the expert's certificate under subrule (2) on the other parties.

(5) The notification must be given—

(a) if the engagement takes effect before the time for disclosing expert reports expires—before that time expires;

(b) in any other case—as soon as practicable after the engagement takes effect.

Part 10—Evidence

Division 1—Affidavits

162—Form of affidavit

(1) An affidavit is to be in an approved form.

(2) Subject to the following exceptions, an affidavit is to be confined to matters that the witness knows of his or her own knowledge.

Exceptions—

1 An affidavit made for the purpose of interlocutory proceedings may contain statements that the witness honestly believes to be true if the witness also states the grounds of the belief.

2 The Court may dispense with the requirements of this subrule to the extent it considers appropriate in a particular case.

(3) An affidavit must be made before an authorised witness to whom the person making the statement certifies his or her honest belief in the truth of the contents of the statement.

(4) The contents of an affidavit cannot be altered after it has been certified (but this subrule does not prevent the making of a later affidavit drawing attention to the error in the earlier affidavit).

(5) An exhibit to an affidavit must be marked in a way that clearly identifies it as the exhibit referred to in the affidavit.

(6) The Registrar may give directions about custody of, and access to, an exhibit and such an exhibit is to be dealt with in accordance with the Registrar's directions.

(7) If a person who gives evidence by affidavit (the ***witness***) is illiterate or blind, the person to whom the witness certifies the truth of the evidence must state in the attestation clause that—

(a) the affidavit was read to the witness; and

(b) the witness appeared to understand and approve the contents of the affidavit.

(8) If a person who does not understand English makes an affidavit in English (the ***witness***), the affidavit must be accompanied by a certificate from an interpreter stating—

(a) the interpreter's qualifications; and

(b) that the interpreter—

(i) interpreted the affidavit to the witness; and

(ii) the witness appeared to understand and approve the contents of the affidavit.

(9) The Court may receive an affidavit despite an irregularity in form.

(10) The Court may receive an affidavit in an action whether the affidavit is made before or after the commencement of the action.

163—Authorised witness

(1) Any of the following is an authorised witness who may witness the making of an affidavit—

(a) the Registrar, a Deputy Registrar, or any other officer of the Court whom the Registrar has assigned for the purpose;

(b) a public notary;

(c) a commissioner for taking affidavits;

(d) a justice of the peace for South Australia;

(e) any other person authorised by law to take affidavits.

(2) An affidavit may not be made before the party, or an employee or agent of the party, on whose behalf the affidavit is filed unless—

(a) the party is the Crown; or

(b) the person taking the affidavit is a lawyer acting for the party.

164—Power to strike out affidavit

The Court may order that an affidavit or part of an affidavit be struck out if satisfied that it is—

(a) scandalous; or

(b) irrelevant; or

(c) an abuse of the process of the Court.

165—Power to require witness to appear for oral examination

(1) Subject to these rules, the Court may, on its own initiative or on application by a party, order a witness who has made an affidavit to attend for cross-examination on the affidavit.

(2) If a witness fails to comply with an order under subrule (1), the Court may (instead of, or as well as, exercising its other powers to deal with the failure) exclude the affidavit from evidence.

(3) If the witness is cross-examined, a re-examination may be conducted in the usual way.

166—Power to require oral evidence from person who should have made affidavit

If a party satisfies the Court that—

(a) the party reasonably requires an affidavit from a particular person; and

(b) the person has failed to comply with a reasonable request to make an affidavit,

the Court may make an order requiring the person to attend for examination before the Court.

Division 2—Use of affidavits in interlocutory proceedings

167—Use of affidavits in interlocutory proceedings

A party who proposes to rely on an affidavit in an interlocutory proceeding must file the affidavit and give copies of the affidavit to all other parties at least two days before the hearing.

Division 3—Use of affidavit or expert report at trial

168—Trial without oral evidence

(1) The parties to an action may, by agreement, determine that a trial is to proceed on the basis of affidavits rather than oral evidence.

(2) The Court may, on its own initiative or on application by a party, order that a trial proceed on the basis of affidavits rather than oral evidence.

169—Reception of certain evidence by way of affidavit or expert report

(1) A party may, with the Court's permission, tender evidence in the form of an affidavit or expert report at the trial of the action.

(2) The party must, within time limits fixed by the Court, serve on the other parties notice of intention to tender evidence in the relevant form together with a copy of the affidavit or expert report (but if the party has already given the other parties copies of the expert report as required by these rules, a further copy need not be given).

(3) The Court may, on its own initiative or on application, order a party to an action to give notice of evidence the party intends to adduce from a witness at the trial by obtaining an affidavit from the proposed witness and giving copies of the affidavit to the other parties.

170—Notice to produce witness for cross-examination

(1) If evidence is to be tendered at the trial in the form of an affidavit or an expert report, another party to the action may, by written notice given to the party at least 7 days before the order that the action proceed to trial is made, require the party for whom the evidence is to be given to produce the witness for cross-examination at the trial.

(2) A party must comply with a requirement under subrule (1) unless the Court determines that it is unreasonable.

Division 4—Subpoenas

171—Interpretation

(1) In this Division, unless the contrary intention appears—

addressee means a person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing party means the party at whose request a subpoena is issued;

subpoena means an order in writing requiring a person (an ***addressee***)—

(a) to attend to give evidence; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both those things.

(2) To the extent that a subpoena requires an addressee to attend to give evidence, it is called a ***subpoena to attend to give evidence***.

(3) To the extent that a subpoena requires an addressee to produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to produce***.

172—Issuing subpoena

(1) The Court may, in any proceeding, by subpoena order an addressee—

(a) to attend to give evidence as directed by the subpoena; or

(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or

(c) to do both those things.

(2) The Court may exercise its power to issue a subpoena not only for the purposes of an action in the Court but also for the purposes of proceedings extraneous to the Court for which the issue of a subpoena by the Court is authorised by statute.

Example—

The Court might issue a subpoena for the purposes of arbitration proceedings under the *Commercial Arbitration Act 1986* on application by a party to the proceedings, supported by an affidavit setting out the reasons justifying its issue (see section 17 of that Act).

(3) The Registrar is empowered to issue subpoenas on the Court's behalf.

(4) The Registrar—

(a) may issue a subpoena if requested by a party to a proceeding to do so; and

(b) must issue a subpoena if directed by the Court to do so.

(5) A subpoena is not to be issued—

(a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena—

(i) not be issued; or

(ii) not be issued without permission of the Court and that permission has not been given; or

(b) requiring the production of a document or thing in the custody of the Court or another court.

(6) A subpoena is not to be issued—

(a) for the purposes of interlocutory proceedings; or

(b) to compel the production of a public document,

unless a Judge or Master authorises the issue of the subpoena.

(7) On issuing a subpoena, the Court will authenticate it by affixing its seal or in some other appropriate manner.

173—Form of subpoena

(1) A subpoena must be in the approved form.

(2) A subpoena—

(a) may be addressed to one or more persons; and

(b) must, unless the Court otherwise orders, identify the addressee or addressees by name, or by description of office or position.

(3) A subpoena may, however, be issued without the identification of the addressee or addressees on the basis that the necessary identifying names or descriptions are to be inserted before service of the subpoena by a solicitor for the party on whose application the subpoena was issued.

(4) A subpoena to produce must—

(a) identify the document or thing to be produced; and

(b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify, for each addressee who is required to attend, the date, time and place for attendance.

(6) If a subpoena requires an addressee's personal attendance at a particular date, time and place to produce a document or thing, or to give evidence (or both)—

(a) the date, time and place for attendance must be the date, time and place at which the trial is scheduled to commence or some other date, time and place permitted by the Court; but

(b) if the course of the Court's business makes it necessary or expedient to change the date, time or place for attendance—

(i) the issuing party may amend the date, time or place by serving notice of the amendment in an approved form on the addressee personally and tendering any additional conduct money that may be reasonable in the light of the amendment; and

(ii) the subpoena then operates in its amended form.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

(8) The last date for service of a subpoena—

(a) is the date falling 5 days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the Court; and

(b) must be specified in the subpoena.

(9) If an addressee is a company, the company must comply with the subpoena by its appropriate or proper officer.

(10) If there is a mistake in the terms in which a subpoena is issued, and the mistake is discovered before the subpoena is served, the issuing party may correct the mistake and, after filing a corrected copy of the subpoena in the Court, proceed with service of the subpoena in its corrected form.

174—Setting aside or other relief

(1) The Court may on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or part, or grant other relief in respect of it.

(2) Any application under subrule (1) must be made on notice to the issuing party.

(3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

175—Service

(1) A subpoena must be served personally on the addressee on or before the last day for service specified in the subpoena.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee or addressees.

176—Compliance with subpoena

(1) An addressee need not comply with the requirement of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 175(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(4) An addressee who is required to comply with a subpoena to produce must comply with the subpoena—

(a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or the person authorised to take evidence in the proceeding as permitted by the Court; or

(b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, so that they are received not less than two business days before the date specified in the subpoena for attendance and production.

(5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge an addressee who is required to give evidence from the obligation to attend to give evidence.

177—Production otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 176(4)(b).

(2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

178—Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

179—Inspection of, and dealing with, documents and things produced otherwise than on attendance

(1) On request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred in accordance with rule 176(4)(b) and, if so, include a description, in general terms, of the documents and things produced.

(2) The following provisions of this rule apply if an addressee produces a document or thing in accordance with rule 176(4)(b).

(3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted permission and the inspection is in accordance with that permission.

(4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having a sufficient interest objects to the inspection under this rule.

(5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.

(6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Registrar—

(a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the Court for hearing and determination.

(8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.

(9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.

(10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry undertakes to the Court by force of this rule that—

(a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.

(11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

180—Disposal of documents and things produced

(1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to an addressee any document or thing produced in response to the subpoena.

Note—

It should be noted, however, that if the document or thing has been tendered as an exhibit, the Registrar is to deal with the exhibit as directed by the Court (see rule 18(2)(c)).

(2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) If the addressee has informed the Court that a document or a copy of a document need not be returned and may be destroyed, the Registrar may, unless the Court otherwise orders, destroy the document or copy instead of returning it.

(4) The Registrar must not destroy a document or a copy of a document unless the Registrar has first given to the issuing party and to the addressee at least 14 days' notice of the intention to destroy the document or copy.

181—Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount referred to in this rule is separate from and in addition to—

(a) any conduct money paid to the addressee; or

(b) any witness expenses payable to the addressee.

182—Failure to comply with subpoena—contempt of court

(1) An addressee who fails to comply with a subpoena without lawful excuse is in contempt of court and may be dealt with accordingly.

(2) Despite rule 175(1), if a subpoena has not been served personally on an addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

183—Documents and things in court custody

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing—

(a) in court or to any person authorised to take evidence in the proceeding, as required by the party; or

(b) as the Court directs.

(3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered—

(a) request the other court to send the document or thing to the Registrar; and

(b) after receiving it, produce the document or thing—

(i) in court or to any person authorised to take evidence in the proceeding as required by the party; or

(ii) as the Court directs.

Division 5—Examination of witnesses

184—Court's power to order examination of witness

(1) The Court may, on its own initiative or on application, appoint an examiner to take the evidence of a witness.

(2) A Judge or Master is eligible to be appointed as an examiner.

(3) The Court may exercise its powers under this rule for the purposes of—

(a) an action in the Court; or

(b) a proceeding in a foreign court or tribunal.

Example—

The Court might appoint an examiner to conduct the examination of a witness if it appears from a commission rogatoire, a letter of request, the Crown Solicitor's certificate, or other evidence acceptable to the Court that a foreign court or tribunal wants to obtain evidence for the purposes of a civil proceeding.

185—Procedure before examiner

(1) Subject to any direction by the Court, a witness in proceedings before an examiner may be examined, cross-examined and re-examined in the same way as a witness at the trial of an action.

(2) If the Court so directs, a videotape record of the examination is to be made.

(3) An examiner is an officer of the Court and has such of the Court's powers as the Court may assign (but not, unless the examiner is a Judge, the power to punish for contempt).

(4) The Court may, on application by an examiner or an interested person, make an order for punishment of—

(a) a contempt committed in the face of the examiner; or

(b) a contempt of an order of the examiner.

186—Record of examination

(1) A record of the examination must be made and certified by the examiner.

(2) The examiner must allow the witness to note any objection made to the accuracy of the record.

(3) At the conclusion of the examination, the examiner—

(a) must forward the certified record of the examination to the Registrar; and

(b) must report to the Court any failure by a witness to answer lawful questions or to produce evidentiary material to the examiner when lawfully required to do so.

(4) If the examination was conducted for the purpose of proceedings before a foreign court or tribunal, the Registrar must forward to the proper officer of the foreign court or tribunal—

(a) a certificate under the seal of the Court to the effect that the examination has been conducted in accordance with the order or request of the foreign court or tribunal; and

(b) a copy of the certified record of the examination; and

(c) a copy of any report made on the examination by the examiner.

Part 11—Offers of settlement

187—Offers of settlement

(1) A party may, before the relevant date, file an offer of settlement in the Court (a ***formal offer of settlement***).

(2) The ***relevant date*** is—

(a) the date falling 21 days before the date fixed for the trial to commence; or

(b) if the offer relates only to costs and is made in proceedings relating only to the taxation of costs, the date falling two days before the date appointed for the taxation.

(3) The offer must—

(a) be in an approved form; and

(b) if the offer relates to some, but not all, of the claims involved in the proceedings—state to which claims it relates; and

(c) state whether the offer relates to costs and, if so, the amount of the offer so far as it relates to costs; and

(d) if the offer relates both to principal relief and costs—state whether the party to whom the offer is made may accept the offer of principal without also accepting the offer as to costs,

and a copy of the offer must be served on all other parties to the action.

(4) A formal offer of settlement must be filed in a suppressed file and must not be disclosed to the trial judge (or the taxing officer) unless—

(a) all questions to which the offer is relevant have been determined; or

(b) a defence of tender before action is raised; or

(c) the defendant relies on the offer (together with an apology or apologies) as a defence to an action for defamation and the plaintiff, by pleading, denies the defence; or

(d) a declaratory judgment determining liability has been made and the Court permits the disclosure of the offer.

(5) If a defendant makes an offer of settlement for a specified amount, the offer may be accompanied by a payment into Court of the relevant amount.

(6) An amount paid into Court may be increased but cannot be withdrawn in whole or part unless—

(a) the plaintiff consents; or

(b) the Court permits its withdrawal.

188—Consequences of filing offer of settlement in Court

(1) A party to whom a formal offer of settlement is made may, before the relevant date—

(a) accept the offer; or

(b) if the offer relates to both the principal relief and costs and the offeror has not indicated that the offer may only be accepted in its entirety—accept the offer so far as it relates to principal relief.

(2) In subrule (1), the ***relevant date*** is—

(a) the date falling 7 days before the date fixed for the trial to commence; or

(b) if the offer relates only to costs and is made in proceedings relating only to the taxation of costs—the date falling two days before the date appointed for the taxation.

(3) The acceptance of a formal offer of settlement—

(a) must be in an approved form; and

(b) takes effect on the filing of the acceptance in the Court.

(4) A copy of the acceptance of a formal offer of settlement must be served on all other parties to the proceedings as soon as practicable after it is filed in the Court.

(5) If a formal offer of settlement is accepted, judgment may be entered, by consent, determining the relevant action or claim on a basis reflecting the terms of the offer.

(6) If a formal offer of settlement so far as it relates to principal relief is not accepted by the party to whom the offer is made and the Court determines the relevant action or claim on terms (as to principal relief) that are no more favourable to the party than the terms of the offer, then, subject to the Court's order to the contrary—

(a) the party to whom the offer was made is not to be entitled to costs referable to the period falling after the relevant date; and

(b) the party that made the offer—

(i) if a defendant—is entitled to costs referable to the period falling after the relevant date; and

(ii) if a plaintiff—is entitled to the whole of the party's costs of action on a solicitor/client basis.

(7) In subrule (6), the ***relevant date*** is the date falling 14 days after the date of service of the offer.

(8) If a formal offer of settlement in proceedings relating only to the taxation of costs is not accepted by the party to whom the offer is made and the Court determines the proceedings on terms that are no more favourable to that party than the terms of the offer, then, subject to the Court's order to the contrary, the costs of the taxation of costs are to be borne on a solicitor/client basis by that party.

Part 12—Suitors fund

189—Continuation of Supreme Court Suitors Fund

The Supreme Court Suitors Fund (the ***Suitors Fund***) continues in existence.

190—Payment of money into and out of Suitors Fund

(1) All money paid into the Court is to be paid into the Suitors Fund.

(2) Money is to be paid out of the Suitors Fund—

(a) by order of the Court; or

(b) by direction of the Registrar; or

(c) if the money was paid into the Court as security for costs of an appeal to the High Court—by order of the High Court or by direction of the Registrar of the High Court.

191—Investment of Suitors Fund

(1) The Suitors Fund (and any income of the Fund) is to be invested by the Registrar as a common fund in a manner approved by the Auditor-General.

(2) However, the Court may direct that any part of the Suitors Fund be separately invested.

(3) Interest will be credited to accounts in the Suitors Fund on a basis approved by the Auditor-General.

Part 13—Power to stay or dismiss proceedings

192—Court's power to stay proceedings

The Court may stay proceedings if the justice of the case so requires.

193—Court's power to dismiss proceedings

The Court may dismiss proceedings if—

(a) the pleadings disclose no reasonable cause of action; or

(b) the proceedings are frivolous, vexatious or an abuse of the process of the Court.

Part 14—Security for costs

194—Security for costs

(1) The Court may order a plaintiff to provide security for costs if—

(a) the action is brought in a representative capacity and the plaintiff is insolvent or would have insufficient resources to meet an order for costs if the action were to prove to be unsuccessful; or

(b) the plaintiff is ordinarily resident outside Australia; or

(c) there are reasonable grounds to suspect that the action may have been brought for an ulterior purpose; or

(d) the order is authorised by statute; or

(e) the order is necessary in the interests of justice.

Note—

If a defendant makes a counterclaim, the defendant is the plaintiff in the cross action—see definition of ***plaintiff***.

(2) Security for costs is to be given in the form and manner directed by the Court.

(3) If the Court orders security for costs, the action is stayed until the security is given unless the Court otherwise directs.

(4) The Court may, at any time, vary or revoke an order for security for costs and make consequential directions.

(5) An amount paid into the Court by way of security for costs may be paid out by consent of the interested parties.

Chapter 8—Special kinds of action

Part 1—Application of general rules

195—Application of general rules

The rules apply generally to actions to which this Part applies except to the extent of any inconsistency.

Part 2—Actions in defence of liberty

196—Powers of Court in cases of suspected unlawful detention

(1) If there are grounds to suspect that a person is being held in unlawful custody or subjected to unlawful restraint, the Court may order the production of the person before the Court so that the Court can inquire into the circumstances of the case.

(2) An application under this rule must be supported by an affidavit—

(a) setting out the grounds for suspecting that the person to whom the application relates is being held in unlawful custody or subjected to unlawful restraint; and

(b) if that person is not the applicant—

(i) stating that the person consents to the application; or

(ii) stating why the application should proceed without the person's consent.

(3) An application for an order under this rule may be made without notice to the person imposing the custody or restraint but the Court may, if it thinks fit, adjourn the application to enable any interested person to be heard.

(4) An order under this rule is to be served on such persons as the Court may direct.

197—Hearing of application

(1) An application for an order under this Part is to be heard in the first instance by a Judge.

(2) The Judge may, if he or she thinks fit, refer the application for hearing by the Full Court.

198—Further inquiry into detention etc

(1) At the time appointed by the Court for the production of the person before the Court, the Court will hear the applicant, the person to whom the application relates, any person on whom the order was served and any other person who appears to the Court to have a proper interest in the matter.

(2) The Court may make orders—

(a) terminating the detention or restraint;

(b) making any other provision for the care and protection of the person that may be appropriate in the circumstances.

Part 3—Actions for judicial review

199—Power to make order for judicial review

(1) The Court may make an order for judicial review.

(2) An ***order for judicial review*** is an order of one of the following kinds—

(a) an order preventing another court or a tribunal that has a duty to act judicially from acting beyond its jurisdiction or in contravention of the requirements of natural justice (***quo warranto***);

(b) an order setting aside the decision of another court or a tribunal that has a duty to act judicially because of error, absence of jurisdiction, failure to observe the requirements of natural justice or fraud (***certioriari***);

(c) an order to compel the performance of a duty of a public nature that cannot be enforced by some other adequate legal remedy (***mandamus***);

(d) an order to prevent a person from wrongfully exercising, or purporting to exercise, functions of a public character (***prohibition***).

200—Court's permission required for proceeding in which order for judicial review sought

(1) If a plaintiff claims to be entitled to an order for judicial review, an action for judicial review may be commenced but cannot proceed further in the Court without the Court's permission.

(2) An action for judicial review must be commenced as soon as practicable after the date when the grounds for the review arose and, in any event, within 6 months after that date.

(3) The originating process for an action for judicial review must, when filed in the Court, be accompanied by—

(a) an application for the Court's permission to proceed with the action; and

(b) an affidavit—

(i) stating the nature of the order sought; and

(ii) setting out, in detail, the grounds on which the applicant seeks the order for judicial review.

(4) The Court may grant permission if the Court is satisfied that there is a reasonable basis on which the applicant might establish a right to an order for judicial review.

(5) If the Court grants its permission, the Court must determine whether the action is to be heard by the Court constituted of a single Judge or by the Full Court.

(6) The Court may—

(a) order a stay of proceedings to which the action for judicial review relates; or

(b) suspend the operation of an order made by the court, tribunal or body whose decision is subject to the action for judicial review,

until completion of the judicial review or some other time determined by the Court, or until further order.

(7) An action for judicial review may include claims for other relief.

Example—

An action for judicial review might include a claim for declaratory relief.

(8) If the Court refuses its permission for an action for judicial review to proceed in the Court—

(a) the action, insofar as it is based on a claim for judicial review, lapses; and

(b) if relevant—the Court may give directions for the further conduct of the action insofar as other forms of relief are claimed.

201—Action for judicial review

(1) If an order for judicial review is sought in relation to an officer or a decision of a court or tribunal, the relevant court or tribunal is to be the defendant to the application.

(2) If the Court makes an order setting aside the decision of another court or a tribunal, the Court may remit the matter to the court or tribunal to be dealt with in accordance with the Court's directions.

Part 4—Interpleader actions

202—Interpleader actions

(1) If—

(a) a person is in possession of property; and

(b) the person claims no personal interest in the property; and

(c) the person is not sure to whom the property belongs or the property is subject to conflicting claims,

the person may commence an action (an ***interpleader action***) to have the Court determine who is entitled to the property.

(2) If the person is a party to an existing action relating to the property, the interpleader action may be introduced into that action as a secondary action.

(3) The Court may give any directions it thinks appropriate for the just determination of an interpleader action, including directions about any one or more of the following—

(a) the persons to be served with notice of the proceedings;

(b) the addition or substitution of parties;

(c) the trial of an issue;

(d) the carriage of proceedings;

(e) the consolidation of the interpleader action with other actions relating to the same property;

(f) costs and any other incidental matter.

Part 5—Actions for possession of land

203—Types of action for possession of land

For the purposes of this Part, a distinction is made between two types of action for possession of land—

(a) an action in which the plaintiff seeks an order enforceable against a named defendant (but against no-one else);

(b) an action in which the plaintiff seeks an order enforceable against anyone who may happen to be in possession of, or physically present on, the land.

204—Actions for possession of land

(1) This rule applies to an action for possession of land in which the plaintiff seeks an order enforceable against anyone who may happen to be in possession of, or physically present on, the land.

(2) The originating process for an action to which this rule applies is to be accompanied by an affidavit stating the grounds on which the plaintiff claims to be entitled to possession.

(3) The Court will not give judgment for possession of land in an action to which this rule applies unless satisfied that appropriate notice of the action has been given to those presently in occupation of the land.

(4) However, notice need not be given to an occupier if the Court is satisfied that the occupier is a trespasser who entered the land without any actual or apparent right to do so and an order for possession should be made as a matter of urgency.

(5) Any person to whom notice is given, or who is entitled to notice, under this rule—

(a) may file a notice of address for service; and

(b) on doing so, becomes a defendant to the action.

Part 6—Probate actions

205—Probate actions

(1) A ***probate action*** is—

(a) an action for a grant of probate of the will of a deceased person in solemn form; or

(b) an action to set aside a grant of probate in common form; or

(c) a contentious action for the grant of letters of administration of the estate (with or without the will annexed) of a deceased person; or

(d) an action to set aside the grant of letters of administration of the estate (with or without the will annexed) of a deceased person.

(2) A defendant to a probate action is a person (other than the plaintiff) whose interests are or may be adversely affected—

(a) under an instrument that is, or may be, the last will of the deceased person; or

(b) on intestacy.

(3) Subject to any direction by the Court to the contrary, a probate action will proceed in the same way as any other adversarial action.

Part 7—Actions for administration

206—Actions for administration

(1) In an action related to a trust or deceased estate, the Court may (if it thinks fit) determine questions arising in the action without making an order for administration.

(2) In any such action, the Court may make orders for the protection of persons who may be interested in the trust or deceased estate (whether or not they are parties to the action).

Examples—

1 The Court might make orders for the ascertainment of possible beneficiaries.

2 The Court might order the trustees, executors or administrators to file accounts of their administration in the Court.

Part 8—Admiralty actions

207—Admiralty actions

(1) An action in admiralty will proceed according to the admiralty rules.

(2) The admiralty rules are the rules under the *Admiralty Act 1988* (Commonwealth).

Chapter 9—Trial

Part 1—Constitution of Court for trial

208—Constitution of Court for trial

(1) As a general rule, an action is to be tried before a single Judge.

(2) The Court constituted of a Judge may direct that an action or an issue in an action be tried before—

(a) a Judge with the assistance of one or more assessors; or

(b) a Master; or

(c) a special referee, arbitrator, or officer of the Court.

Example—

The Court might refer to a Master or referee the assessment of damages or an assessment of the value of goods.

Part 2—Court's power to control trial

209—Court's power to control trial

(1) The Court may give directions about—

(a) the issues on which it requires evidence; and

(b) the nature of the evidence it requires to decide those issues; and

(c) the way in which the evidence is to be placed before the Court; and

(d) limiting the number of witnesses or the amount of evidence that a party may call or introduce on a particular issue.

(2) The Court may, at any time—

(a) limit the time to be taken by a trial or any part or aspect of a trial; or

(b) amend any such limitation.

Examples—

1 The Court might limit the time to be taken in examining, cross-examining or re-examining a witness.

2 The Court might limit the time to be taken by a party in presenting its case or making a particular oral submission.

(3) In deciding whether and, if so, how to exercise its powers under this rule, the Court—

(a) must have regard to—

(i) the need to ensure that justice is administered expeditiously and economically; and

(ii) the need to ensure that each party is allowed an adequate opportunity to present its case; and

(iii) the need to prevent abuse of the judicial system for the purpose of delay or other ulterior purposes; and

(b) may have regard to other relevant considerations.

(4) The Court may use its power under this rule to exclude evidence that would otherwise be admissible.

Part 3—Issues involved in trial of action

210—Trial of action

(1) Unless the Court otherwise directs, all issues involved in both primary and secondary actions are to be tried together.

(2) A party to a secondary action is entitled to introduce, to the extent permitted by the trial judge, evidence relevant to the primary action and, if the party's interest may be affected by the outcome of another secondary action, that other secondary action.

(3) A party to a secondary action is entitled to cross-examine, to the extent permitted by the trial judge, the witnesses of—

(a) a party to the primary action; or

(b) if the party's interest may be affected by the outcome of another secondary action—a party to that secondary action.

(4) Each party is bound by the Court's judgment so far as it determines issues affecting the interest of the party even though the party's participation in the action arose from a secondary action in which those issues were not raised.

211—Trial of separate issues

The Court may order the separate trial of an issue of fact or law (or an issue involving mixed questions of fact and law) involved in an action.

Part 4—Evidence at trial

Division 1—General rules about taking evidence

212—Evidence to be given orally in open court at trial of action

Subject to these rules, and any direction by the Court, evidence of a witness at the trial of an action is to be taken orally in open court.

213—Special power in relation to expert evidence

(1) The Court may exercise either or both of the following powers in regard to expert evidence—

(a) direct that the evidence of an expert witness be deferred until all (non-expert) factual evidence has been taken;

(b) ask an expert witness to review the (non-expert) factual evidence and to state (by affidavit or in oral evidence) whether the witness wants to modify an opinion earlier expressed in the light of that evidence or a particular part of that evidence.

(2) If two or more expert witnesses are to be called to give evidence about the same, or a similar, question, the Court may, on its own initiative or at the request of a party, give one or more of the following directions—

(a) that the expert witnesses confer;

(b) that the expert witnesses produce for use by the Court a document identifying—

(i) the matters and issues on which they are in agreement; and

(ii) the matters and issues on which they differ;

(c) that an expert witness be asked to review the opinion of another expert and to state (by affidavit or in oral evidence) whether the witness wants to modify an opinion earlier expressed in the light of the opinion of the other expert;

(d) that the evidence of two or more expert witnesses be taken in a particular sequence or that they should be examined, cross-examined or re-examined as a group, each being asked to answer, in turn, the questions relevant to the subject-matter of the action put by or on behalf of the parties to the action.

Note—

As to expert evidence generally and the notice to be given of an intention to introduce expert evidence, see Chapter 7 Part 9 Division 2.

Division 2—Limitation on right to call evidence

214—Limitation on right to call evidence etc

(1) If a party has been directed to give notice of witnesses the party proposes to call, or of evidentiary material the party proposes to tender, the party may only call a witness or tender evidentiary material at the trial of the action if—

(a) the required notice of the party's intention to call the witness or tender the evidentiary material has been given; or

(b) the Court permits the party to call the witness or tender the evidentiary material despite the failure to give the required notice.

Note—

For the power to direct that notice be given of a party's evidentiary intentions, see rule 159.

(2) A party may only call a witness to give expert evidence at the trial of the action if—

(a) the expert evidence to be adduced from the witness has been disclosed to the other parties in the form of an expert report or an affidavit (or the Court has relieved the party from the obligation of disclosure); or

(b) the Court permits the party to call the witness despite non-disclosure of the evidence.

(3) If the Court grants permission under subrule (2)(b), the Court will, unless there is good reason for not doing so, make an order that the party in whose favour the permission is granted, or that party's lawyer, is to be liable for costs related to the non-disclosure.

Division 3—Documentary evidence

215—Production of documents at trial

(1) A party must produce at the trial a document in the party's possession if—

(a) the party referred to the document in a document filed in the action; or

(b) the document was disclosed in a list of documents filed by the party in the Court; or

(c) another party has, by notice to the party, required production of the document at the trial; or

(d) the Court orders its production.

(2) If a party is required under subrule (1)(c) to produce a document that is not relevant or necessary, the costs of production are to be borne by the party requiring its production.

(3) For the purposes of this rule, a person produces a document—

(a) in the case of a document in written, printed or some other physical form—

(i) by bringing it to the precincts of the Court and having it available for production at the request of another party or at the direction of the Court; and

(ii) if such a request or direction is made—by producing it as requested or directed;

(b) in the case of a document in electronic form—by transmitting the document to the Registrar, so that it is available for production from the Court's electronic case management system.

216—Court to receive certain evidence in documentary form

(1) Unless the Court directs to the contrary, the evidence in chief of the following witnesses will be received by the Court in documentary form—

(a) if the trial is to proceed on the basis of affidavits—the party adducing the evidence must tender it in the form of affidavits;

(b) if the party intending to adduce the evidence has given notice of intention to tender the evidence in the form of an affidavit—the party adducing the evidence must tender the affidavit;

(c) if a party intending to adduce expert evidence has given notice of intention to tender the evidence in the form of an expert report—the evidence is to be tendered in the form of an expert report.

Note—

For the reception of evidence by way of affidavit, see rule 169.

(2) A party will only be required to produce for cross-examination a witness whose evidence in chief has been given by affidavit or an expert report if—

(a) another party has before the relevant time limit given notice as required under these rules requiring production of the witness for cross-examination; or

(b) the Court orders the party to produce the witness for cross-examination.

(3) The ***relevant time limit*** is the date falling 21 days before the date fixed for the trial to commence or, if the party who wants to conduct the cross-examination received a copy of the affidavit or expert report less than 28 days before the commencement date, the date falling 7 days after a copy of the affidavit or expert report was served on that party.

(4) Although a party has given notice that the evidence in chief of a particular witness is to be given in documentary form, the Court may permit the party to adduce further oral evidence from the witness at the trial of the action.

Division 4—Cross-examination on pleadings

217—Cross-examination on pleadings

(1) If a party gives evidence at the trial of an action, the party may be cross-examined about the party's knowledge of or belief in the truth of the facts alleged in the party's pleadings.

(2) The Court may draw an inference adverse to the party's credit from a discrepancy between what it finds proved and the allegations of fact as stated in the party's pleadings.

Part 5—Record of trial

218—Record of trial

A record of each trial is to be kept in accordance with the Registrar's directions.

Part 6—Effect of death or incapacity of Judge

219—Effect of death or incapacity of Judge

(1) If a Judge dies or becomes incapacitated before completing the hearing and determination of proceedings, another Judge may complete the hearing and determination.

(2) If reasons for judgment in final form were prepared before the Judge died or became incapacitated, the other Judge must publish the reasons and give judgment in accordance with them.

(3) In any other case, the Judge may—

(a) rehear evidence and submissions in whole or part; and

(b) give any directions that may be appropriate in the circumstances.

Chapter 10—Alternative dispute resolution

Part 1—Mediation

220—Mediation

(1) A Judge or Master may appoint a mediator in an action and refer the action or a particular issue arising in the action for mediation.

(2) The power to appoint a mediator is not to be exercised by a Master without the consent of the parties affected by the proposed mediation.

(3) The mediator is to be a person determined by the Court (either with or without the consent of the parties).

(4) A Judge or Master may be a mediator.

Part 2—Arbitration

221—Court's power to refer action for arbitration

(1) The Court may, on its own initiative or on application by a party, appoint an arbitrator in an action and refer the action or a particular issue arising in the action for arbitration.

(2) The arbitrator is to be appointed if practicable with the agreement of the parties (but their agreement is not essential).

(3) A Judge or Master is eligible to be appointed as an arbitrator.

222—Conduct of arbitration

(1) An arbitration is to be conducted as directed by the Court.

Example—

The Court might direct that an arbitration be conducted in the same way as an arbitration under the *Commercial Arbitration Act 1986*.

(2) An arbitrator is an officer of the Court and has such of the Court's powers as the Court may assign (but not the power to punish for contempt).

(3) The Court may, on application by an arbitrator or an interested person, make an order for punishment of—

(a) a contempt committed in the face of an arbitrator; or

(b) a contempt of an order of an arbitrator.

(4) The arbitrator's award may be registered in the Court and enforced as a judgment of the Court.

Chapter 11—Judgment

Part 1—Nature of relief

223—Nature of relief

The Court may, in an appropriate case, give judgment for a form of relief that differs from the kind of relief sought by the plaintiff.

224—Judgment where opposing claims established

(1) If a defendant establishes a right to set off, the Court may give judgment for the balance.

(2) If a plaintiff succeeds on a claim, and the defendant on a counterclaim, the Court may give judgment in favour of the party who establishes the greater entitlement for the difference.

225—Judgment requiring compliance with positive or negative requirements

(1) A judgment requiring a person to do, or to refrain from doing, an act must have endorsed on it a warning, in a form approved by the Court or the Registrar, of the possible consequences of failure to comply with the judgment.

(2) A judgment requiring a person to do, or refrain from doing, an act may specify a time within which compliance is required and, if it does not do so, the Court may, on application by a party in whose favour the judgment was given, specify a time within which compliance is required.

(3) A judgment requiring a person to do, or to refrain from doing, an act must be served personally on the person or, if that person is a company, on a director or executive officer of the company.

226—When judgment takes effect

(1) A judgment that the Court gives following a process of adjudication takes effect when the Court pronounces judgment.

(2) A judgment that is entered without adjudication takes effect when it is entered in the records of the Court.

(3) The Court may deliver an interlocutory judgment by giving the parties notice of the judgment and the reasons for judgment and, in that event, the judgment takes effect when notice is served on the parties.

(4) The Court may, however, order that a judgment take effect earlier or later than as prescribed in this rule.

Part 2—Judgment by consent

227—Judgment by consent

(1) The Court may give judgment by consent of the parties.

(2) Unless the Court directs to the contrary, a sum of money for which judgment is given by consent of the parties is taken to be in addition to any sum already recovered.

(3) A judgment given by consent has the same force and effect as a judgment given on adjudication of claims on which the judgment is based.

(4) A consent to judgment—

(a) may be given by the party personally or by a lawyer acting on behalf of a party; and

(b) may be given—

(i) orally before a Judge or Master; or

(ii) by written notice of consent, signed by the consenting party or his or her lawyer, and filed with the Registrar; or

(iii) by electronic notice of consent transmitted to the Registrar's email address.

(5) The Registrar may enter a judgment by consent if satisfied by written or electronic notices of consent that all parties consent to the judgment.

Part 3—Default judgments

Division 1—Entry of default judgment by permission of Court

228—Entry of default judgment by permission of Court

(1) If a party fails to file a pleading, or particulars of its case, as required under these rules, or commits some other procedural irregularity that seriously prejudices the proper and expeditious conduct of the action, another party may, with the Court's permission, enter a default judgment.

(2) If the defendant is in default, judgment may be entered for the relief claimed or some other relief the Court considers appropriate.

(3) If the claim is for the possession of land, the Court may require that notice of an application for permission to enter a default judgment be given to anyone in possession of the land.

Division 2—Entry of default judgment where Court's permission not required

229—Entry of default judgment where Court's permission not required

(1) In the following cases, a plaintiff may enter judgment in default without first obtaining the Court's permission to do so—

(a) if a defendant does not file a defence to a liquidated claim within 28 days after service of the plaintiff's statement of claim—the plaintiff may enter judgment in default of a defence against the defendant for an amount not exceeding the amount of the liquidated sum plus interest;

(b) if a defendant does not file a defence to an unliquidated claim within 28 days after service of the plaintiff's statement of claim—the plaintiff may enter judgment in default of a defence against the defendant for an amount to be assessed;

(c) if a defendant does not file a defence to a claim for the detention of goods within 28 days after service of the plaintiff's statement of claim—the plaintiff may enter judgment in default of a defence against the defendant—

(i) for delivery of the goods; or

(ii) for the value of the goods to be assessed.

(2) In subrule (1)—

a ***liquidated claim*** is a claim for a specific amount or a claim for an amount that can be precisely calculated;

an ***unliquidated claim*** is a claim for an amount that requires assessment by the Court.

(3) A plaintiff who enters judgment under this rule is, subject to any order of the Court to the contrary, entitled to costs up to the date of entering judgment and—

(a) if judgment for a specified amount is entered—the judgment will also require the defendant to pay the plaintiff's costs to be taxed;

(b) if the Court is yet to assess the amount of the judgment—the Court will make an appropriate order for costs at the conclusion of the assessment proceedings.

Division 3—Power to set aside default judgments etc

230—Power to set aside or vary default judgment

The Court may, on conditions it considers just, set aside or vary a default judgment.

231—Continuation of action by or against parties not in default

(1) If default judgment is entered in an action against a plaintiff or a defendant but there remains another plaintiff or defendant who is not in default, the action by or against that other party continues.

(2) However, this does not apply if a claim is satisfied by enforcement of the default judgment.

Part 4—Summary judgment

232—Summary judgment

(1) The Court may, on application by a party, give summary judgment for that party.

(2) Summary judgment may only be given if the Court is satisfied that—

(a) if the applicant is a plaintiff—there is no reasonable basis for defending the applicant's claim; or

(b) if the applicant is a defendant—there is no reasonable basis for the claim against the applicant.

233—General discretion as to summary judgment

(1) The Court may, in its discretion, give summary judgment on a particular issue without disposing of the claim as a whole.

(2) If the Court gives summary judgment without disposing of the claim as a whole, the Court may give directions about the determination of the remaining issues and, in the absence of such directions, the action proceeds in the normal way as to the remaining issues.

234—Judgment in default of attendance of parties at trial

(1) If, when an action is called on for trial, the plaintiff does not attend (or no party attends), the Court may enter judgment dismissing the action in default of the plaintiff's attendance.

(2) If, when an action is called on for trial—

(a) the plaintiff attends but the defendant does not; and

(b) the plaintiff would have been entitled to judgment if the defendant had failed to file a defence,

the Court may enter judgment for the plaintiff in default of the defendant's attendance.

Part 5—Judgment on admissions

235—Judgment on admissions

(1) The Court may, on application by a party, give judgment on the basis of admissions.

(2) The Court may give judgment under this rule even though the judgment does not resolve all issues between the parties.

Part 6—Publication of reasons for judgment

236—Publication of reasons for judgment

(1) The reasons of a Judge or Master for a judgment, order or direction are published by entry of the reasons in the records of the Court.

(2) The reasons for a judgment, order or direction may be published in an appropriate case both in the form of a summary and in a more extended form.

(3) On entry in the records of the Court, the reasons will be available for inspection and downloading from the Court's website.

(4) However, any part of the reasons that is suppressed from publication under the *Evidence Act 1929* is not to be published on the Court's website.

Part 7—Judgments against partnerships etc

237—Judgment against partnership in partnership name

If judgment is given against a partnership in the partnership name and not against the individual members of the partnership, proceedings for execution against individual members of the partnership may only be taken with the Court's permission.

238—Judgment for or against unincorporated association

(1) A judgment for or against an unincorporated association that has sued or been sued in the name of the association may be enforced in the same way as a judgment for or against a company.

(2) A judgment in the nature of a mandatory or restrictive injunction against an unincorporated association may, with the Court's permission, be enforced against a member or officer of the association.

Part 8—Judgment in representative action

239—Judgment in representative action

(1) A judgment given in a representative action against a representative party is, subject to an order of the Court under subrule (2), binding on all persons represented by the representative party.

(2) A person apparently represented, or alleged to have been represented, in a representative action may apply to the Court for a declaration that the person is not bound by the judgment.

(3) The Court may make such a declaration if satisfied that the person was not in fact represented by the representative party.

(4) A judgment given in a representative action may only be enforced against a person represented by the representative party by permission of the Court and, before the Court gives its permission, it must allow the person a reasonable opportunity to make an application under subrule (2).

Part 9—Entry of judgment

240—Entry of judgment

(1) A party who claims to be entitled to judgment may apply to the Court for judgment.

(2) The application is to be made—

(a) in the case of a default judgment—by way of administrative request; or

(b) in any other case—by way of interlocutory application.

Note—

For entry of default judgment, see rules 228 and 229.

241—Registrar to settle and enter judgments

(1) Subject to this rule, a judgment must be formally entered in the Court's record.

(2) The Registrar will, on application by a party in whose favour judgment has been given, or who is entitled to judgment, enter judgment in the Court's record.

(3) The Registrar may—

(a) determine the form in which the judgment is to be entered and enter it accordingly; or

(b) require the applicant to lodge a draft of the judgment for settling.

(4) The Registrar may require all parties to attend before the Registrar for the purpose of settling a judgment (but if a party fails to attend, the Registrar may proceed in the absence of that party).

(5) Subject to a direction by the Court to the contrary, a judgment of the following kind does not need to be formally entered in the Court's record—

(a) a judgment for the extension or reduction of a time limit specified by these rules;

(b) a judgment in the nature of an interlocutory order;

(c) a judgment in the nature of a direction to an officer of the Court (other than a lawyer) to do something.

Part 10—Power to correct, vary or set aside judgment

242—Power to correct, vary or set aside judgment

(1) The Court may correct an error in a judgment at any time.

(2) If satisfied that the justice of a case so requires, the Court may—

(a) vary a judgment; or

(b) set aside a judgment and reopen an action.

Example—

The Court might set aside a judgment and reopen an action if satisfied that the judgment is vitiated by a mistake.

(3) The Court may act under this rule on its own initiative or on application by a party.

(4) If the Court proposes to act under this rule on its own initiative, it must notify the parties and allow them an opportunity to make representations on the proposed course of action.

Part 11—Orders ancillary to judgment

243—Orders ancillary to judgment

(1) The Court may, on application by a party, make any order necessary to give effect to a judgment.

(2) For example—

(a) the Court may order that accounts be taken or an inquiry conducted and give ancillary directions about how the proceeding is to be conducted and the evidence to be taken;

(b) if a judgment requires the making of an instrument, the Court may give directions for—

(i) the preparation and delivery of a draft instrument; and

(ii) the preparation and delivery of a statement of objections to the draft; and

(iii) the settling of the draft; and

(iv) the execution of the instrument;

(c) the Court may direct the publication of an advertisement to ascertain creditors, next of kin, or any other unascertained class;

(d) the Court may direct an inquiry into the claim or interest of any persons who respond to an advertisement under paragraph (c);

(e) if a judgment debtor is a member of a partnership—the Court may make an order charging the judgment debtor's interest in the property or profits of the partnership with the judgment debt (see section 23 of the *Partnership Act 1891*).

(3) Notice of an application for an order under subrule (2)(e) must be given to all other partners.

244—Powers directed at securing compliance with judgment by company

If a judgment against a company has been disobeyed, the Court may, on its own initiative or on application by a person entitled to the benefit of the judgment, make orders against a director, officer or other person who may be in a position of control or influence requiring the director, officer or other person to take specified steps with a view to securing the company's compliance with the judgment.

245—Extension of judgment to bind non-party

(1) The Court may, on application by a party to an action involving the administration of the estate of a deceased person, the administration of a trust, or a transaction or proposed transaction relating to property, order that a judgment in the action extend to a person who was not a party to the action at the time judgment was given.

(2) The Court must allow the person to be bound by the judgment a reasonable opportunity to be heard on the application.

Part 12—Injunctions

246—Court's power to grant injunction

(1) The Court may, on application by a party, grant an injunction before, at or after the hearing and determination of proceedings in the Court.

(2) In a case of urgency, an application may be made without notice to other parties but the Court may, if it thinks fit, require the applicant to give notice of the application to other parties.

(3) If an injunction is granted on an application made without notice to other parties—

(a) the Court must fix a time for a hearing (a ***confirmation hearing***) either at the time of making the injunction or on the later application of a party affected by the injunction; and

(b) if the Court decides at a confirmation hearing not to confirm the injunction—it then lapses.

247—Requirements for Mareva order

(1) A ***Mareva order*** is an order directed at keeping a defendant's assets within the jurisdiction and preventing their removal or disposal.

(2) A plaintiff applying for a Mareva order must show—

(a) that the plaintiff has a cause of action justiciable in the jurisdiction; and

(b) that the plaintiff has reasonable grounds for asserting the cause of action; and

(c) that—

(i) there is a danger that the defendant's assets may be removed from the jurisdiction or disposed of; and

(ii) there is a consequent danger that the plaintiff may not be able to satisfy a judgment obtained in the action by execution.

(3) The Court may, on application by a defendant, modify or discharge a Mareva order to avoid injustice to the defendant or for any other proper reason.

Part 13—Orders dealing with property

248—Property subject to proceedings

(1) The Court may make orders for the preservation of property subject to or connected with proceedings before the Court.

(2) The Court may (for example) order the payment of a fund into the Court or make other provision for the security of a fund.

(3) If the property is perishable, or it is desirable for some other reason to sell the property, the Court may order the sale of the property.

(4) If—

(a) a party brings an action for the recovery of specific property other than land; and

(b) the defendant does not dispute the plaintiff's title but claims to be entitled to retain the property under a lien or other security for the payment of money,

the Court may order the party in possession of the property to give it up to the other on the other paying into Court an amount fixed by the Court to cover the amount covered by the lien or other security and (if the Court thinks fit) interest and costs.

(5) The Court may give directions about—

(a) the management of real or personal property subject to proceedings in the Court; or

(b) how real or personal property subject to proceedings in the Court is to be dealt with; or

Example—

The Court might order the sale, exchange or partition of land.

(c) the payment of income derived from real or personal property subject to proceedings in the Court.

249—Sale of land

(1) This rule applies if the Court decides to order the sale of land.

(2) The Court may—

(a) appoint a party or other person to have the conduct of the sale; and

(b) give directions about the conduct of the sale and the execution of any conveyance necessary to give effect to the sale.

(3) A person appointed to sell land must certify the result of the sale to the Court.

250—Partially ascertained class

If some, but not all, of the persons entitled to share in the distribution of property have been identified and the Court expects difficulty or delay in identifying the others, the Court may authorise or require distribution to the persons who have been identified without diminishing their shares to allow for costs yet to be incurred in identifying the others.

Part 14—Orders for accounts or report

251—Orders for accounts or report

(1) The Court may, on its own initiative or on application by a party, order that accounts or a report relevant to a question in issue in an action be prepared and filed in the Court.

(2) The order may provide for preparation of the accounts or report by a party, an independent expert or other person.

(3) The Court may, in the same or a later order, give directions about the nature and extent of the inquiry to be carried out for the preparation of the account or report.

Example—

The Court might (for example) give directions about the extent to which the person preparing the accounts or report is required to inquire into the adequacy of existing accounts or records.

(4) The Court may order the examination of a party or other person on accounts or a report filed under this rule.

(5) The Court may order that, on the filing of accounts under this rule, a party is to pay to another an amount certified by the person preparing the accounts, to be owing from that party to another party.

252—Non-compliance with order for accounts or report

If there has been undue delay in the preparation of accounts or a report, the Court may—

(a) require the person responsible for preparing the accounts or report to appear before the Court to explain the delay; or

(b) if the plaintiff is responsible for the delay—stay the proceedings until the order is complied with; or

(c) if the defendant is responsible for the delay—strike out the defence.

Part 15—Appointment of receiver

253—Appointment of receiver

(1) The Court may, on its own initiative or on application by a party, appoint a receiver if it appears to be just and convenient to do so.

(2) On the hearing of an application for the appointment of a receiver, the Court may grant an injunction restraining a party from dealing with property subject to the proposed receivership until the application is determined.

(3) The Court may make the appointment conditional on the receiver giving security to the Registrar for the proper conduct of the receivership.

(4) The Court may fix, and provide for the payment of, the remuneration of a receiver.

254—Obligations of receiver

(1) A receiver must deal with money and property received by the receiver in the course of the receivership as directed by the Court.

(2) The receiver must file accounts of the receivership in the Court at the intervals directed by the Court.

255—Defaults by receiver

(1) If there are grounds to suspect that a receiver may have failed to carry out the receiver's duties as required by the Court, the Court may order the receiver to appear before the Court to explain the default.

(2) If the Court finds that the receiver is in default, the Court may exercise one or more of the following powers—

(a) disallow the receiver's remuneration in whole or part;

(b) require the receiver to pay interest on money that should have been paid to the Court or someone else under the terms of the receivership;

(c) order the receiver to pay compensation for loss resulting from the default;

(d) order the receiver to pay costs;

(e) revoke the appointment of the receiver and make any consequential orders for handing over money or property in the receiver's hands.

256—Revocation of appointment in case of receiver's illness etc

(1) The Court may remove a receiver from office if—

(a) the receiver—

(i) becomes mentally or physically incapable of carrying out the receiver's duties satisfactorily; or

(ii) becomes bankrupt or applies to take the benefit of a law for the benefit of bankrupt or insolvent debtors; or

(iii) is convicted of an indictable offence; or

(b) there is some other proper reason for removing the receiver from office.

(2) If a receiver dies or is removed from office, the Court may make orders for the handing over of property in the hands of the former receiver or his or her personal representatives.

Part 16—Protection of persons under disability

257—Settlement requires Court's approval

(1) A settlement of proceedings for the benefit of, or against the interests of, a person under a disability, or of a claim that might have formed the basis of such proceedings, is not binding on the person under a disability unless the Court approves the terms of the settlement.

(2) An action for the Court's approval of a settlement may be brought under this rule even though no related proceeding has been commenced in the Court.

258—Court's power to regulate dealings with money to which person under disability entitled

(1) Any money to which a person under a disability is entitled under a judgment of the Court, or on the settlement of proceedings or a claim that might have formed the basis of proceedings, is to be dealt with in accordance with the Court's directions.

(2) The Court may give directions under this rule from time to time as circumstances require.

Part 17—Approval of settlement reached by representative party in class action

259—Approval of settlement reached by representative party in class action

(1) A settlement of an action to which a class representative agrees is binding on the class if approved by the Court.

(2) However, the Court may, on application by an interested person, set aside a settlement agreed by a class representative if the interests of justice so require.

Part 18—Service of judgment

260—Service of judgment

(1) Subject to any contrary direction of the Court, a judgment must be served on a person against whom it is to be enforced.

Exception—

The following judgments do not need to be served—

(a) an interlocutory judgment;

(b) a judgment authorising or requiring an officer of the Court (other than a solicitor) to take or refrain from a particular action;

(c) a judgment requiring a person present in court immediately to take or refrain from a particular action;

(d) a judgment of any other kind excluded by practice direction from the requirement to be served.

(2) The judgment need not, however, be served personally but, if it is not served personally, the Court will not issue a warrant to attach a person for contempt of the judgment, or take any other action against a person for contempt, unless satisfied that the judgment has actually come to the person's attention.

Part 19—Interest on judgment debt

261—Interest on judgment debt

Unless some other rate is fixed by law, interest on a judgment debt accrues at the rate of 6.5 per cent per annum.

Chapter 12—Costs

Part 1—Record of costs to be kept

262—Record of costs to be kept

(1) A party to proceedings must maintain an adequate record of the party's costs.

(2) An adequate record is one that enables the party, within 28 days of the date of judgment, to formulate a claim for costs—

(a) stating—

(i) the total amount claimed; and

(ii) the component of that amount referable to disbursements; and

(b) showing in general terms how the amount of the claim is arrived at.

(3) A solicitor acting for a party must maintain a record under this rule on the party's behalf and is not entitled to charge a fee for doing so.

(4) If a party fails to comply with obligations under this rule, the Court may refuse to award costs or reduce the amount of the costs that might otherwise have been awarded in the party's favour.

(5) This rule does not apply in relation to work carried out, and disbursements made, before its commencement.

Part 2—Court's discretion as to costs

263—Court's discretion as to costs

(1) As a general rule, costs follow the event.

(2) The general rule is, however, subject to specific rules to the contrary[1] and also to the following exceptions (which apply subject to the Court's order to the contrary)—

(a) the costs of an amendment are to be awarded against the party making the amendment;

(b) the costs of an application to extend time fixed by or under these rules are to be awarded against the applicant;

(c) the costs of an application that should have been (but was not) made at an earlier stage of the proceedings are to be awarded against the applicant;

(d) the costs of an adjournment arising from a party's default are to be awarded against the party in default;

(e) the costs of proving a fact or document that a party has unreasonably failed to admit are to be awarded against that party;

(f) in an action founded on a motor accident claim, general costs of action are not to be awarded in favour of a successful plaintiff unless the damages exceed $150 000;

(g) in an action founded on a claim for defamation, general costs of action are not to be awarded in favour of the successful plaintiff unless the damages exceed $25 000;

(h) in an action founded on a claim for damages or any other monetary sum (other than a motor accident claim or a claim for defamation), general costs of action are not to be awarded in favour of the successful plaintiff unless the amount awarded exceeds $75 000.

Example—

1 For example, the special provisions as to costs where a party fails to accept an offer of settlement and the amount obtained by judgment does not exceed the amount of the offer (see rule 188).

(3) In exercising its discretion, the Court may (subject to any other relevant rule) have regard to any offer to consent to judgment or other attempt to settle the action or an issue involved in the action.

(4) In exercising its discretion with regard to counsel fees, the Court will have regard to the importance of the case, its difficulty and the time reasonably occupied by counsel.

(5) If an action is transferred or removed into the Court, the Court will not disturb orders for costs made in the other court or tribunal unless there is good reason to do so.

264—Basis for awarding costs

(1) The Court may, in the exercise of its discretion as to costs, award costs on any basis the Court considers appropriate.

(2) As a general rule, however, costs are awarded as between party and party (that is, on the basis that the party entitled to the costs will be reimbursed for costs reasonably incurred by the party in the conduct of the litigation to an extent determined by reference to the scale of costs in force, under these rules or the previous rules, when the costs were incurred).

(3) The scale of costs is fixed by Schedule 1.

(4) The Court may depart from the scale if there is good reason to do so.

Example—

The Court might allow a fee greater than allowed by the scale for a pleading if satisfied that the fee is justified by the difficulty of the case.

(5) In exercising its general discretion as to costs, the Court may—

(a) award costs as between solicitor and client (that is, on the basis that the party will be fully reimbursed for costs reasonably incurred by the party in the conduct of the litigation); or

(b) award costs on the basis of an indemnity (that is, on the basis that the party will be fully reimbursed for costs incurred by the party in the conduct of the litigation except to the extent that the party liable for the costs shows them to have been unreasonably incurred); or

(c) award costs by way of lump sum; or

(d) award costs on any other basis the Court considers appropriate.

(6) The Court may award different components of costs on different bases.

(7) The Court may include in an award of costs an amount representing interest.

(8) A party who is entitled to costs, or against whom costs have been awarded, may apply to the Court to have costs, or a particular component of costs, awarded on a particular basis.

265—Time for making and enforcing orders for costs

(1) The Court may deal with costs at any stage of proceedings (before or after final judgment has been given).

(2) However, subject to any order of the Court to the contrary—

(a) a bill of costs is not to be taxed until after the principal proceedings have been concluded; and

(b) an order for costs is not to be enforced until after the principal proceedings have been concluded.

266—Power to adjust liability to costs

(1) The Court may order that costs be set off against a countervailing liability.

(2) If a party (the ***first party***) is entitled to be indemnified in whole or part by another party (the ***second party***) for costs awarded in favour of a further party (the ***third party***), the Court may make an order for costs against the second party in favour of the third party.

(3) If a party is entitled to be indemnified for costs by a person who is not a party, the Court may make an order for costs against the person liable on the indemnity.

267—Orders for payment of costs of guardian or other representative party

(1) The Court may order the payment of the costs of a representative party out of a fund or by persons nominated by the Court.

(2) The representative of a person under a disability is not to be personally liable for costs unless the Court orders to the contrary.

268—Reservation of costs

If the Court reserves the costs of an application or other proceeding incidental to an action, the costs of the application or other incidental proceeding follow the event of the action unless the Court later orders to the contrary.

269—Over-representation of parties with common interest

If two or more parties have identical or similar interests but are separately represented and, in the Court's opinion, unnecessarily so, the Court may exercise either or both of the following powers—

(a) the Court may order that costs to which the parties are entitled be determined on a basis that would be appropriate if they had common legal representation;

(b) the Court may order the over-represented parties to compensate other parties to the action for additional costs incurred by them as a result of the over-representation.

270—Reference of question for inquiry

(1) The Court may refer for inquiry and determination by a Master—

(a) any question about—

(i) whether costs should or should not be allowed; or

(ii) who should pay costs; or

(iii) the basis on which costs should be allowed; or

(b) any other question related to costs.

(2) Before the Court exercises a power or discretion relating to costs, the Court may refer the matter for inquiry and report by a taxing officer.

Part 3—Taxation of costs

271—Initiation of proceeding for taxation of costs

(1) A person (the ***claimant***) who claims to be entitled to costs from another person (the ***respondent***) that are liable to taxation under an order of the Court or these rules, must file in the Court a claim for the costs prepared in an approved form.

(2) The claim must include—

(a) a notice in the approved form; and

(b) a general description of how the claim is made up including a statement of all counsel fees and other disbursements.

(3) The claimant must, at the request of the respondent, produce for inspection by the respondent all documents on which the claimant proposes to rely if the claim proceeds to taxation.

(4) Within 28 days after service of the claim on the respondent, the respondent must respond to the claim by filing a notice in the Court—

(a) admitting the claim in full; or

(b) admitting the claim to an extent stated in the response; or

(c) rejecting the claim in its entirety,

(and if the respondent fails to respond as required by this subrule, the respondent will be taken to have admitted the claim in full).

(5) The Court will, on administrative request, make an order for payment of costs to the extent they are admitted or presumed to be admitted under subrule (4).

(6) If the claim is not admitted in full, either party may apply to the Court for a preliminary assessment of the issues in dispute and, on such an application, the Court may exercise any one or more of the following powers—

(a) determine the basis on which costs are to be awarded and give any directions that may be necessary or desirable to arrive at a proper award of costs on the relevant basis;

(b) resolve issues in dispute between the parties or give directions for resolving such issues by mediation, arbitration or reference to an expert for report;

(c) make such orders for costs as may appropriately be made without proceeding to detailed taxation of the costs;

(d) order that the claim for costs proceed in whole or part to detailed taxation.

272—Taxation of costs where right to taxation arises under some other law

(1) If a person (the ***applicant***) seeks taxation of costs under the *Legal Practitioners Act 1981* or some other law, the applicant may, by letter to the Registrar, apply to the Registrar for taxation.

(2) The letter must—

(a) be accompanied by the account or accounts issued for the costs to which the application relates; and

(b) a statement of the extent (if any) to which the applicant accepts the costs as fair and reasonable.

(3) The Registrar will refer the application to the Court constituted of a Master for preliminary assessment.

(4) On a preliminary assessment, the Court may exercise one or more of the following powers—

(a) resolve issues in dispute between the parties or give directions for resolving such issues by mediation, arbitration or reference to an expert for report;

(b) make such orders for the payment of costs or the repayment of costs overpaid as may appropriately be made without proceeding to detailed taxation of the costs;

(c) order that the claim for costs proceed in whole or part to detailed taxation.

273—Preparation of schedule in cases where detailed taxation ordered

(1) In a case where the Court orders that a claim for costs proceed in whole or part to detailed taxation, the party claiming to be entitled to the costs (the ***claimant***) must—

(a) prepare an itemised schedule of the costs in an approved form; and

(b) file it in the Registry and serve a copy on the party alleged to be liable for the costs (the ***respondent***).

(2) Within 14 days after service of the schedule, the respondent must file in the Registry a response—

(a) identifying each disputed item; and

(b) stating the ground of the dispute.

(3) The Court may allow an undisputed item of costs without inquiry.

274—General provisions about taxation of costs

(1) This rule applies both to proceedings in the nature of a preliminary assessment of costs and proceedings in the nature of a detailed taxation of costs.

(2) The Court has—

(a) the same powers as it has in relation to an action in the Court;

Examples—

1 The Court may take evidence on affidavit or orally.

2 The Court may require the attendance of witnesses or the production of documents (or both).

3 The Court may make orders about the representation of persons interested in the taxation.

(b) the following special powers—

(i) the Court is not bound by the rules of evidence but may decide questions by estimation or in any other way that may be expedient in the circumstances;

(ii) the Court may make interim orders.

(3) The following general principles will be applied—

(a) costs will be allowed so far as they are necessary and reasonable but not so far as they result from over-caution, negligence or mistake;

(b) the necessary and reasonable costs of procuring evidence reasonably required for the presentation of a party's case will generally be allowed;

(c) if the same solicitor or firm of solicitors represents two or more parties to an action—costs will not be allowed separately for each party but on the basis of the aggregate work necessary and reasonable for the representation of both or all parties;

(d) if proceedings are adjourned because of the default of a party—the party should bear the costs and, if proceedings are adjourned because of the default of a party's lawyer—the lawyer should bear the costs.

(4) The Court may—

(a) require a party to produce its records of costs and disbursements and any other material that might be relevant to the assessment;

(b) require a party to provide further details of any item in respect of which the party claims to be entitled to costs.

(5) If it appears that costs have been overpaid, the Court may make an order for repayment.

275—Delay

If a party entitled to costs (the ***claimant***) unduly delays the bringing of a claim for costs under these rules and the party liable for the costs (the ***respondent***) suffers prejudice as a result of the delay, the Court may—

(a) assess compensation for the delay in favour of the respondent and reduce the costs awarded by the amount so assessed; or

(b) reduce on any other basis the amount to which the claimant would have been entitled if there had been no delay; or

(c) disallow the claim for costs in its entirety.

276—Taxation by Master

If costs are taxed by a Master, the Master will, in the first instance, make a provisional order for the payment of costs or any other amount found to be payable on the taxation (a ***provisional costs order***).

277—Taxation by taxing officer

(1) This rule applies if costs are taxed by an officer (a ***taxing officer***) who is not a judicial officer of the Court.

(2) Subject to any rule to the contrary, a taxing officer has the same powers and discretions with regard to the taxation of costs as a judicial officer of the Court.

(3) If a party objects to the allocation of the taxation of costs to a taxing officer, the objection will be considered by a Master who may—

(a) take over the proceeding; or

(b) overrule the objection.

(4) On completion of taxation, the taxing officer may make a provisional order for the payment of costs or any other amount found to be payable on the taxation (a ***provisional costs order***).

278—Review of provisional costs order

(1) A party who is dissatisfied with a provisional costs order may, within 14 days after the date of the order, apply for review of the order by a Master.

(2) An application for review must specify, in detail, the applicant's objection to the decisions made on the taxation.

(3) If the provisional order was made by a Master, the review will, as a general rule, be in the nature of a reconsideration by the Master who made the order (but another Master may conduct the review if for some reason it is not possible or convenient for the same Master to do so).

(4) On a review, the Court may—

(a) confirm the provisional costs order and order that it be entered in the Court's record as a judgment of the Court; or

(b) vary the provisional costs order as may be appropriate in the circumstances and order that it be entered in the Court's record as a judgment of the Court.

(5) A party who is dissatisfied with the decision on review may, within 14 days of that decision, apply for a further review by a Judge.

(6) The Court may, on the further review, confirm the costs order as entered in the Court's record as a judgment of the Court or order that it be varied as the Court thinks appropriate.

279—Unchallenged provisional costs order may be entered as judgment

A provisional costs order is to be entered, at the request of the person entitled to costs, in the Court's record as a judgment of the Court if no application for review of the order is made within 14 days after the date of the order.

Chapter 13—Appellate proceedings

Part 1—General

280—Forum for hearing appellate proceedings

(1) Subject to any statute or rule to the contrary—

(a) an appellate proceeding arising from a judgment of a Judge or Master of the Court is to be heard and determined by the Full Court; and

Exception—

An appellate proceeding arising from an interlocutory judgment of a Master is (subject to subrule (2)) to be heard and determined by the Court constituted of a single Judge.

(b) an appellate proceeding arising from a judgment of a court or tribunal constituted of a judicial officer who has, by statute, the status of judge is to be heard and determined by the Full Court; and

Exception—

An appellate proceeding arising from an interlocutory judgment of a District Court Judge is (subject to subrule (2)) to be heard and determined by the Court constituted of a single Judge.

Note—

Note that, under sections 43(2)(a) and 44(1) of the *District Court Act 1991*, appellate proceedings arising from a judgment, order or decision of a Master of the District Court are to be heard and determined by the District Court itself constituted of a single Judge.

(c) any other appellate proceeding is, subject to an order under subrule (2), to be heard and determined by the Court constituted of a single Judge.

(2) The Court (constituted of a Judge) may, on application by a party or on its own initiative, refer an appellate proceeding for hearing and determination by the Full Court if the difficulty or importance of the questions raised justify the reference.

281—Appeals requiring permission

Subject to any statutory provision to the contrary, an appeal to the Court lies by permission of the Court if—

(a) the judgment subject to the appeal is—

(i) an interlocutory judgment of the Court given by a Judge; or

(ii) a judgment given on appeal from an interlocutory judgment; or

(b) the appeal is limited to a question about costs.

282—Court to which application for permission is to be made

(1) An application for permission to appeal is to be made to the court of first instance or to the appellate court.

(2) If an application for permission to appeal is made to the court of first instance, the court may only—

(a) grant permission to appeal; or

(b) refer the application for determination by the appellate court.

(3) The court of first instance should, if practicable, be constituted for the purpose of hearing an application for permission to appeal of the judge, master, magistrate or other judicial officer who gave the judgment to which the application relates.

(4) In this rule—

appellate court means—

(a) if the appeal would, assuming that permission were granted, lie to the Court constituted of a single Judge—the Court so constituted;

(b) if the appeal would, assuming that permission were granted, lie to the Full Court—the Full Court;

court of first instance means the court or tribunal whose judgment would, assuming permission to appeal were granted, be under appeal (and may refer to the Court constituted of a single Judge or a Master).

Part 2—Appeals

283—Time for appeal

(1) Subject to any statute or rule to the contrary, an appeal must be commenced within 21 days after the date of the judgment, order or decision subject to the appeal.

Note—

See in particular, rule 285 to the contrary.

(2) If, however, an appeal requires permission and the application for permission to appeal is made before the appeal is commenced, the appeal must be commenced within 7 days after the appellant obtains permission to appeal.

284—How to commence appeal

(1) An appeal is commenced by filing a notice of appeal.

(2) A notice of appeal—

(a) must be in an approved form; and

(b) must identify the judgment, order or decision subject to the appeal; and

(c) must state in detail the grounds of the appeal; and

(d) must state the orders sought by the appellant on the appeal; and

(e) if the appeal is of a kind for which permission to appeal is necessary—

(i) must include a request for the necessary permission; or

(ii) if permission has been obtained already, must state when, and from which court, permission to appeal was obtained; and

(f) if an extension of time for commencing the appeal is necessary—must include an application for the necessary extension of time.

(3) Unless the Court otherwise directs, an appellant may not rely on grounds that are not stated in the notice of appeal.

285—Applications for permission to appeal

(1) If an appeal requires the Court's permission, the following alternatives are available to the appellant—

(a) the appellant may commence the appeal in the ordinary way and include in the notice of appeal a request for the necessary permission; or

(b) the appellant may, within 14 days after the date of the judgment against which the appellant seeks to appeal, make a separate application for permission to appeal to—

(i) the court of first instance; or

(ii) if the appellate court is the Court constituted of a single Judge—the appellate court.

(2) If the appellant commences the appeal before obtaining permission to appeal, the appeal is conditional on permission to appeal being granted and, if permission is refused, the appeal lapses.

(3) If the appellant makes a separate application for permission to appeal to the Court before filing a notice of appeal, the appellant must file with the application an affidavit setting out the grounds of the application.

(4) If the appellant makes a separate application for permission to appeal to another court or a tribunal and the application is referred for determination by the Court, the appellant—

(a) must, if the appeal lies to the Court constituted of a single Judge, within 7 days after the reference—

(i) apply to have the referred application heard and determined by a Judge; and

(ii) file in the Court an affidavit setting out the grounds on which the appellant seeks permission to appeal (which may include grounds that are in addition to, or differ from, the grounds on which permission to appeal was sought from the court of first instance);

(b) must, if the appeal lies to the Full Court, file a notice of appeal, including a request for the necessary permission to appeal, within 14 days after the reference.

286—Parties to appeal

(1) A party to the proceedings in which the judgment under appeal was given is a party to the appeal unless the party has no interest in the subject matter of the appeal.

(2) The Court may order the addition or removal of a person as a party to an appeal.

(3) A person cannot be added as an appellant without the person's consent.

287—Notification to be given of appeal

(1) The appellant must, within two days after filing a notice of appeal, notify—

(a) all parties to the appeal; and

(b) if the appeal is from another court or tribunal—the proper officer of the court or tribunal.

(2) Notification of an appeal is given by serving a copy of the notice of appeal.

(3) On receipt of a notice of appeal under this rule, the proper officer of a court or tribunal must, subject to any direction by the Court, transmit to the Registrar—

(a) all documents lodged with the court or tribunal in the relevant proceedings; and

(b) a copy of any transcript of evidence or proceedings; and

(c) any other evidentiary material relating to the proceedings in the custody of the court or tribunal; and

(d) a copy of the judgment, order or decision subject to the appeal and of any reasons given for it.

(4) The proper officer of the court or tribunal should comply with any reasonable request from the Registrar for transmission of the materials referred to in subrule (3) in electronic form.

288—Notices of cross-appeal and contention

(1) If a respondent to an appeal also wants to appeal against the judgment subject to the appeal, the respondent may, within 14 days after service of the notice of appeal, lodge a notice of cross-appeal.

(2) If the Court's permission for the cross-appeal is necessary, the notice of cross-appeal must include a request for the Court's permission.

(3) A notice of cross-appeal must conform with the requirements for a notice of appeal (so far as applicable).

(4) If a respondent wants to contend that a decision subject to appeal should be upheld for reasons that differ from those given by the court or tribunal from whose decision the appeal is brought, the respondent must, within 14 days after service of the notice of appeal, file notice of the respondent's contention stating in detail the grounds on which the respondent asserts the decision should be upheld.

289—Amendment of appeal notice

(1) In this rule, an ***appeal notice*** means—

(a) an application for permission to appeal; or

(b) a notice of appeal; or

(c) a notice of cross-appeal; or

(d) a notice of contention.

(2) An appeal notice may be amended by filing a supplementary appeal notice.

(3) An appeal notice may, however, only be amended by permission of the Court after the appeal has been set down for hearing.

(4) A party who amends an appeal notice must serve copies of the supplementary notice on all other parties.

290—Powers of Court incidental to appeal or application for permission to appeal

(1) The Court may exercise any of the following powers in relation to an appeal or an application for permission to appeal—

(a) the Court may extend the time for commencing the appeal or making the application or taking any step in the appeal;

(b) the Court may permit a party to amend an application for permission to appeal, a notice of appeal or cross-appeal, a notice of contention or other document filed in the Court in relation to the appeal;

(c) the Court may make, vary or reverse interlocutory orders in relation to the appeal or application for permission to appeal, or vary or reverse interlocutory orders of the court or tribunal from which the appeal arises;

(d) the Court may direct that notice of the appeal or application be given to a nominated person;

(e) if an appeal arises from the judgment of another court or a tribunal, the Court may request the court or tribunal, or a judge, magistrate or other officer of the court or tribunal, to provide a report on questions relevant to the appeal or application;

(f) the Court may direct a party to prepare and file in the Court a written statement of its case prepared in accordance with the Court's directions and to give copies of the statement of case to the other parties to the appeal or application;

(g) the Court may, in special circumstances, order that security be given for the costs of an appeal;

(h) the Court may summarily dismiss the appeal if it is obvious that it cannot succeed.

(2) A copy of a report requested under subrule (1)(e) must be made available to the parties to the appeal.

(3) The powers conferred by this rule may be exercised on the hearing of the appeal or application or in interlocutory proceedings before a single Judge or a Master.

(4) The Court may, in interlocutory proceedings for the exercise of a power conferred by this rule, reserve a question raised in the proceedings for determination at the hearing of the appeal.

291—Determination of application for permission to appeal

(1) An applicant for the Court's permission to appeal must file the applicant's summary of argument in the Court, and serve copies of the summary on the other parties to the application—

(a) in the case of an appeal to the Full Court—within the time allowed by practice direction;

(b) in the case of any other appeal—if and when the Court requires the applicant to do so.

(2) The summary of argument is to be a concise statement of the factual and legal basis on which the applicant seeks to appeal, including, where relevant—

(a) references to specific passages of the transcript of evidence (stating the name of the witness and the page reference); and

(b) references to authorities and legislative provisions on which the applicant relies.

(3) The Court may, at its discretion—

(a) grant or refuse permission to appeal without hearing oral argument; or

(b) order that the application be listed for oral argument; or

(c) order that the application and the appeal be heard concurrently; or

(d) make any other order that may be appropriate in the circumstances.

292—Hearing of appeal

(1) An appeal is to be by way of rehearing (unless the law under which the appeal is brought provides to the contrary).

(2) Subject to any limitation on its powers arising apart from these rules, the Court may determine an appeal as the justice of the case requires despite the failure of parties to the appeal to raise relevant grounds of appeal, or to state grounds of appeal appropriately, in the notice of appeal.

(3) Subject to any limitation on its powers arising apart from these rules, the Court may—

(a) draw inferences of fact from evidence taken at the original hearing and, in its discretion, hear further evidence on a question of fact;

(b) amend or set aside the judgment subject to the appeal and give any judgment that the justice of the case requires;

(c) remit the case or part of the case for rehearing or reconsideration;

(d) make orders for the costs of the appeal.

293—Discontinuance of appeal

(1) An appellant may discontinue an appeal by filing a notice of discontinuance in the Court.

(2) If there are two or more appellants and one or more but not all discontinue the appeal, the discontinuance does not prevent the remaining appellant or appellants from continuing the appeal.

(3) The appellant must, as soon as practicable after filing a notice of discontinuance, give a copy of the notice to—

(a) all other parties to the appeal; and

(b) if the appeal is from another court or tribunal—the proper officer of the court or tribunal.

(4) An appellant discontinuing an appeal is liable to the other parties to the appeal for the costs arising from the appeal.

(5) The discontinuance of an appeal does not affect a cross-appeal in the same proceedings.

Part 3—Reservation or reference of questions of law

294—Reservation or reference of questions of law

(1) If the Court (constituted of a single Judge or Master) reserves or refers a question of law for determination by the Full Court, the Court must, when reserving or referring the question, designate a party to the action to be the ***responsible party*** who is to have the carriage of the proceedings.

(2) If some other court or a tribunal reserves or refers a question of law for determination by the Court under any other law, the court or tribunal must (subject to contrary direction by the Full Court) designate a party to the action to be the ***responsible party*** who is to have the carriage of the proceedings.

(3) The responsible party must, as soon as practicable after a question of law is reserved or referred for determination, submit a concise statement stating the question for determination and the facts out of which it arises.

(4) The statement must be approved by the judicial officer who made the decision to refer the question for determination by the Court.

(5) Unless the Court otherwise directs, the proper officer of a court or tribunal by which a question of law is reserved or referred for determination by the Court must forward to the Registrar of the Court—

(a) all documents filed in the court or tribunal in relation to the case; and

(b) a transcript of any evidence taken in the court or tribunal.

(6) The proper officer of the court or tribunal should comply with any reasonable request from the Registrar for transmission of the materials referred to in subrule (5) in electronic form.

Part 4—Miscellaneous

295—Setting down appellate proceedings for hearing

(1) If the party having the carriage of an appellate proceeding fails to set the proceeding down for hearing within the time fixed by practice direction, another party may apply to the Court for permission to set the proceeding down for hearing or for an order dismissing the proceeding.

(2) Unless an appellate proceeding is set down for hearing within 6 months after the proceeding is commenced or a longer time allowed by the Court, the proceeding is taken to have been discontinued and lapses.

(3) If a proceeding lapses under subrule (2), all parties are to bear their own costs.

296—Interlocutory directions as to appellate proceedings

(1) The Court may exercise any power incidental to the conduct or determination of an appellate proceeding in an interlocutory proceeding.

Examples—

1 The Court might direct that an appellate proceeding that would normally lie to a single Judge of the Court be referred to the Full Court.

2 In the case of an appeal requiring permission to appeal, the Court might direct either that the application for permission to appeal and the appeal be heard concurrently or that the application for permission be heard first and, if that succeeds, a time be then fixed for the hearing of the appeal.

(2) The Court constituted for hearing the appellate proceeding may review and cancel any such direction.

297—Summary of argument

(1) Each party to an appellate proceeding must file a summary of the party's argument in the Court.

(2) The summary of argument must be filed within the relevant time limit prescribed by practice direction.

(3) Subject to any direction given by a Judge or Master, a summary of argument must conform with each of the following requirements—

(a) it must contain a concise statement of any facts on which the party relies;

(b) if an error is alleged in the reasoning of the judicial officer at first instance, it must identify any relevant passage in the reasons for judgment;

(c) if an error of fact is alleged, it must identify relevant passages in the transcript of evidence;

(d) if an error of law is alleged, or the appellate proceeding is in the nature of the reservation or reference of a question of law, it must refer to relevant decided cases and to relevant legislation;

(e) it must comply with any requirements imposed—

(i) by practice direction; or

(ii) by direction of a Judge or Master.

298—Case book

(1) The party responsible for the carriage of appellate proceedings in the Full Court must—

(a) prepare a case book; and

(b) lodge the case book at the Registry within the time limit prescribed by the relevant practice direction.

(2) The case book is to be prepared in accordance with the relevant practice direction.

(3) If the case book is not lodged in electronic form, the responsible party must lodge sufficient copies of the case book (as determined by the Registrar) for the use of the Court.

(4) The Court or the Registrar may give directions about the contents of the case book.

(5) The party who prepared the case book must, on receiving the appropriate fee for a copy of the case book, provide another party to the proceedings with a copy of the case book.

299—Notification of decision

(1) When the Court decides appellate proceedings from another court or tribunal, the Registrar must—

(a) give the proper officer of the court or tribunal written notice of the Court's decision together with any written reasons given by the Court; and

(b) return any documents or materials forwarded to the Court by the proper officer of the court or tribunal (other than documents and materials forwarded in electronic form) in connection with the proceedings.

(2) If the Court refuses to give its permission for appellate proceedings from another court or tribunal or, for some other reason, such appellate proceedings are not completed in the Court, the Registrar must—

(a) give the proper officer of the court or tribunal written notice of that fact; and

(b) return any documents or materials forwarded to the Court by the proper officer of the court or tribunal (other than documents and materials forwarded in electronic form) in connection with the proceedings.

300—Stay of execution

(1) An appeal or an application for permission to appeal does not operate to stay execution of or proceedings on the judgment subject to the appeal or application nor does it invalidate proceedings that have already been taken on the judgment.

(2) The Court may, however, order a stay of execution of, or proceedings on, a judgment for any proper reason.

Examples—

1 If the judgment is subject to appeal to the Court or the High Court, the existence of the appeal may constitute a proper reason for granting a stay.

2 If the Court is satisfied that an appeal or an application for permission to appeal to the Court or the High Court is intended, the Court may be satisfied that the proposed appellate proceeding is a proper reason for granting a stay.

Note—

See in particular, rule 285.

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

301—Contempt committed in face of Court

(1) If a contempt is committed in the face of the Court and it is necessary to deal urgently with it, the Court may—

(a) if the person alleged to have committed the contempt (the ***accused***) is within the precincts of the Court—order that the accused be taken into custody; or

(b) issue a warrant to have the accused arrested and brought before the Court to be dealt with on a charge of contempt.

(2) The Court must formulate a written charge containing reasonable details of the alleged contempt and have the charge served on the accused when, or as soon as practicable after, the accused is taken into custody.

Part 2—Court initiated proceedings for contempt—other cases

302—Court initiated proceedings for contempt—other cases

(1) If the Court decides on its own initiative to deal with a contempt of the Court, the Court will require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.

(2) The Registrar will then issue a summons requiring the person alleged to have committed the contempt (the ***accused***) to appear before the Court at a nominated time and place to answer the charge.

(3) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—

(a) there is reason to believe that the accused will not comply with a summons; or

(b) a summons has been issued and served but the accused has failed to appear in compliance with it.

Part 3—Contempt proceedings by party to proceeding

303—Contempt proceedings by party to proceeding

(1) A party to a proceeding who claims to have been prejudiced by a contempt of the Court committed by another party, a witness or another person in relation to the proceeding (the ***accused***) may apply to the Court to have the accused charged with contempt.

(2) The application—

(a) must be made as an interlocutory application; and

(b) must include details of the alleged contempt.

(3) The application may be made without notice to the accused or other parties but the Court may direct the applicant to give notice of the application to the accused or the parties (or both).

(4) If the Court is satisfied on an application under this rule that there are reasonable grounds to suspect the accused of the alleged contempt, the Court may require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.

(5) The Registrar will then issue a summons requiring the accused to appear before the Court at a nominated time and place to answer the charge.

(6) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—

(a) there is reason to believe that the accused will not comply with a summons; or

(b) a summons has been issued and served but the accused has failed to appear in compliance with it.

Part 4—Hearing of charge of contempt

304—Charge to be dealt with by Judge

A charge of contempt is to be dealt with by the Court constituted of a single Judge.

Exception—

If the contempt is a contempt of the Full Court, the Full Court may itself deal with the charge.

305—Procedure on charge of contempt

(1) The Court may require the Registrar or a party to proceedings to which the contempt relates to prosecute a charge of contempt.

(2) The Court will deal with a charge of contempt as follows—

(a) the Court will hear relevant evidence for and against the charge from the prosecutor and the accused;

(b) the Court may, on its own initiative, call witnesses who may be able to give relevant evidence;

(c) at the conclusion of the evidence, the Court will allow the prosecutor and the accused a reasonable opportunity to address the Court on the question whether the charge has been established;

(d) if, after hearing the evidence and representations from the prosecutor and the accused, the Court is satisfied beyond reasonable doubt that the charge has been established, the Court will find the accused guilty of the contempt;

(e) the Court will, if it finds the accused guilty of the contempt, allow the prosecutor and the accused a reasonable opportunity to make submissions on penalty;

(f) the Court will then determine and impose penalty.

(3) A witness called by the Court may be cross-examined by the prosecutor and the accused.

(4) In proceedings founded on a charge of contempt—

(a) the Court—

(i) may exercise with respect to the charge any of the powers that it has with respect to a charge of an indictable offence; and

(ii) may exercise with respect to the accused any of the powers that it has in relation to a person charged with an indictable offence; and

(b) evidence may be received by way of affidavit if the accused does not require attendance of the witness for cross-examination.

306—Punishment of contempt

(1) The Court may punish a contempt by a fine or imprisonment (or both).

(2) If the Court imposes a fine, the Court may—

(a) fix the time for payment of the fine; and

(b) fix a term of imprisonment in default of payment of the fine.

(3) The Court may order a person who has been found guilty of a contempt to pay the costs of the proceedings for contempt.

(4) The Court may release a person who has been found guilty of a contempt on the person entering into an undertaking to the Court to observe conditions determined by the Court.

(5) The Court may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.

(6) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt—

(a) may be made on conditions the Court considers appropriate; and

(b) may be suspended on conditions the Court considers appropriate.

(7) The Court may, on its own initiative or on application by the Registrar—

(a) cancel the release of a person who has been released under subrule (4) for breach of a condition of the undertaking; and

(b) issue a warrant to have the person arrested and brought before the Court to be dealt with for the original contempt.

(8) The Registrar, if so directed by the Court, must make an application under subrule (7).

Chapter 15—Statutory proceedings

Part 1—General principles

307—Proceedings under statute

(1) A statutory action is, subject to the provisions of the relevant statute, to be commenced and to proceed in the Court in the same way as an action at common law.

(2) It follows that statutory and common law claims may be brought together in the same action.

Example—

A claim for statutory solatium may be integrated with a claim for common law damages.

(3) If a statutory action is incidental to an existing action in the Court, it may be integrated with that action.

Example—

A party wanting an order for the taking of evidence outside the State under Part 6B of the *Evidence Act 1929* would normally initiate the proceedings by interlocutory summons in the proceedings to which the evidence is relevant.

(4) If, however, any question arises about who should be joined as parties to a statutory action, or who should be served, or how the action should proceed in the Court, a party may apply by interlocutory application for advice and directions (before or after the settlement conference) to resolve the question.

(5) This rule is, however, subject to the provisions relating to proceedings under specified statutes set out below.

308—Administrative proceedings and minor judicial proceedings under statute

(1) If a statute assigns a function of an administrative nature to the Court, the function is to be carried out by the Registrar.

Examples—

1 The issue of a summons under the *Commercial Arbitration Act 1986* in connection with an arbitration.

2 The payment of money into (or out of) the Court in cases where a statute authorises or requires the payment independently of the existence of proceedings in the court relevant to the payment.

3 The registration of a judgment or order of another Australian court or tribunal under a statutory right. (However, if the judgment or order requires substantive adaptation or modification for enforcement as a judgment or order of the Court, its registration would not be a function of an administrative nature.)

(2) A person who proposes to ask the Court to carry out—

(a) an administrative function; or

(b) a minor judicial function that lies within the scope of such functions delegated to the Registrar under these rules,

Examples—

1 The taxation or review of costs or charges that are by statute liable to taxation or review by the Court but are unrelated to proceedings in the Court.

2 The exercise of powers under the *Enforcement of Judgments Act 1991* which lie within the province of the Registrar.

must apply, in an approved form, to the Registrar.

(3) In case of difficulty, the Registrar may refer the application to a Master or Judge.

(4) A person dissatisfied with the Registrar's decision on an application under this rule may apply to a Master or Judge for a review of the decision and, on such an application, the Master or Judge may set aside the decision and make any decision that should have been made in the first instance.

Part 2—Proceedings under particular Acts

309—*Aged and Infirm Persons' Property Act 1940*

(1) In this rule—

Act means the *Aged and Infirm Persons' Property Act 1940*.

(2) This rule applies to an application for a protection order, or for variation of a protection order, under the Act.

Note—

Part 2 of the Act deals with the making, variation and rescission of protection orders.

(3) Before serving the summons initiating the proceedings, the applicant must, by interlocutory application, seek directions with regard to service and the Court may on such an application—

(a) direct that the defendant be notified of the nature and significance of the proceedings, and the defendant's right to be heard in the proceedings, in a way the Court considers best adapted to the circumstances of the case; or

(b) if the Court is satisfied that any attempt at rational explanation would be futile—dispense with service on the defendant.

Note—

This supplements section 8(2) of the Act which requires service of originating process on the defendant except in exceptional cases.

(4) The Court may direct that the Public Advocate be joined as a party to the proceedings to represent the interests of the defendant (but no order for costs can be made against the Public Advocate).

310—*Proceeds of Crime Act 2002* (Commonwealth) or *Criminal Assets Confiscation Act 2005*

(1) In this rule—

Act means—

(a) the *Proceeds of Crime Act 2002* (Commonwealth); or

(b) the *Criminal Assets Confiscation Act 2005* (SA).

(2) Subject to any contrary direction by the Court—

(a) proceedings under the Act are to be based on affidavits rather than formal pleadings; and

(b) evidence for the purposes of such proceedings is to be given by way of affidavit rather than orally; and

(c) the rules relating to status hearings and settlement conferences do not apply; and

(d) the rules relating to pre-trial disclosure of documents do not apply.

(3) A party commencing proceedings in the Court under the Act must, within the relevant time limit, apply for the Court's directions as to the course of proceedings.

(4) The ***relevant time limit*** is—

(a) in the case of proceedings brought without notice—14 days; or

(b) in the case of proceedings brought on notice to another party or other parties—14 days after all parties to be served with notice of the proceedings have been served.

(5) The Court may, on an application for directions under this rule, give such directions as it considers appropriate in the circumstances.

311—*Foreign Judgments Act 1971*

(1) In this rule—

Act means the *Foreign Judgments Act 1971*.

(2) No execution is to issue on a registered judgment unless each of the following conditions have been satisfied—

(a) an affidavit or affidavits have been filed in the Court stating—

(i) that the amount for which execution is to be issued remains due and payable under the judgment or, if the judgment is for the delivery up of personal property, that the relevant property has not been recovered under the judgment; and

(ii) that notice was served on the judgment debtor on a specified date informing the judgment debtor of the registration of the judgment and of the judgment debtor's rights under section 8 of the Act to apply to have registration of the judgment set aside;

(b) at least 14 days have passed since service of the notice;

(c) no application is currently before the Court to have registration of the judgment set aside.

(3) The Court's permission is required for the issue of execution on a registered judgment if 6 months or more has elapsed since registration of the judgment.

(4) The fee for a certified copy of a registered judgment is the same as for a certified copy of a judgment of the Court.

(5) The courts referred to in Schedule 2 are courts of reciprocal jurisdiction.

312—*Inheritance (Family Provision) Act 1972*

(1) In this rule—

Act means the *Inheritance (Family Provision) Act 1972*.

(2) When a person (the ***initiating claimant***) begins an action for provision out of the estate of a deceased person under the Act, the claimant must file with the initiating process an affidavit stating to the best of the claimant's knowledge, information and belief—

(a) the names and current addresses of all other persons who may be entitled to make a claim for provision (or further provision) out of the estate of the deceased under the Act (the ***other potential claimants***); and

(b) the names and current addresses of all beneficiaries of the estate.

(3) The claimant must serve notice of the action, stating the basis of the claim, on—

(a) the executor of the will, or the administrator of the estate, of the deceased person; and

(b) any beneficiary of the estate who might be adversely affected by the claim; and

(c) each of the other potential claimants.

(4) A notice given to another potential claimant must (whether or not the potential claimant is already a beneficiary of the estate) contain a statement, in an approved form, of his or her right to make a concurrent claim.

(5) Within 28 days after service of a notice under subrule (3), a potential claimant may file a statement of claim in the Court making, and stating the basis of, a claim for provision out of the estate.

(6) Within 28 days after the relevant date—

(a) any of the following may file a defence to the claim of the initiating claimant or any later claim—

(i) the executor of the will, or the administrator of the estate, of the deceased person;

(ii) any beneficiary of the estate; and

(b) a claimant may file a defence against the claim of another claimant.

(7) If the action is proceeding on the basis of affidavits rather than formal pleadings, a statement of claim under subrule (5), or a defence under subrule (6), should be in the form of an affidavit.

(8) Each of the following is a plaintiff in an action for provision out of the estate of a deceased person under the Act—

(a) the initiating claimant;

(b) any of the other potential claimants who files a statement of claim under this rule.

(9) Each of the following is a defendant to an action for provision out of the estate of a deceased person under the Act—

(a) the executor of the will, or the administrator of the estate, of the deceased person;

(b) any person who files a defence to a claim under this rule.

(10) It follows that the same person may be both plaintiff and defendant in the same action and, if a person is a party to the action both as an executor and administrator and in a personal capacity, the person may have separate addresses for service in each capacity.

(11) After the filing of defences, the action proceeds in the usual way and in accordance with the usual time limits subject to the following additional requirements and qualifications—

(a) within 21 days after filing a notice of address for service, the executor or administrator must file an affidavit—

(i) stating the assets and liabilities of the estate; and

(ii) exhibiting a copy of the probate or letters of administration;

(b) not more than 35 days and not less than 14 days before the date appointed for trial, the executor or administrator must file a further affidavit stating any changes to the financial position of the estate since the affidavit filed under paragraph (a);

(c) if a party disputes a statement made in an affidavit filed under paragraph (a) or (b), the party must file a notice of dispute identifying the matter in dispute;

(d) an executor or administrator who has no personal interest in the outcome of the plaintiff's claim may, with the Court's permission, withdraw from the hearing of a claim.

(12) If the plaintiff reasonably estimates that the net estate of the deceased that is available for distribution amounts to $250 000 or less, the following provisions apply—

(a) the summons initiating the action must be accompanied by a notice in the approved form appointing a date and time for a preliminary hearing of the matter;

(b) at the date and time so appointed, the Court (which may be constituted for this purpose of a Master) may hear representations from the parties then present and proceed to determine any claim or claims summarily on the basis of evidence then available (including written or oral evidence that does not conform with the usual rules of evidence);

(c) the Court may make any other order, or give any other direction, that may be necessary or desirable in the circumstances;

(d) in exercising its powers and discretions under this subrule, a primary object of the Court will be to minimise costs of the proceedings.

(13) If an action should have been, but was not, dealt with under subrule (12), the Court may order the plaintiff to bear any costs that might have been avoided if that subrule had been complied with.

313—*Jurisdiction of Courts (Cross-vesting) Act 1987*

(1) In this rule—

Act means the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

(2) An application for an order for the transfer of an action under the Act can be heard and determined only by the Court constituted of a Judge or by the Full Court.

(3) An application for an order for the transfer of an action under the Act—

(a) must clearly identify any special federal matter as defined in the Act; and

(b) must identify any action that the applicant has begun, or intends to begin, in another Court involving the same or similar issues to those involved in the action for which the order for transfer is sought.

(4) If a party asserts that a matter is to be, or may be, determined by the Court in accordance with the law of another place under section 11 of the Act, the party's pleadings must state which law must, or should, according to the party's assertion, be applied.

(5) If a party seeks an order under section 11 of the Act for the application to an action of laws of evidence or procedure differing from those normally applied in the Court, an interlocutory application may be made for such an order.

314—*Native Title (South Australia) Act 1994*

(1) In this rule—

Act means the *Native Title (South Australia) Act 1994*.

(2) The Court may arrange a native title conference in accordance with the Act.

(3) The mediator may, in the course of a conference, exercise any of the following delegated powers of the Court—

(a) the powers of the Court to issue directions—

(i) requiring a party to undertake investigations, make inquiries or ascertain facts that may be relevant to the proceedings;

(ii) requiring a party to provide (to the Court or another party) reports, maps, records or other documents that may be relevant to the proceedings;

(iii) requiring a party to provide particulars of his or her case, including a written summary of the evidence the party intends to introduce;

(iv) dealing with the time, place and other arrangements for the conference and regulating its procedure;

(b) with the consent of all parties, take evidence for the purposes of the proceedings before the Court.

(4) If settlement is reached at a conference, the mediator must as soon as practicable report the terms of the settlement (which should include agreed terms of orders to be made by the Court to give effect to the settlement).

(5) The Court constituted of a Judge may make the necessary orders to give effect to the terms of settlement.

315—*Evidence and Procedure (New Zealand) Act 1994* (Commonwealth)

(1) The provisions of the Federal Court Rules in regard to proceedings under the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth) (Order 69A—Trans-Tasman proceedings) apply with necessary modifications to proceedings under that Act before the Court.

(2) However, proceedings that are under those rules to be commenced on motion or originating motion are to be commenced before the Court on interlocutory application.

Schedule 1—Scale of costs as between party and party

Documents

1	Drawing a document that is necessary to originate, or for use in, or in connection with, any proceeding or in a matter, whether litigious or otherwise, including the engrossment of the original, per A4 page, provided that a greater amount may be allowed where the matter is of importance and/or difficulty (see Notes D, E and G)	$65.00
2	Where a document is partly printed and partly drawn, the drawing fee for the drawn part will be allowed and, in addition, for the printed matter (including all perusals of the same), per A4 page (see Notes D and E)	$14.50
3	Engrossing the original of a document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page (see Notes D and E)	$14.50
4	Photocopying or printing a document, including printing an email (sent or received), per sheet (see Note L)	$1.00
5	Perusing a document, per A4 page or equivalent (However, if the document is of substance, an amount not exceeding $19.50 per A4 page or equivalent may be allowed)	$7.20
6	Scanning of documents, including emails, where full perusal is not justified, per A4 page or equivalent (see Note D)	$2.10

Attendances

(see Note C)

7	The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour (see Note K)	$263.00
8	The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour (see Note K)	$162.00
9	Attending on an application, matter or taxation in chambers or on a pre-trial conference, or a settlement conference (not certified fit for counsel) or a callover—	
	(a) if short or matter adjourned without substantial argument	$95.00
	(b) if ordinary	$163.00
	(c) if protracted or of difficulty, per hour—in a range	$263.00
10	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour	$127.00
11	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including, attending to set down a chamber application and to search the list for chamber appointments and all attendances necessary to settle and seal an order or other document, and filing or lodging documents or papers at Court electronically, per attendance or lodgment	$21.00

12	An attendance by telephone of a solicitor, for each 6 minutes interval or part of 6 minutes		$27.00
13	An attendance by telephone of a clerk—		
	(a)	on a matter of substance	$13.50
	(b)	on a short call where a message is left	$3.10
14	An attendance on the swearing of an affidavit—		
	(a)	of a solicitor to be sworn to an affidavit	$38.20
	(b)	of a solicitor to take an affidavit where the solicitor or the solicitor's firm has prepared the affidavit	$20.60
	(c)	of a clerk to be sworn to an affidavit	$20.60
	(d)	of a solicitor on another person to be sworn to an affidavit where no charge is made under paragraph (b) (such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by item 7 of the scale.)	$40.20

Letters

15	Any letter (including an email letter)—		
	(a)	per A4 page, provided that letters of less than one page and the first page of a letter are to be charged proportionally	$65.00
	(b)	circular letters after the first (including the cost of copying/printing), per A4 page	$8.30
	(see Notes D and E)		
16	For receiving and sending documents by fax transmission and email and the electronic scanning of documents—		
	(a)	for incoming fax transmissions, per printed page	$1.00
	(b)	for outgoing fax transmissions, for the first page (and, for each subsequent page, an additional $2.10)	$9.30
	(c)	for outgoing emails (not charged under item 15) (and, for each attachment, an additional $7.30)	$7.30
	(d)	for electronically scanning documents, for the first sheet (and, for each subsequent sheet, an additional $2.10)	$7.30
	Where applicable, STD and ISD charges will be allowed as a disbursement		
17	For the payment of an account where an account in writing has been rendered and which is in order, including any letter sent with the payment of that account, if the letter relates solely to the account, and to include all disbursements on cheques		$8.30

Registration of certificate of judgment under *Service and Execution of Process Act 1992*

18	Instructions for and attending to registration of a certificate of judgment under the *Service and Execution of Process Act 1992* (Cth), including all correspondence, documents, attendances in relation thereto as assessed pursuant to section 22A(1) of the Act, but not exceeding		$363.00

Miscellaneous

19	Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index		
	(a)	for the first 10 A4 pages	$9.30
	(b)	for more than 10 A4 pages	$17.50

20	Paging, collating, binding and indexing a brief or appeal book—		
	(a)	for 10 pages or less	$18.60
	(b)	from 11 pages to 50 pages	$74.30
	(c)	from 51 pages to 100 pages	$123.00
	(d)	from 101 pages to 200 pages	$195.00
	(e)	for more than 200 pages	$285.00

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of half of the amount allowable under this item for the first copy of the brief or appeal book will be allowed for each additional brief or appeal book.

Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 pages may be treated as a separate brief or appeal book.

21	Care and consideration in the preparation of a brief is to be an amount in the discretion of the taxing officer but, in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters, the amount allowed is	$85.00
22	Preparation of short form bill of costs, per A4 page	$65.00
23	Drawing and the engrossment of the original, and of the solicitor's own copy of—	
	(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements	
	(b) indices (where not otherwise provided)	
	(c) formal lists	
	(d) copies of extracts from other documents	
	per A4 page	$32.00

Notes

A The amount allowed for each of the above items is to be at the discretion of the taxing officer, who is at liberty, in the particular circumstances of the matter, to disallow an item entirely or allow a greater or lesser amount for an item. The taxing officer may allow a greater amount where the matter is of importance of difficulty.

B Each bill of costs (other than a short form bill of costs) must show—

(a) the time spent on an attendance; and

(b) the number of A4 pages (or the equivalent) contained in any document for which a charge is made; and

(c) the name of any solicitor and the status of any clerk in respect of whom an attendance is charged; and

(d) a separate identifying number for each item and the date of the item; and

(e) the items of work and disbursements in chronological order.

C Where the time for an attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of the hour.

D Where, in this Schedule, fees (other than for photocopying, printing, electronic scanning, or sending and receiving fax transmissions) are set by reference to an A4 page, such fees are fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines of 12 size print with a left hand margin no wider than 4 centimetres and a right hand margin no wider than 2 centimetres). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page consists of 45 lines in 12 size print with margins as previously stated in this note. The fee allowable may be adjusted by the taxing officer depending on whether the document or correspondence in question exceeds or falls short of those standards.
Where the contents of a document (or page of a document) are less than one A4 page in length, the fee allowed is, therefore, to be at the discretion of the taxing officer.

E Where a document is prepared on other than A4 paper, the amounts to be allowed under items 1, 2, 3 and 15 may be increased or decreased in the discretion of the taxing officer.

F Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.

G For drawing of any bill of costs (not including a short form bill of costs), the taxing officer may allow an additional 50 per cent on all drawing fees.

H Such allowance for kilometerage by motor vehicle or other conveyance will be made as the taxing officer considers reasonable.

I Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, the appropriate form is to be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondent's respective responses thereto.

J The maximum rate for perusal is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the taxing officer instead of a perusal fee.

K When an instructing solicitor is in Court, the lower attendance rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, for example, by proofing witnesses, preparing indices, etc.

L Where a substantial number of sheets are, or should be, photocopied at the same time, regard may be had to commercial photocopying rates in respect of multiple copies of the same document, for each sheet after the first.

M The costs allowed in the scale do not include the Goods and Services Tax (**GST**) which is to be added except in the following circumstances. GST should not be included in a claim for costs in a party/party bill of costs if the receiving party is able to recover GST as in input tax credit. Where the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill. Where there is a dispute as to whether GST is properly claimed in the party/party bill of costs, the receiving party must provide a certificate signed by the solicitors or auditors of the receiving party as to the extent of any input tax credit available to the receiving party.

Schedule 2—Courts of reciprocal jurisdiction

Jurisdiction	Court
Alberta	Court of Queen's Bench of Alberta Court of Appeal of Alberta Supreme Court of Canada
Anguilla	Eastern Carribean Supreme Court
Antigua and Barbuda	Court of Appeal High Court of Justice (both being superior Courts of the West Indies Associated States Supreme Court)
The Commonwealth of the Bahamas	Court of Appeal Supreme Court
Bermuda	Court of Appeal Supreme Court
British Columbia	Supreme Court of Canada Court of Appeal for British Columbia Supreme Court of British Columbia
Belize	Supreme Court
British Solomon Islands Protectorate	Fiji Court of Appeal High Court of Western Pacific
British Virgin Islands	West Indies Associated States Supreme Court
Cayman Islands	Grand Court
Cook Islands	Court of Appeal and Supreme Court of New Zealand
Dominica	West Indies Associated States Supreme Court
Falkland Islands and Dependencies (South Georgia and the South Sandwich Group)	Court of Appeal Supreme Court
Federal Republic of Germany	Bayerische Oberste Landesgericht Bundersgerichtshof Landgerichte and Oberlandsgerichte
France	Cour de Cassation Cours de Appeal Tribunaux de grande instance, and in the case of judgments for the payment of compensation to injured parties in criminal proceedings, Cours d'Assise and Tribunaux correctionnels
The Gambia	Court of Appeal Supreme Court
Ghana	Supreme Court Court of Appeal High Court of Justice
Gibraltar	Court of Appeal Supreme Court
Gilbert Islands	Fiji Court of Appeal High Court of the Western Pacific
Grenada	Supreme Court of Grenada (consisting of the High Court and the Court of Appeal)

Jurisdiction	Court
Guyana	Court of Appeal High Court
Hong Kong	Supreme Court
India	Supreme Court High Courts and Judicial Commissioner Courts District Courts and Civil Courts of Bombay, Calcutta and Madras
Israel	Supreme Court District Courts Rabbinical Courts Moslem Religious Courts Christian Religious Courts Druze Religious Courts
Italy	Corte Suprema di Cassazione Corte di Assise Corte di Appello Tribunale
Jamaica	Court of Appeal Supreme Court
Japan	Supreme Court High Courts District Courts
Kenya	Supreme Court
Kiribati	High Court of Kiribati Court of Appeal for Kiribati
Malawi	Supreme Court of Appeal High Court
Malaysia	Federal Court High Courts in Malaya and Borneo
Malta	Constitutional Court Court of Appeal Civil Court Commercial Court
Manitoba	Supreme Court of Canada Court of Appeal for Manitoba Her Majesty's Court of Queens Bench for Manitoba; and County Courts
Montserrat	Eastern Carribean Supreme Court
Newfoundland and Labrador	Supreme Court of Canada Supreme Court of Newfoundland
New Zealand	Court of Appeal Supreme Court
Niue	Court of Appeal of New Zealand Supreme Court of New Zealand
Pakistan	Supreme Court High Court for the Province of West Pakistan District Courts
Papua New Guinea	The National Court of Justice The Supreme Court of Justice

Jurisdiction	Court
Republic of Fiji	Supreme Court Fiji Court of Appeal High Court
Republic of Nauru	Supreme Court of Nauru
St Christopher, Nevis and Anguilla	Court of Appeal High Court of Justice (both being Superior Courts of the West Indies Associated States Supreme Court)
St Helena (with Ascension and Tristan de Cunha)	Supreme Court
St Lucia	West Indies Associated States Supreme Court
St Vincent and Grenadines	Eastern Carribean Supreme Court (consisting of the Court of Appeal and the High Court)
Saskatchewan	Supreme Court of Canada Court of Appeal for Saskatchewan Her Majesty's Court of Queens Bench for Saskatchewan
Seychelles	Supreme Court
Sierra Leone	Supreme Court Appeal Court High Court
Singapore	High Court
Solomon Islands	High Court of the Solomon Islands Solomon Islands Court of Appeal
Sri Lanka	Supreme Court District Courts
Switzerland	Bundes-Gericht and all cantonal Superior Courts
Tonga	Supreme Court of Tonga Privy Council Appeal Court
Tuvalu	High Court of Tuvalu
Western Samoa	Supreme Court Court of Appeal

GIVEN under our hands and the Seal of the Supreme Court of South Australia this 17th day of July 2006.

(L.S.) J. DOYLE, CJ
J. W. PERRY, J
K. P. DUGGAN, J
B. M. DEBELLE, J
M. J. NYLAND, J
D. J. BLEBY, J
T. A. GRAY, J
J. R. SULAN, J
A. M. VANSTONE, J
J. ANDERSON, J
R. C. WHITE, J
R. A. LAYTON, J
M. DAVID, J

K. O'CALLAGHAN, Government Printer, South Australia