

1992—No. 137

INDUSTRIAL RELATIONS ACT 1991—REGULATION

(Industrial Court Rules (Transitional) Regulation 1992)

NEW SOUTH WALES



[Published in Gazette No. 40 of 27 March 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Industrial Relations Act 1991, has been pleased to make the Regulation set forth hereunder.

TERRY GRIFFITHS
Minister for Justice.

Citation

1. This Regulation may be cited as the Industrial Court Rules (Transitional) Regulation 1992.

Commencement

2. This Regulation commences on the commencement of the Industrial Relations Act 1991.

Interim rules of the Industrial Court

3. The Industrial Court (Interim) Rules 1992 set out in Appendix A apply as the rules of court of the Industrial Court until rules of the Industrial Court are made under section 313 of the Industrial Relations Act 1991.

APPENDIX A

**INTERIM RULES OF THE INDUSTRIAL COURT OF NEW
SOUTH WALES**

PART 1—PRELIMINARY

Citation

1. These Rules may be cited as the Industrial Court (Interim) Rules 1992.

Commencement

2. These Rules commence on the commencement of the Industrial Relations Act 1991.

Division of Rules

3. These Rules are divided as follows:

PART 1—PRELIMINARY

PART 2—INDUSTRIAL COURT OF NEW SOUTH WALES

PART 3—PRELIMINARY DISCOVERY

PART 4—INITIATION OF PROCEEDINGS

Division 1—General

Division 2—Void Contracts and Regulated Contracts

Division 3—Void Enterprise Agreements

Division 4—Application for Recovery of Money

Division 5—Miscellaneous Applications

PART 5—MOTIONS

PART 6—REFERENCES

PART 7—APPEALS

Division 1—General

Division 2—Stated Case

PART 8—PARTICULARS

PART 9—AFFIDAVITS

PART 10—SERVICE AND NOTICE OF HEARING

PART 11—APPEARANCE

PART 12—DOCUMENTS

PART 13—GENERAL PROCEDURE
PART 14—DISCOVERY AND INSPECTION OF DOCUMENTS
 Division 1—Discovery
 Division 2—Inspection
 Division 3—Interrogatories
 Division 4—General
PART 15—SUBPOENAS
PART 16—AMENDMENT
PART 17—ADMISSIONS
PART 18—OFFER OF COMPROMISE
PART 19—WITHDRAWALS AND DISCONTINUANCE
PART 20—TIME
PART 21—MEDIATION
 Division 1—Preliminary
 Division 2—Mediation
PART 22—EVIDENCE
PART 23—PREHEARING CONFERENCES
PART 24—SOLICITORS AND AGENTS
PART 25—COSTS
PART 26—PROCEEDINGS RELATING TO PROSECUTION
PART 27—CONTEMPT
 Division 1—Preliminary
 Division 2—Contempt in the face or hearing of the Court
 Division 3—Motion or proceedings for punishment
PART 28—MATTERS BEFORE THE REGISTRAR
 Division 1—Preliminary
 Division 2—Reference and Removal
 Division 3—Appeals to Court
 Division 4—General Powers and Duties
PART 29—MISCELLANEOUS
FIRST SCHEDULE—FORMS
SECOND SCHEDULE—SCALE OF COSTS AND FEES
THIRD SCHEDULE—ADDITIONAL POWERS OF REGISTRAR

Definitions

4. In these Rules:

“**Court**” means the Industrial Court of New South Wales;

- “**decision**” includes an order, direction, or ruling;
- “**filed**” means filed in the Registry of the Court;
- “**Chief Judge**” means the Chief Judge of the Court;
- “**process**” means an application, reference, notice of appeal or other process by which proceedings are initiated and any other document filed or served in the course of proceedings;
- “**promptly**”, in relation to the performance of an act means immediately, or where that is not practicable, as soon as such performance is reasonably possible in the circumstances;
- “**Registrar**” means the Registrar of the Court;
- “**Registry**” means the Registry of the Court;
- “**respondent**” means a party to the proceedings other than an applicant or appellant;
- “**the Act**” means the Industrial Relations Act 1991 and references to sections in these Rules refer to sections of that Act;
- “**tutor**” bears the same meaning as that term in the Supreme Court Rules 1970.

Forms

5. (1) Forms are prescribed in the First Schedule.

(2) If a form in that Schedule requires the form to be completed in a specified manner, or requires specified information to be included in, attached to or furnished with the form, the form is not duly completed unless it is completed in that manner and unless it includes, or has attached to or furnished with it, that information.

(3) A document which, in the opinion of the Registrar, is either substantially in accordance with the required content of any form in the First Schedule or contains only such variation as the nature of the case necessitates, may be accepted for filing in the Registry.

PART 2—INDUSTRIAL COURT OF NEW SOUTH WALES

Seals and stamps

1. (1) There shall be a seal of the Court which shall bear the Royal Arms, with the words “The Seal of the Industrial Court” around or above, and the words “of New South Wales” below.

(2) The seal shall be kept in the custody of the Registrar and shall be affixed to all Rules of the Court and such other documents as the Chief Judge directs.

(3) There shall be a stamp of the Court bearing the words “Industrial Court of New South Wales”.

(4) The stamp shall be kept in the custody of the Registrar and shall be used on all process relating to the Court filed with or issued by the Registrar and such other documents as the Chief Judge directs.

(5) A rubber stamp or other facsimile may be used instead of such seal or stamp for any purpose.

Registrar to receive and submit all documents filed

2. (1) All proceedings before the Court under the Act or any other Act shall be commenced and continued in the Registry.

(2) The Registrar shall, either personally or by any officer as the Registrar directs in the name and on behalf of the Registrar, receive all documents filed in respect of applications made under the Act or any other Act in relation to the Court, issue all process and all orders of the Court and keep a record of the proceedings of the Court.

(3) The Registrar shall endorse the date of lodgment on all process.

(4) Where the signature of the Registrar is required on any document, a rubber stamp or other facsimile of that signature may be affixed to the document by such officer as the Registrar authorises.

Filing by post or Document Exchange

3. (1) Any document for filing in the Registry may be filed under this Rule.

(2) A document for filing under this Rule may:

(a) be posted to the Registry; or

(b) be left, addressed to the Registry:

(i) in the exchange box of Australian Document Exchange Pty Ltd and of the Registry;

(ii) in another exchange box for transmission to the exchange box of that Company and the Registry; or

(iii) in a box provided for the purpose in the Registry,

and shall be accompanied by any prescribed fee together with a request that the document be filed.

Registry hours

4. (1) The office of the Registry shall be open to the public for the transaction of business from 9.30 am to 4.00 pm on all days except Saturdays, Sundays and public holidays.

(2) The office of the Registry may be opened at other times by the direction of the Registrar or of the Chief Judge.

Serial numbers for filing

5. Documents relating to proceedings before the Court shall be kept and maintained separately and shall bear a serial number which is distinctive to the particular proceeding.

Searches

6. (1) Except as provided by subrule (2), a person shall be at liberty to search in the Registry in any proceeding for the purpose of inspecting any document filed or lodged with the Registry.

(2) An order of the Chief Judge is required for the purpose of search and inspection of a document where the proceeding or the appropriate part of the proceeding before the Court:

- (a) is the subject of an order under section 303; or
- (b) relates to evidence for which a direction has been given under section 312; or
- (c) relates to a matter in which the Court has previously directed that confidentiality should be observed;
- (d) is the subject of a direction by a judge that the proceeding or a specified part of the proceeding or a document in the proceeding shall not be opened for inspection.

PART 3—PRELIMINARY DISCOVERY**Examination and production**

1. (1) Where, on application by any person, it appears to the Court that:

- (a) the applicant, having made reasonable inquiries, is unable to ascertain the identity of a person for the purpose of commencing proceedings against that person or is unable to ascertain the description of any person sufficiently for that purpose; and

- (b) some person has or may have knowledge of facts, or has or may have in that person's possession, custody or power any document or thing, tending to assist in the ascertainment of the identity or description of the person concerned,

the Court may order that person:

- (c) to attend before the Court or the Registrar and be orally examined on any matter relating to the identity or description of the person concerned; and
- (d) to produce any document or thing in that person's possession, custody or power relating to the identity or description of the person concerned.

(2) Where, on the application of any person, the matters mentioned in subrule (1) (a) appear to the Court and it further appears to the Court that a corporation has or may have in its possession, custody or power any document or thing tending to assist in the ascertainment of the identity or description of the person concerned, the Court may order the corporation or any officer of the corporation to produce any document or thing in the possession, custody or power of the corporation relating to the identity or description of the person concerned.

(3) In this Rule:

“person concerned” means the person referred to in subrule (1) (a); and

“description” includes the name, place of residence, place of business, occupation and sex of the person concerned.

Procedure

2. (1) An application for an order under Rule 1 shall be made by notice of motion in form 1 joining the person against whom the order is sought as a respondent.

(2) An order under Rule 1 must be served personally on the person ordered to attend or to produce any document or thing.

Conduct money

3. Part 15 Rules 3 and 8 apply in relation to an order under Rule 1 as they apply in relation to a subpoena.

Expenses and loss

4. Where any person incurs expense or loss in complying with an order under Rule 1 in an amount exceeding any sum paid under Rule 3,

the Court may order the applicant to pay to that person an amount sufficient to make good the expense or loss.

PART 4—INITIATION OF PROCEEDINGS

Division 1—General

Originating process

1. (1) Except as otherwise provided, the manner of application to the Court (including application for any determination, declaration, injunction or order) shall be by way of application in form 2.

(2) Notice of motion shall be in form 1.

(3) Summons to show cause shall be in form 3.

(4) Where no form of application has been prescribed the originating process shall be in a form approved by the Registrar.

(5) In any proceedings between parties, or where the Court or the Registrar directs, the originating process shall bear a note requiring any party wishing to appear before the Court to file a notice of appearance within 7 days of service of the process upon that person and drawing attention to Part 11 of these Rules.

(6) Where leave of the Court is required to commence proceedings or to take any step in proceedings, the application for leave shall be by notice of motion and shall briefly but specifically state the reasons why leave should be granted.

Registrar to facilitate service of process

2. (1) The Registrar shall take all reasonable steps to ascertain the persons interested in or who may be affected by an application and may require evidence to be supplied upon affidavit or otherwise as to the persons so interested or affected.

(2) Any such affidavit shall state the means of knowledge of the deponent and the inquiries or searches, which may have been undertaken to ascertain who is so interested or affected.

(3) The Registrar may direct service of any process upon such persons as the Registrar thinks fit.

Affidavit of service

3. An affidavit of service in form 4 shall be filed by the applicant promptly after service of the originating process has been effected.

Matters initiated by Court

4. (1) If the Court decides, on its own initiative, to exercise any of its functions it may proceed summarily or direct that proceedings be commenced by a summons to show cause.

(2) Such summons shall be served by the Registrar upon any person as the Court may direct and any person so served shall appear before the Court.

Urgency affidavit

5. (1) An applicant who desires that any matter should be dealt with as one of urgency shall file an affidavit setting out, briefly but specifically, the reasons for the request.

(2) A copy of the affidavit shall be served with the originating process but, if the proceedings before the Court have already commenced at the time of the filing of the affidavit, it shall promptly be served on each of the other parties.

Applications for hearings outside Sydney

6. (1) Where any party desires that the Court sit at any place other than Sydney for the purpose of hearing any matter, the party may be directed by the Registrar to file an affidavit in support, setting out, briefly but specifically, the nature of the matter, the grounds and reasons for the request, the number of witnesses likely to be called and the nature of the evidence to be given.

(2) A copy of the affidavit shall be served on each of the other parties and any affidavit in answer shall be filed within 3 days from the date of service upon that party of the copy of the affidavit.

Court's exercise of powers of Registrar

7. Where in relation to proceedings before the Court any summons, notice, direction or other document may be signed or given or any extension of time may be granted or direction given by the Registrar, it may be signed, given or granted by the Chief Judge or other member of the Court.

Division 2—Void Contracts and Regulated Contracts**Proceedings under section 275 of the Act**

8. (1) Application to the Court to exercise the powers conferred on it by section 275 of the Act must be by summons in form 5.

- (2) A party claiming relief is to be called an applicant.
- (3) A party against whom relief is claimed is to be called a respondent.
- (4) The application must indicate:
- (a) the contract, arrangement, condition or collateral arrangement in respect of which the application is made; and
 - (b) briefly, but specifically, the grounds of the application; and
 - (c) any award, former industrial agreement, agreement registered under Chapter 6 of the Act or contract, by reference to which the claim or any part of it is based; and
 - (d) the relief claimed and particulars of the manner in which any amount claimed is calculated; and
 - (e) the persons against whom relief is claimed.
- (5) The summons must have subscribed to it a note to the respondent to the effect that an order may be made against the respondent in the event of non-appearance in the proceedings.
- (6) Unless otherwise ordered by the Registrar, a copy of the application must be filed.
- (7) Affidavits must be filed with the summons, stating briefly but specifically the facts, matters and circumstances relied upon in support of the application.
- (8) Unless otherwise ordered by the Registrar, the application, together with a copy of the affidavits in support, must be served on the respondent in the manner specified in Part 10 Rule 1 (2) unless Part 10 Rule 7 applies.
- (9) Division 1 applies to proceedings under this Division.
- (10) Where an appearance has not, within the required period, been entered by a respondent, the applicant may proceed to have the matter determined in the absence of that respondent.

Applications under section 281 of the Act

9. (1) An application to the Court pursuant to section 281 must be in form 6 and must state:
- (a) the name of the industrial organisation of employees which is making the application; and
 - (b) the industry or calling in which the members of the organisation are employed; and
 - (c) the work to which the application relates; and

- (d) the contract under or in pursuance of which it is alleged the work is being or is likely to be carried out or performed; and
- (e) briefly, but specifically, the grounds of the application; and
- (f) if applicable, the minimum rate at which it is claimed that a person should be remunerated in relation to the carrying out or performance of the kind of work involved in the application; and
- (g) the persons or bodies who or which have an interest in the matters to which the proposed order relates.

(2) The provisions of this Part apply to proceedings under this Rule in the same way as they apply to proceedings on an application under Rule 8.

Division 3—Void Enterprise Agreements

Applications under section 133 of the Act

10. (1) An application to the Court pursuant to section 133 must be in form 7.

(2) The provisions of this Part apply to proceedings under this Rule in the same way as they apply to proceedings on an application under Rule 8.

Division 4—Application for Recovery of Money

Recovery of wages due under awards and similar amounts

11. (1) An application for an order for the payment of money under sections 151, 153, 156, 686 or 687 of the Act, section 13 (1) of the Annual Holidays Act 1944, section 12 (1) of the Long Service Leave Act 1955 or section 12 (1) of the Long Service Leave (Metalliferous Mining Industry) Act 1963, shall be by application in form 8 and shall state:

- (a) the name and address of the person on whose behalf the order is sought; and
- (b) the name and address of the person against whom the order is sought; and
- (c) any award, agreement or determination, or the conditions of the permit issued under section 21, under which it is claimed the amount became due; and
- (d) the Act and the section under which the application is made; and
- (e) particulars of the amount claimed.

(2) The application shall be signed by:

- (a) the applicant or the solicitor for the applicant;

- (b) the secretary or other officer of an industrial organisation taking the proceedings; or
- (c) a person authorised in writing by the applicant to make such application on behalf of the applicant.

(3) Where an application is made by the secretary or other officer of an industrial organisation or by an authorised person, the consent or authority as the case may be of the applicant shall be filed with the application. Nevertheless, proof of such consent or authority may, with leave of the Court, be given at the hearing.

Recovery of cost of work not fixed by award or agreement

12. (1) An application for leave to recover remuneration for work under section 152 shall be by application in form 9 and shall state:

- (a) the name and address of the person seeking the leave; and
- (b) the name and address of the person from whom it is sought to recover remuneration; and
- (c) the kind of work done for which it is sought to recover remuneration; and
- (d) the award or agreement or the conditions of the permit issued under section 21 under which the price or rate claimed is fixed; and
- (e) the other work done or the work done in different circumstances to which it is alleged the award, agreement or permit is applicable; and
- (f) the price or rate for work referred to in paragraph (e); and
- (g) briefly but specifically the circumstances relied upon as making it just and equitable for the employer to remunerate the employee.

Division 5—Miscellaneous Applications

Superannuation appeals

13. An appeal pursuant to section 390 shall be in form 10.

Civil proceedings for victimisation

14. An application pursuant to section 482 shall be in form 11.

Recovery of compensation from officer

15. An application pursuant to section 488 shall be in form 12.

Application for leave to hold office

16. Leave of the Court pursuant to section 493 or section 494 shall be sought by way of application in form 2.

Application for order relating to oppressive conduct by organisation

17. (1) An application by the Industrial Registrar to the Court for an order pursuant to section 497 shall be by summons to show cause in form 3.

(2) An application to the Court by any other person for an order pursuant to section 497 shall be in form 2.

Application for suspension or cancellation of registration of organisation

18. An application for the suspension and cancellation, or cancellation, of the registration of an organisation registered pursuant to the Act shall be in form 2.

PART 5—MOTIONS**Application**

1. An interlocutory or other application in relation to proceedings already commenced shall be made by motion.

Notice

2. (1) Subject to subrule (2), a person shall not move the Court for any order unless before moving that person has filed notice of the motion in form 1 and has served the notice on each interested party who has an address for service in the proceedings.

(2) A person may move the Court without previously filing or serving notice of the motion:

- (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant; or
- (b) where each other party interested consents to the order; or
- (c) where the Court dispenses with the requirements of subrule (1).

(3) The notice of motion shall:

- (a) state the date and time when, and the place where, the motion is to be made; and

- (b) where the Court makes an order under Rule 3, bear a note of the order made; and
 - (c) state concisely the nature of the order which is sought; and
 - (d) name each party affected by the order which is sought.
- (4) Costs need not be specifically claimed.

Time for service of notice

3. Where a notice of motion is required to be served, it shall, unless the Court otherwise orders, be served not less than 3 days before the date fixed for the motion.

Service

4. Where a notice of motion is to be served on a person who has not entered an appearance and the time for entering an appearance has not expired, the notice shall be served personally.

Absence of party

5. The Court may hear and dispose of a motion in the absence of any party:

- (a) where service or notice of the motion on the absent party is not required by these Rules or by an order; or
- (b) where the notice of motion has been duly served on the absent party.

Notice of adjournment

6. Where a notice of motion has been served for any date or the hearing of a motion has been adjourned to any date and, before that date, any party files a request, bearing the consent of each other party to the motion, for an adjournment in accordance with this Rule, the hearing of the motion shall stand adjourned to the date specified in the notice or to such later date as the Court may appoint.

Further hearing

7. (1) Where a notice of a motion for any day has been filed and served, and the motion is not disposed of on that day:

- (a) the Court may hear and dispose of the motion on any later date fixed by the Court; and

- (b) subject to subrule (2), filing or service of a further notice of motion shall not be required.
- (2) Subrule (1) (b) shall not have effect:
 - (a) where the Court directs the filing or service of a further notice of motion; or
 - (b) where service is required on a party on whom notice of the motion has not previously been served.

PART 6—REFERENCES

Reference by single member to the Full Court

1. A reference of any question of law in a proceeding before a Judge of the Court sitting alone to the Full Court pursuant to section 297 (2) (c) shall be in form 13.

Reference by Registrar to Court

2. (1) The Registrar may refer any matter or question before the Registrar to the Court.

(2) The reference by the Registrar to the Court shall be in form 14.

Reference of question of interpretation of an award

3. A reference of any question of the interpretation, application or operation of an award or agreement pursuant to section 198 shall be in form 15.

Reference by Industrial Relations Commission or Industrial Registrar

4. A reference by the Industrial Relations Commission of New South Wales or the Industrial Registrar to the Court shall be in form 16.

Service of documents following reference

5. (1) Upon any reference to the Court, the applicant, or such other party as the Registrar directs, shall serve upon the other parties before the Court a copy of:

- (a) the reference; and
- (b) the transcript of proceedings from which the question or matter has been referred; and
- (c) the appointment for hearing.

(2) An affidavit of service shall be filed by the applicant promptly after service of the documents has been effected.

PART 7—APPEALS

Division 1—General

Appeal to Court

1. (1) An appeal to the Court under the Act or any other Act shall be made in form 17 (where leave is not required) or 18 (where leave is required).

(2) An appeal shall be made within 28 days (or such further time as the Court allows, before or after the expiration of that period) after the date of the decision appealed against.

(3) An application to extend the time to appeal shall be in form 19 and may be included in the appeal.

Appeal to Full Court

2. (1) An appeal from a decision of the Court to the Full Court shall be in form 17 or 18, as the case may require.

(2) An appeal shall be made within 28 days (or such further time as the Court allows, before or after the expiration of that period) after the date of the decision appealed against.

(3) An application to extend the time to appeal may be included in the appeal.

Application for stay of proceedings

3. Where it is intended to seek a stay of the whole or part of the decision of the Court pending the determination of the appeal, the appeal shall include an application to that effect.

Respondents

4. Each of the parties (other than the appellant) appearing or represented in the proceedings under appeal shall be joined as respondents to the appeal.

Service of appeal

5. (1) Upon lodging an appeal, the appellant shall serve a copy of the appeal promptly on the parties to the proceedings in which the decision under appeal was given or made.

(2) An affidavit of service in form 4 shall be filed by the appellant promptly after service of the appeal has been effected.

Interlocutory decisions

6. Any decision made in any proceedings before the Court prior to a final decision in those proceedings shall be taken for the purposes of appeal to have been made on the same day as the final decision.

Appeal book

7. (1) The appellant shall, within 28 days after the filing of an appeal, file an appeal book consisting of

- (a) the application and any documents subsequently filed in the proceedings; and
- (b) the transcript of the proceedings (including the exhibits) before the court or tribunal from which the appeal is brought; and
- (c) the decision appealed against,

and shall promptly serve a copy of the appeal book on each respondent.

Exercise of powers of Full Court

8. Reference by the Full Court in connection with the exercise of its functions in relation to a particular matter to a member of the Court sitting alone shall be in form 20.

Division 2—Stated Case

Stated case

9. (1) An application to state and sign a case for the opinion of the Court pursuant to section 741 must be in form 21.

(2) The time for applying for a case to be stated is 28 days after the making of the relevant decision, or such further time as the Registrar may allow.

(3) Written notice of the application must be given by the applicant to the respondents by serving a copy of the application upon each respondent.

(4) The time for giving the respondent such a notice is within 3 days after the application is made.

Appellant not required to enter recognizance to prosecute appeal

10. The requirement for a person to enter into a recognizance pursuant to section 102 of the Justices Act 1902 does not apply to a person who makes application for a case to be stated for the opinion of the Court.

Form of stated case

11. (1) A stated case must be in form 22.

(2) The stated case must:

- (a) be divided into paragraphs and numbered consecutively; and
- (b) state concisely the facts and documents necessary to enable the Court to decide the questions arising or otherwise to hear and determine the proceedings on the stated case; and
- (c) state the questions and matters to be decided or determined.

Draft case to be prepared

12. (1) Within 28 days after filing the application to state and sign a case (or such further time as the Registrar may allow) the applicant must file in the Registry a draft case and serve a copy on each respondent.

(2) A copy of any record of evidence need not be annexed to the draft case.

(3) The applicant may, without leave, state in the draft case grounds on which it is contended that the determination was erroneous in point of law other than the grounds stated in the application to state and sign a case.

Draft case to be forwarded to magistrate

13. (1) The Registrar is required to forward the draft case, when filed, to the magistrate concerned, who is to appoint in writing a time and place at which the draft case is to be settled.

(2) A respondent who wishes to object to the draft case must, before the date appointed to settle it, give notice of the objection in writing to the applicant and to the magistrate.

Settlement of draft case

14. (1) The magistrate is required to notify the applicant in writing when the draft case has been settled.

(2) Within 14 days after being notified that the draft case has been settled, the applicant is to obtain it and prepare and file the case for signature by the magistrate.

(3) The applicant may apply in writing to the magistrate to dispense with the copying of evidence which is irrelevant to the stated case.

Magistrate to sign stated case

15. (1) When the magistrate has signed the case the magistrate is to notify the applicant that the case has been signed.

(2) The proceeding before the Court is to be commenced by the applicant filing the case in the Registry within 7 days after being notified that the case has been signed.

(3) Unless otherwise ordered by the Registrar or the Court, no copies of the case need be filed.

Service of copies of case

16. The applicant must promptly serve a copy of the case (including the record of evidence) upon each of the respondents.

Further powers of Chief Industrial Magistrate

17. For the purpose of stating a case for the Court, the Chief Industrial Magistrate is the prescribed person referred to in section 104A of the Justices Act 1902.

PART 8—PARTICULARS

General

1. (1) A party filing any process shall give the necessary particulars of any claim or other matter raised by that party in such process.

(2) Rules 2 to 6 do not affect the generality of subrule (1).

Interest

2. (1) Subject to subrule (2), Rule 1 (1) does not require a party to give particulars of a claim for an order for interest under section 157 of the Act.

(2) Where a party making application for orders under Part 10 of Chapter 3 of the Act, claims, as part of that relief, an order for or which

includes, interest, particulars shall be given of the rates at which, the amounts on which and the periods for which, interest is claimed.

Fraud, etc.

3. A party shall give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which the party relies.

Condition of mind

4. (1) A party pleading any condition of mind shall give particulars of the facts on which that party relies.

(2) In subrule (1) “**condition of mind**” includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

Out of pocket expenses

5. A party who claims moneys which have been paid or which the party is liable to pay shall give particulars of those moneys.

Damages

6. A party who claims damages shall give particulars of the facts and matters relied upon to establish that claim.

Manner of giving particulars

7. Where any of Rules 1 to 6 require particulars to be given, the particulars shall be set out in the process or in a separate document referred to in the process and that document shall be filed and served with the process.

Order for particulars

8. (1) The Court may, on terms, order a party to file and serve on any other party:

- (a) further particulars of any claim or other matter stated in any process, or in any affidavit filed by that party; or
- (b) a statement of the nature of the case on which the party relies; or
- (c) where the party claims damages, particulars of those damages.

(2) Without limiting the generality of subrule (1), where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may, on terms, order that party to file and serve on any other party:

- (a) where knowledge is alleged, particulars of the facts on which the party relies: and
- (b) where notice is alleged, particulars of that notice.

PART 9—AFFIDAVITS

Time for swearing

1. An affidavit for use in any proceedings may be sworn before or after the commencement of the proceedings.

Form

2. (1) An affidavit shall be in form 23 and be made in the first person.

(2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, that person must certify in or below the jurat that:

- (a) the affidavit was read in that person's presence to the deponent; and
- (b) the deponent seemed to understand the affidavit.

(4) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (3) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that the deponent seemed to understand it.

Alterations

3. (1) Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit, the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any word or figures written in place of the erasure and signs or initials them.

(2) Subrule (1) applies to an account or other document verified by affidavit as if the account or document were part of the affidavit.

Annexures and exhibits

4. (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

(3) An exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and signed by the person before whom the affidavit is sworn.

Numbering and fastening of pages

5. The pages of an affidavit or an affidavit with an annexure shall:

- (a) be consecutively numbered in the top right hand corner; and
- (b) be securely fastened on the left hand side or corner.

Irregularity

6. An affidavit may, with the leave of the Court, be used notwithstanding any irregularity in form.

Handing up affidavits

7. (1) An affidavit, unless otherwise required by or under an Act or by an order of the Court, may be filed in the Registry or may be handed up in the course of proceedings.

(2) An affidavit which has been served shall, before it is filed or handed up, bear a note of the time, place and manner of service.

Service

8. A party intending to use an affidavit shall serve it on each other interested party not later than a reasonable time before the occasion for using it arises.

Scandal, etc.

9. Where there is scandalous, irrelevant or otherwise oppressive matter in an affidavit, the Court may order that:

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

Cross-examination

10. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under subrule (1) shall be made to the party serving or proposing to use the affidavit.

(3) Where the attendance of a person is required under subrule (1), the affidavit may not be used unless the person attends or is dead or the Court grants leave to use it.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine that person.

PART 10—SERVICE AND NOTICE OF HEARING

Service of process by parties

1. (1) Except as otherwise provided by these Rules or unless the Registrar otherwise directs, service of all process shall be effected by the parties.

(2) Service of a summons to show cause shall be in accordance with Rule 2 (a) or (b), 3 (a), (b) or (c), 4 (2) (a), (b) or (c) or 5 (1) or (2), as the case may require.

(3) Except as otherwise provided by this Part or unless the Court has given a direction with regard to service, process other than a subpoena shall be served as specified in this Part.

Service upon individuals

2. Service of process upon any natural person shall be effected:

- (a) by leaving any document to be served with the person; or
- (b) if any document to be served is not accepted, by putting the document down in the presence of the person to be served and indicating its nature; or
- (c) by leaving any document with any other person apparently above the age of 14 years at the residence or usual place of business of the person; or
- (d) by posting any document to the person, or leaving it, at the address for service filed by the person; or

- (e) where any person has not filed an address for service, by posting any document to the person at the residence or usual place of business of that person.

Service upon corporations other than industrial organisations

3. Service of process upon a corporation other than an organisation incorporated under the Act shall be effected:

- (a) by leaving any document with the secretary or other principal officer of the corporation; or
- (b) by tendering any document to that secretary or principal officer after indicating its nature; or
- (c) by leaving any document with a person at the registered office of the corporation; or
- (d) where the corporation has filed an address for service, by posting any document to that secretary or principal officer at that address or by leaving it at that address; or
- (e) where the corporation has not filed an address for service, by posting any document to that secretary or principal officer at the registered office of the corporation; or
- (f) where provision is made by any other Act for the service of a document on the corporation concerned, by serving a copy of any document in accordance with that provision.

Service upon organisations

4. (1) In this Rule, “organisation” means any industrial or non-industrial organisation registered or recognised under the Act, any association registered under Chapter 6 of the Act, and any State Peak Council.

(2) Service of process upon an organisation shall be effected:

- (a) by leaving any document with the secretary or principal officer of the organisation; or
- (b) by tendering any document to that secretary or principal officer after indicating its nature; or
- (c) by leaving any document with a person at the registered office of the organisation; or
- (d) where the organisation has filed an address for service, by posting any document to that secretary at that address or by leaving it at that address; or

- (e) where the organisation has not filed an address for service, by posting any document to that secretary or principal officer at the registered office of the organisation.

Service on solicitors or agents

5. (1) Where a party is represented by a solicitor or agent, any process other than the originating process may be served upon the solicitor or agent at the solicitor's or agent's office or at the solicitor's or agent's document exchange box provided by the Australian Document Exchange Pty Limited.

(2) Where a solicitor or agent makes a note on a copy of an originating process that service is accepted on behalf of any person, the document shall be taken to have been duly served on that person on the date on which the solicitor or agent makes the note or such earlier date of service as may be proved.

(3) The term solicitor in this Rule includes the solicitor's agent.

Time of service

6. (1) Every originating process, together with any accompanying affidavits, shall be served upon the person thereby notified or summoned to appear promptly and at least 3 days before the day on which the matter is to be dealt with unless the Court gives leave for a shorter period of service.

(2) Any affidavit in answer to a served document may be filed and shall, unless otherwise directed by the Court, be served as soon as practicable but not later than the day preceding the hearing.

Substituted service

7. (1) Where personal or other service of any process is required by these Rules or otherwise and it is made to appear to the Registrar that such service cannot conveniently be effected, the Registrar may make such order for substituted or other service, or for the substitution of notice by letter, facsimile message, other electronic means, public advertisement or otherwise, as may seem just.

(2) Such notice shall contain such particulars as the Registrar directs.

(3) The Registrar, in making an order under this Rule, may order that the documents be taken to have been served on the happening of any specified event or on the expiry of any specified period.

Service out of the State

8. (1) Service outside the State is to be as nearly as practicable in accordance with Part 10 of the Supreme Court Rules.

(2) Leave to serve or confirmation of service may be given by the Court.

Appointment for hearing

9. (1) Following the appointment of a date, time and place for the mention or hearing of any originating process before the Court, notice of appointment in form 24 shall be promptly given to the applicant by the Registrar.

(2) Unless the appointed date, time and place are stated in the originating process, the applicant shall cause the notice of appointment to be served upon the other parties promptly and at least within the time specified in Part 10 Rule 6.

(3) Where the date, time and place have been appointed before the originating process has been served upon a party, the notice of appointment may be endorsed on the originating process.

(4) The appointed date, time and place may be altered by notice given in accordance with Rule 10.

Notice of hearing

10. (1) Notice of the time and place for the mention or hearing of any matter (or any alteration of that time or place) may be given by the Court, or the Registrar to the persons concerned, or their representatives, orally or by telephone, facsimile message or other electronic means.

(2) A person to whom notice has been given under subrule (1) shall be liable to attend or be represented at the mention or hearing of the matter as if summoned to appear.

PART 11—APPEARANCE**Appearance by solicitor, agent or in person**

1. (1) Subject to section 304, a respondent may enter an appearance and may defend proceedings by a solicitor or agent or in person.

(2) Notwithstanding subrule (1), but subject to any Act, a corporation (other than a corporation registered under the Act or a solicitor

corporation) may not enter an appearance or defend any proceedings except by a solicitor without the leave of the Court.

No step without appearance

2. Subject to these Rules, a person shall not, except by leave of the Court, take any step in any proceedings unless, before taking the step, that person has filed originating process or has entered an appearance.

Mode of entry

3. (1) An appearance in any proceedings shall be entered by filing a notice of appearance in form 25.

(2) Two or more persons entering an appearance by the same solicitor on the same day may do so by a single notice of appearance.

Notice of appearance

4. (1) A notice of appearance shall show:

- (a) the name, address, telephone number and facsimile number (if any) of the person entering the appearance; and
- (b) where the person entering the appearance appears by a solicitor, the name, address, telephone number and facsimile number (if any) of the solicitor; and
- (c) where the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent in the proceedings, the name, address, telephone number and facsimile number (if any) of the agent; and
- (d) an address for service.

(2) Where any address shown in a notice of appearance is not genuine, the applicant may, with the leave of the Court, continue the proceedings as if the appearance had not been entered.

(3) A respondent who wishes to take no active part in proceedings may:

- (a) include in the respondent's appearance a statement that the respondent submits to the making of orders and the giving or entry of judgment in respect of all claims made; and
- (b) add to the statement “, save as to costs”.

(4) A respondent who has filed an appearance containing a statement referred to in subrule (3):

- (a) shall not, except with the leave of the Court, file any process or affidavit or take any other step in the proceedings; and
- (b) may at any time, by leave of the Court, file any process or affidavit and take any other step in the proceedings upon such terms and conditions as may be imposed by the Court.

Copies and service

5. (1) A respondent may, when filing a notice of appearance, tender a sufficient number of copies for service on the applicant, on each other party of whose address for service the respondent has notice and, if the respondent wishes, on the respondent, and request that the copies be dealt with in accordance with subrule (3).

(2) A respondent may, when filing a notice of appearance under Part 2 Rule 3 send a sufficient number of copies for service on the applicant, on each other party of whose address for service the respondent has notice and, if the respondent wishes, on the respondent, and request that the copies be dealt with in accordance with subrule (3).

(3) Where a notice of appearance is received in the Registry together with 1 or 2 copies and a request that the copies be dealt with in accordance with this subrule:

- (a) the copies shall be marked by an officer with the date of acceptance of the notice of appearance;
- (b) a copy shall be used by an officer for the purpose of serving the notice on the applicant;
- (c) each other copy (if any) shall be used by an officer for the purpose of serving the notice on each other party who has an address for service in the proceedings and, if there is sufficient number of copies, on the respondent,

(4) Unless a copy of a notice of appearance is tendered with a request that it be dealt with in accordance with subrule (3) (b), the respondent shall, on the date of entry of appearance, serve the notice of appearance on the applicant and on each other party of whose address for service the respondent has notice.

Time for an appearance

6. (1) A respondent shall enter an appearance before filing any document and within 7 days of service of any originating process on that respondent.

(2) Notwithstanding subrule (1), where a matter is commenced by way of notice of motion a respondent shall enter an appearance before the date appointed for any hearing or mention and before filing any document.

Late appearance

7. (1) A respondent may enter an appearance at any time without leave.

(2) A respondent entering an appearance after the time limited for appearing shall not, unless the Court otherwise orders, be entitled to file any process by way of defence or do any other thing later than if an appearance had been entered within that time.

Conditional appearance

8. (1) A respondent may enter a conditional appearance.

(2) A conditional appearance shall have effect for all purposes as an unconditional appearance, unless the Court otherwise orders or the respondent applies under and in accordance with Rule 9 and the Court makes an order under that Rule.

Setting aside originating process etc.

9. (1) The Court may, on notice of motion filed by a respondent in accordance with subrule (2), by order:

- (a) set aside the originating process; or
- (b) set aside the service of the originating process on the respondent; or
- (c) declare that the originating process has not been duly served on the respondent; or
- (d) discharge any order giving leave to serve the originating process outside the State or confirming service of the originating process outside the State; or
- (e) discharge any order extending the validity for service of the originating process; or
- (f) protect or release property seized, or threatened with seizure, in the proceedings; or
- (g) declare that the Court has no jurisdiction over the respondent in respect of the subject matter of the proceedings; or
- (h) decline in its discretion to exercise its jurisdiction in the proceedings; or
- (i) grant such other relief as it thinks appropriate.

(2) Notice of motion under subrule (1) may be filed by a respondent before that respondent enters an appearance or within 14 days after the date of filing of a conditional appearance.

(3) The notice of motion shall bear a statement that “The respondent’s address for service is” and state the address.

(4) The making of an application under subrule (1) shall not be treated as a voluntary submission to the jurisdiction of the Court.

PART 12—DOCUMENTS

First page of documents in proceedings before Court

1. (1) The first page of a document prepared by a party for use in Court shall be set out in form 26.

(2) Documents in any proceedings before the Court shall be headed “Before the Industrial Court of New South Wales” and shall show the serial number of the proceedings.

(3) A document in any proceedings in relation to an award shall be entitled with “Re” together with the name of the award, the name of the applicant and an abridged statement of the nature of the proceedings.

(4) A document in any proceedings between parties shall be entitled between the parties who shall be described as applicant or appellant and respondent or as the case may be, together with an abridged statement of the nature of the proceedings.

(5) A document in any proceedings in which there is no other party and which does not relate to an award shall be entitled “The application of” together with the name of the applicant and an abridged statement of the nature of the proceedings.

(6) A document in proceedings which are initiated by the Court shall be entitled as directed by the Court, or in the absence of such a direction, as directed by the Registrar.

(7) Except in the case of an originating process or a document to be served on a person who is not a party to the proceedings, a document may bear an abbreviation of the title of the proceedings sufficient to identify the proceedings.

(8) The Registrar may add to the title of any document, filed or lodged in any proceedings before the Court, any matter which the Registrar requires to add for the purpose of clarification.

Address for service to be included

2. (1) At the foot of the left hand side of the first page of a document prepared by a party for use in the Court there shall be shown the name, address, telephone number and facsimile number (if any) of any solicitor or agent for the party and, where the address for service of the party is the office of a solicitor or an agent who has an exchange box in a document exchange of Australian Document Exchange Pty Limited, the number of that box.

(2) Subrule (1) does not apply where the party preparing a document is not represented by a solicitor or an agent but the document shall show at the foot of the left hand side of the first page of the document the name, address, telephone number and facsimile number (if any) for service of the party.

(3) The address shown on the document shall be the address for service of the party lodging the document until notice of change of address is given.

(4) The term solicitor in this Rule includes the solicitor's agent.

Signing documents

3. All process filed by a party shall be signed in form 27 by or on behalf of that party or by that party's solicitor or agent unless otherwise indicated or required.

Paper and writing

4. (1) This Rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

(2) A document shall be on paper of durable quality, capable of receiving ink writing, and measuring about 297 millimetres long and 210 millimetres wide.

(3) The writing on a document shall be on one face of the paper only and a margin of not less than 25 millimetres shall be kept clear on the left hand side.

(4) There shall be a space of not less than 3 millimetres between the lines of writing.

(5) The writing shall be clear, sharp, legible and permanent.

(6) A carbon copy shall not be sufficient.

(7) A document shall not be filed if it bears any blotting, erasure, or such other alteration as to cause material disfigurement.

Numbers

5. Dates, sums and other numbers shall be expressed in figures and not in words.

Scandal, etc.

6. The Court may order to be struck out of any document any matter which is scandalous, frivolous, vexatious, irrelevant or otherwise oppressive.

Copies of documents to be filed

7. In relation to all proceedings before the Court, all documents filed shall be accompanied by such number of copies as the Registrar specifies or subsequently directs.

PART 13—GENERAL PROCEDURE

General powers

1. The Court may in relation to any proceedings before it:
 - (a) hear and determine the proceedings in the absence of a party who has been summoned or given notice to appear; or
 - (b) sit at any place; or
 - (c) refer any matter to an expert and receive the report of the expert as evidence; or
 - (d) direct parties to be joined or struck out; or
 - (e) allow the amendment, for such purposes and on such terms as it thinks fit, of any proceedings; or
 - (f) correct, amend or waive any error, defect or irregularity, whether in substance or in form; or
 - (g) determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties before it and may require that those cases be presented within the periods so determined.

Directions generally

2. (1) The Court may generally give all such directions and do all such things as in its opinion will enable expense or delay to be reduced and

will help to achieve a prompt hearing of the matters at issue between the parties and will contribute to the expeditious conduct of the proceedings and the just determination of the matter or dispute and the equitable disposal of proceedings.

(2) Without limiting the generality of subrule (1), the Court may:

- (a) make orders for the purpose of defining the matters in dispute and the issues to be decided; or
- (b) direct the mode in which issues may be proved, including whether the presentation of the whole or any part of the evidence may be in writing or by affidavit or orally; or
- (c) give directions with regard to the mode of proof of any matter or thing, the production of documents and the making of admissions (subject to all just exceptions) with respect to any document or to any question of fact; or
- (d) dispense with the formal proof of any matter which is not genuinely in dispute or where such proof would cause expense or delay which is not warranted in the circumstances, and in particular dispense with proof of handwriting, documents or authority.

(3) The Court may exercise its powers under this Rule at any time after the commencement of the proceedings and on its own motion or on the application of any party.

Directions where procedure wanting or in doubt

3. (1) Where any person desires to commence proceedings or to take any steps in a particular case before the Court and:

- (a) the provisions of the Act and these Rules do not make any or adequate provision for a procedure to be followed and there is no established practice or usage of the Court; or
- (b) a difficulty arises or doubt exists as to the procedure to be followed,

the Court may give directions or make such orders with respect to the procedure to be followed as it considers necessary.

(2) Directions may be given or orders may be made by the Court:

- (a) on its own initiative; or
- (b) on application by notice of motion by a party seeking such directions or orders.

(3) Such application may be made ex parte, but shall be served on such persons as the Court directs.

(4) Such directions and orders are to be directed to providing a just, speedy and inexpensive determination of proceedings.

(5) Proceedings commenced in accordance with such directions or orders are to be taken to be well commenced.

(6) Steps taken in accordance with such directions or orders are to be taken to be regular and sufficient.

Production of document on notice

4. Where a party to any proceedings serves on another party a notice in form 28 requiring the party served to produce at any proceedings a document or thing for the purpose of evidence and that document or thing is in the possession, custody or power to produce of the party served, the party shall, unless the Court otherwise orders, produce the document or thing in accordance with the notice without the need for any subpoena for production.

Exhibits

5. (1) Where a matter before the Court has been completed, the Registrar shall retain any exhibit until after the expiration of the appeal period.

(2) Where a notice of appeal has not been filed within the permitted time, the Registrar may, on the Registrar's initiative or upon written application, return any exhibit to the person who tendered it or to any person who proves, to the Registrar's satisfaction, an entitlement to the exhibit, subject to an obligation to return the exhibit if required.

(3) Any exhibit may be taken out by leave or order of the Court or of the Chief Judge, subject to an undertaking to return the exhibit if required.

Want of prosecution

6. Where any party has not done any act required to be done by or under the Act or any other Act or otherwise has not pursued the proceedings with due diligence, the Court may:

- (a) order that the application be dismissed for want of prosecution; or
- (b) fix a definite time for the doing of the act and at the same time order that upon non-compliance the application shall stand dismissed for want of prosecution or subsequently, in the event of non-compliance, order that it be dismissed; or

- (c) make such further or other order as in the circumstances may seem just.

Power to waive requirements and extend time

7. (1) Application to waive, pursuant to section 309, strict compliance with any procedural requirement of these Rules or any other requirement under the Act or to exempt any party from compliance with any such Rule either before or after the occasion for compliance arises, may be made by notice of motion or orally in the course of the proceedings and if made separately shall, unless the Court otherwise directs, be supported by affidavit.

(2) The Registrar may modify or waive any requirement, or extend any time for the lodging of any document or the doing of any act (whether or not the time has expired) set out in these Rules, on such terms as the Registrar thinks fit.

Practice notes

8. (1) Where:

- (a) the provisions of the Act, the Regulations and the Rules do not make any or adequate provision for a procedure to be followed and there is no established practice or usage of the Court;
- (b) a difficulty arises or doubt exists as to the procedure to be followed; or
- (c) the Court desires to change any established practice, procedure or usage,

the Chief Judge may, by practice note, determine or change the practice, procedure or usage.

(2) Such practice note is to be signed by the Chief Judge and published in the Industrial Gazette.

(3) Practice notes are to be directed to providing a just, speedy and inexpensive determination of proceedings.

(4) A practice note becomes effective 14 days after publication in the Industrial Gazette or such later date as the practice note directs.

Supplementary practice before Court

9. Where:

- (a) there are no relevant provisions; and
- (b) there is no established practice, procedure or usage; and

(c) there is no order, direction or practice note in force, the practice, procedure or usage for the time being of the Supreme Court or, in the case of appeals, the practice, procedure or usage for the time being of the Court of Appeal is, as far as practicable, to regulate the practice, procedure or usage of the Court.

PART 14—DISCOVERY AND INSPECTION OF DOCUMENTS

Division 1—Discovery

Notice for discovery

1. (1) Subject to these Rules and to any direction given in a particular case, any party may, prior to the commencement of the hearing of the matter, by notice for discovery in form 29 served on any other of those parties, require the party served to give discovery of documents, with or without verification.

(2) A party may require another party to give discovery with verification notwithstanding that the party has previously required that other party to give discovery without verification.

Discovery on notice

2. (1) A party required under Rule 1 to give discovery shall, subject to Rule 3, give discovery within such time (not being less than 14 days after service of the notice for discovery) as may be specified in the notice for discovery.

(2) A party required under Rule 1 to give discovery without verification shall, subject to Rule 3, give discovery by serving on the party giving the notice for discovery a list in accordance with Rule 6 of documents relating to any matter in question between that other party and the party giving the notice for discovery.

(3) A party required under Rule 1 to give discovery with verification shall, subject to Rule 3, give discovery by serving on the party giving the notice for discovery:

- (a) an affidavit verifying such a list as is mentioned in Rule 6; and
- (b) the list so verified, unless the list has already been served on that party.

(4) Where a claim is made against a party:

- (a) for the recovery of any penalty recoverable by virtue of any Act or Commonwealth Act; or
- (b) for the enforcement of a forfeiture,

that party need not include in a list of documents under this Rule any document relating only to a matter in question on that claim.

Limitation of discovery on notice

3. (1) The Court may, before or after any party has been required under Rule 1 to give discovery, order that discovery under Rule 2 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceedings, as may be specified in the order.

(2) The Court shall, on application, make such orders under subrule (1) as are necessary to prevent unnecessary discovery.

Co-respondents

4. Where an applicant claims relief against 2 or more respondents, and requires any respondent to give discovery under Rule 2, that respondent shall serve the list of documents and affidavit (if any) not only on the applicant but also on each other respondent.

Order for general discovery

5. The Court may, at any stage of any proceedings, from time to time, order any party to serve on any other party:

- (a) a list in accordance with Rule 6 of documents relating to any matter in question in the proceedings; or
- (b) a list as mentioned in paragraph (a), verified by affidavit.

Contents of list

6. (1) A list of documents required by or under this Part shall, unless the Court otherwise orders, conform to the requirements of this Rule.

(2) A list of documents shall enumerate the documents which are or have been in the possession, custody or power of the party making the list.

(3) A list of documents shall be in form 30 and shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

(4) Where a party making a list of documents claims that any document in the possession, custody or power of that party is privileged

from production, the grounds of the privilege shall be sufficiently stated in the list.

(5) A list of documents shall distinguish those documents which are in the possession, custody or power of the party making the list from those that have been but are not in the possession, custody or power of that party.

(6) A list of documents shall, as to any document which has been but is not then in the possession, custody or power of the party making the list, state when the party parted with the document and what has become of it.

(7) A list of documents shall appoint a time within 7 days after service of the list when, and a place where, the documents in the list may be inspected.

(8) Where a party making a list of documents has a solicitor in the proceedings, the solicitor shall certify on the list that the solicitor has explained:

- (a) where the list is unverified, to the person instructing the solicitor;
or
- (b) where the list is verified, to the deponent,

the requirements for disclosure to the solicitor of any document which relates to the matter in question in the proceedings and which is or has been in the party's possession, custody or power.

(9) Where the solicitor for a party is a solicitor corporation, the certificate and explanation required by subrule (8) shall be given to the person instructing the corporation by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

Absence of privilege

7. (1) Except with the leave of the Court, a party to any proceedings in the Court may not claim privilege from production of any document on the ground that it relates solely to and does not tend to impeach the party's own case and does not relate to or tend to support the case of any opposing party.

(2) Leave under subrule (1) shall not be granted except for special cause.

(3) Any application to the Court for leave under subrule (1) may be made without serving notice of the motion.

Order for particular discovery

8. Where, at any stage of the proceedings, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed or served in the proceedings that there are grounds for a belief that some document or class of document relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the Court may order that party:

- (a) to make an affidavit stating whether that document or any document of that class is or has been in the possession, custody or power of that party and, if it has been but is not then in the possession, custody or power of that party, when that party parted with it and what has become of it; and
- (b) to serve the affidavit on any other party.

Deponent

9. (1) Subject to subrule (2), an affidavit verifying a list of documents of a party or an affidavit to be made by a party pursuant to an order under Rule 8 may be made as follows:

- (a) by the party;
- (b) where the party is a disabled person, by the tutor of that party;
- (c) where the party is a corporation (other than an industrial organisation registered or recognised under the Act), by a member or officer of the corporation;
- (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;
- (e) where the party is the Crown, an officer of the Crown suing or sued in the officer's official capacity, by an officer of the Crown;
- (f) where the party is an organisation registered or recognised under the Act, by an officer of the organisation.

(2) Where the party is a person to whom any of paragraphs (c), (d), (e) and (f) of subrule (1) applies and the affidavit is to be made and served pursuant to an order, the Court may:

- (a) specify by name or otherwise the person to make the affidavit; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom any of paragraphs (c), (d), (e) and (f) of subrule (1) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

Division 2—Inspection**Document referred to in process or affidavit**

10. (1) Where any process or affidavit filed or served by a party refers to a document, any other party may, by notice to produce served on that party, require the production of the document for inspection.

(2) A party served with a notice under subrule (1), shall, within 4 days after that service, serve on the party requiring production a notice:

- (a) appointing a time within 7 days after service of the notice under this subrule when, and a place where, the document may be inspected;
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in the possession, custody or power of that party and stating to the best of the knowledge, information and belief of that party where the document is and in whose possession, custody or power it is.

Order for production

11. (1) Where:

- (a) it appears from a list of documents served by a party under this Part that any document is in the possession, custody or power of a party; or
- (b) any process or affidavit filed or served by a party refers to any document; or
- (c) it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed or served in the proceedings that there are grounds for a belief that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party,

the Court may, unless the document is privileged from production, order the party:

- (d) to produce the document for inspection by any other party at a time and place specified in the order; or
- (e) to serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

(2) An affidavit made pursuant to an order under subrule (1) (e) shall, unless the Court otherwise orders, state whether there are in the document copied any and, if so, what erasures, interlineations or alterations.

Power to take copies

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

Production to the Court

13. (1) The Court may, at any stage of any proceedings, order any party to produce to the Court any document in the possession, custody or power of that party relating to any matter in question in the proceedings.

(2) Upon production of a document to the Court pursuant to an order under subrule (1), the Court may deal with the document in such manner as the Court thinks fit.

Inspection to decide objection

14. Where an application is made for an order under Rule 11 for the production of any document for inspection by another party or for an order under Rule 13 for the production of any document to the Court and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

Division 3—Interrogatories**Interrogatories only with leave**

15. (1) A party, with leave of the Court, before a matter has been set down for hearing, may serve on any of the other parties a notice in form 31 requiring the party to answer separate specified interrogatories relating to any matter in question between the interrogating party and the party served.

(2) An application for leave of the Court shall be by notice of motion and, unless the Court otherwise directs, shall be made *ex parte* and may be dealt with in chambers.

(3) The administration of interrogatories and the practice and procedure relating to them shall be nearly as possible that applicable under Part 24 of the Supreme Court Rules 1970.

Division 4—General**Order only if necessary**

16. The Court shall not make an order under this Part for the filing or service of any list of documents or affidavit or other document or for the production of any document or the answering of any interrogatories unless satisfied that the order will contribute to the expeditious conduct of the proceedings and the just determination of the matter or dispute and the equitable disposal of the proceedings.

Default

17. (1) Where a party makes default in serving a list of documents or affidavit or other document or in producing any document or in answering any interrogatories as required by or under this Part, the Court may give or make such judgment or such order as it thinks fit, including:

- (a) if the party in default is an applicant, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed; or
- (b) if the party in default is a respondent, an order giving judgment for the applicant; or
- (c) orders as to costs.

(2) Where a party has a solicitor:

- (a) an order under any of the foregoing Rules of this Part need not, for the purposes of enforcement of the order, be served personally; but
- (b) if the order has not been served personally, the order shall not be enforced if it is shown that the party did not have notice or knowledge of the order within sufficient time for compliance with the order.

Challenge to claim of privilege

18. Where a party making a list of documents claims that any document in the possession, custody or power of the party is privileged from production, the Court may, if it thinks fit:

- (a) permit evidence in relation to the claim to be given by any other party by affidavit or otherwise; and
- (b) permit cross-examination of any affidavit used in support of the claim.

Public interest

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

PART 15—SUBPOENAS**Interpretation**

1. In this Part:

“**subpoena for production**” means a subpoena to attend and produce documents or things;

“**subpoena to give evidence**” means a subpoena to attend and give evidence;

“**the person named**” means, in relation to a subpoena, the person to whom the subpoena is addressed.

Subpoenas

2. (1) Unless the Court otherwise orders:

- (a) a subpoena for production shall be in form 32; and
- (b) a subpoena to give evidence shall be in form 33; and
- (c) a subpoena for production and to give evidence shall be in form 34.

(2) Unless the Court otherwise orders, a subpoena may be issued by the Registrar at the request of any party.

(3) Any number of persons may be included in one subpoena, but the copy served need only contain the name of the person upon whom it is served.

(4) A party requesting the issue of a subpoena shall produce a form of subpoena and file a copy thereof.

(5) Subject to any order of the Court, a subpoena may be issued even though the Court has made an order under Part 22 Rule 9.

Conduct money

3. (1) The person named in a subpoena is to be tendered, at the time of service of the subpoena or not later than a reasonable time before the day on which compliance is required by the subpoena, a sum sufficient to meet the reasonable expenses of complying with the subpoena.

(2) The person named is not required to attend on any day on which attendance is required unless that sum is so paid or tendered.

Service of subpoena

4. (1) Service of a subpoena shall be effected in accordance with this Rule unless the Court or the Registrar otherwise directs.

(2) Service of a subpoena may be effected by handing the subpoena or a copy of the subpoena to the person named.

(3) If, on tender of the subpoena to the person named, the person refuses to accept it, the subpoena may be served by putting it down in the presence of that person after the nature of the subpoena has been explained.

(4) Where the person named in the subpoena is a party for whom a solicitor or an agent is acting in the proceedings, the subpoena may, with the consent of the solicitor or agent, be served on the person named by leaving it at the address for service.

(5) Service of a subpoena on a corporation (other than an organisation or association registered or recognised under the Act) may be effected by serving the subpoena in accordance with subrule (2) or (3), as the case may require, on the mayor, chairperson or president, or on the town clerk, clerk, secretary, treasurer or other similar officer of the corporation or, where provision is made by or under any Act for service of a document on a corporation, by serving the subpoena in accordance with that provision.

(6) Service of a subpoena on any organisation or association registered or recognised under the Act may be effected by serving the subpoena in accordance with subrule (2) or (3), as the case may require, on the president, principal officer, secretary, treasurer or other similar officer of the organisation or by serving the subpoena in accordance with Part 10 Rule 4.

(7) A subpoena issued at the request of a party may not be served on the person named later than 5 days before the date the person is required to attend, unless the Court otherwise orders.

(8) An order for short service may be made at any time.

(9) Any application for an order for short service shall indicate the reasons why an order should be made, and unless the Court orders otherwise, shall be dealt with in chambers without the appearance of any person.

(10) A copy of any order for short service must be served with the subpoena or the subpoena shall bear a notation that such order has been made.

Setting aside of subpoena

5. (1) The Court may on application by the person named in the subpoena set aside a subpoena wholly or in part.

(2) An application under subrule (1) shall be served on the party on whose request the subpoena was issued.

Production by non-party

6. (1) A subpoena requiring production of any document or thing shall, unless the Court otherwise orders, permit the person named, instead of attending and producing it, to produce the document or thing to the Registrar by hand or by post so that it is received not later than 2 days before the first date on which production is required.

(2) Where a document or thing is produced to the Registrar in accordance with subrule (1), the Registrar shall:

- (a) if requested so to do, give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the Court directs.

Production of documents by Registrar

7. (1) Where for the purpose of any proceedings a person requests the Registrar in writing to produce to the Court any document in the custody of the Registrar, the Registrar shall, unless the Court otherwise orders, arrange for the production of the document in accordance with the request.

(2) A party desiring the production of a document or thing in the custody of any other court or tribunal must request, in writing, the Registrar to proceed under subrule (3).

(3) On the receipt of a request, the Registrar is to request the court or tribunal holding the document or thing to send it to the Registrar.

(4) The Registrar is required upon receipt of such document or thing to produce the same in accordance with the request or as the Court may direct.

Expenses payable to witnesses

8. (1) Any person who is not a party to proceedings and who is called as a witness or attends at Court in compliance with a subpoena is entitled at the hearing or at any time thereafter to request the Court or the Registrar for an order that the party calling that person or requesting the issue of the subpoena pay the expenses incurred in giving evidence or attending Court in accordance with the scale provided in the Second Schedule.

(2) Such an order may allow the expenses of that person in a fixed amount or may order that such expenses be taxed in accordance with the table of expenses prescribed under the Second Schedule.

PART 16—AMENDMENT**General**

1. (1) The Court may, at any stage of any proceedings, on application by any party or of its own motion, order that any document in the proceedings be amended, or that any party have leave to amend any document in the proceedings, in either case in such manner as the Court thinks fit.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, or of correcting any defect or error in any proceedings, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, subrule (1) applies to the person intended to be made a party as if that person were a party.

(4) This Rule does not apply to the amendment of a minute of a judgment or order.

(5) This Part is subject to section 309.

Amendment of process

2. (1) A party may, without leave, amend originating process once at any time before the matter is set down for hearing.

(2) A party may, subject to subrules (4) and (5), by consent of the parties, amend the originating process at any stage of the proceedings.

(3) Subject to subrules (4) and (5), this Rule applies to an amendment which would have the effect that a person is added as, or ceases to be, a party, as it applies to other amendments.

(4) This Rule does not apply to an amendment which would have the effect of adding a person as an applicant unless:

- (a) the applicant immediately before the amendment is made acts by a solicitor; and
- (b) that solicitor at the time the amendment is made certifies on the amended document:
 - (i) that the solicitor acts for the person added as an applicant; and
 - (ii) that the person consents to being added as an applicant.

(5) This Rule does not apply to an amendment which would have the effect that a person ceases to be a party unless that person consents to ceasing to be a party.

Process by opposite party

3. (1) This Rule applies, subject to any order of the Court, where a party amends pursuant to or without leave of the Court.

(2) Where an applicant amends the originating or other process, a respondent who has filed any process in reply may amend the same within 14 days after service of the amendment under Rule 10.

Disallowance of amendments

4. (1) Where a party amends any process or document under Rule 2 (1) or Rule 3, the Court, on application by an opposite party, may, subject to subrule (2), by order disallow the amendment.

(2) Notice of motion under subrule (1) shall be filed and served within 14 days after the date of service on the applicant under Rule 10.

(3) Where, on the hearing of an application under subrule (1), the Court is satisfied that, if an application for leave to make the amendment had been made under Rule 1 (1) on the date on which the amendment was made under Rule 2 (1) or Rule 3, the Court would not have given leave to make the whole or some part of the amendment, the Court shall disallow the amendment or that part, as the case may be.

Statutes of limitation

5. (1) Where any relevant period of limitation expires after the date of filing of an application and after that expiry an application is made under Rule 1 for leave to amend the application, the Court may make an order giving leave accordingly, notwithstanding that period has expired.

(2) Where there has been a mistake in the name of a party and the Court is satisfied that the mistake was not misleading nor such as to cause reasonable doubt as to the identity of the person intended to be made a party, the Court may make an order for leave to make an amendment to correct the mistake, whether or not the effect of the amendment is to substitute a new party.

(3) The Court may order that an applicant who, in the originating process, makes a claim for relief on a cause of action arising out of any facts, have leave to make an amendment having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts and a claim for relief on that new cause of action.

(4) An amendment made pursuant to an order made under this Rule shall, unless the Court otherwise orders, relate back to the date of filing the originating process.

(5) This Rule does not limit the powers of the Court under Rule 1.

Duration of leave or consent

6. (1) Subject to any extension of time by the Court, where the Court has made an order giving a party leave to amend a document and the party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, before the expiration of 14 days after the date on which the order is made, the order shall cease to have effect.

(2) Where, at the request of a party, each other party gives consent to amend a document, then, if the requesting party does not amend the document in accordance with the consents before the expiration of 14 days after the date on which the consent or the first of the consents is given, all consents shall cease to have effect.

Mode of amendment—directions

7. (1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment.

(2) Rules 8, 9 and 10 have effect subject to subrule (1).

Mode of amendment—simple amendments

8. (1) Where the amendments to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the

document difficult or inconvenient to read and the document has been filed, the amendments may be made by writing the alterations in the document.

(2) A filed document amended under this Rule shall be marked with a statement specifying the date of the amendment and also, if made pursuant to an order, the date of the order or, if not made pursuant to an order, a reference to the Rule authorising the amendment.

Mode of amendment—fresh document

9. Subject to Rule 8 (1), amendments to a filed document shall be made by filing a fresh document, amended as so authorised, and bearing a statement specifying the matters mentioned in Rule 8 (2).

Service after amendment

10. Where a document has been served and is afterwards amended, the party making the amendment shall, on the day on which the amendment is made, serve on the parties on whom the document was served:

- (a) if the amendment is made under Rule 8—a notice specifying the amendments and the matters mentioned in Rule 8 (2); or
- (b) if the amendment is made under Rule 9—the fresh document.

Minute of judgment or order

11. (1) Where there is a mistake in an order or decision, arising from an accidental slip or omission, the Court, on application by any party or of its own motion, may at any time correct the mistake or error.

(2) The Court, on application by any party or of its own motion, may, at any time, for the purpose of carrying out its intention and to express accurately its meaning, correct any order or decision.

(3) Rules 8, 9 and 10 do not apply to a correction made under subrule (1).

PART 17—ADMISSIONS

Voluntary admission

1. (1) A party to proceedings may, by notice served on another party, admit, in favour of the other party, but for the purpose of the proceedings only, the facts specified in the notice.

(2) A party may, with the leave of the Court, withdraw an admission under subrule (1).

Notice to admit facts

2. (1) A party to proceedings may, by notice in form 35 served on another party, require him to admit, for the purpose of the proceedings only, the facts specified in the notice.

(2) If, as to any fact specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit facts, a notice in form 36 disputing that fact, that fact shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit facts is served in favour of the party serving the notice.

(3) A party may, with the leave of the Court, withdraw an admission under subrule (2).

Judgment on admissions

3. (1) Where admissions are made by a party, the Court may, on the application of any other party, give any judgment or make any order to which the applicant is entitled on the admissions.

(2) The Court may exercise its powers under subrule (1) notwithstanding that other questions in the proceedings have not been determined.

Admission of documents discovered

4. (1) Where a list of documents is served on a party under Part 14 (which relates to discovery and inspection of documents), and inspection of any document specified in the list is permitted to that party under that Part, then, subject to subrule (2), the following admissions by that party in favour of the party serving the list shall have the effect unless the Court otherwise orders:

- (a) that the document, if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party:

- (a) has by any process denied the authenticity of a document; or

- (b) within 14 days after the time limited under Part 14 for inspection of a document, serves on the party giving inspection a notice that the authenticity of the document is disputed,

subrule (1) does not work as an admission by the first mentioned party as to that document.

(3) Where a party serves on another party a list of documents pursuant to Part 14, those parties shall be in the position that they would be in if the latter party had, on the date of service of the list, served on the party serving the list a notice requiring production at the trial of such of the documents specified in the list as are in the possession, custody or power of the party serving the list.

(4) Subrules (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Part 14 Rule 8 (which relates to discovery of particular documents) as they apply in relation to a list of documents served under that Part.

Notice to admit documents

5. (1) A party to proceedings may, by notice in form 35 served on another party, require that other party to admit, for the purpose of those proceedings only, the authenticity of the documents specified in the notice.

(2) If, as to any document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit documents, a notice in form 36 disputing the authenticity of the document, the document shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit documents is served.

(3) A party may, with the leave of the Court, withdraw an admission under subrule (2).

Restricted effect of admission

6. An admission under this Part for the purpose of any proceedings shall not be used:

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

PART 18—OFFER OF COMPROMISE**Mode of making offer**

1. (1) An offer or compromise is made to a party under this Part by serving a notice of the offer on the party.

(2) A notice of offer shall:

(a) be prepared in accordance with Part 12 Rules 1–5; and

(b) bear a statement to the effect that the offer is made in accordance with this Part.

Application

2. In any proceedings the applicant or the respondent may make to the other an offer to compromise any claim in the proceedings on the terms specified in the notice of offer.

Time for making or accepting offer

3. (1) An offer may be made at any time before the time prescribed by subrule (8) in respect of the claim to which it relates.

(2) A party may make more than one offer.

(3) An offer may be expressed to be limited as to the time it is open to be accepted but the time expressed shall not be less than 28 days after it is made.

(4) An offeree shall, within 3 days after service, serve a written acknowledgment of receipt on the offeror.

(5) An offeree may accept the offer by serving notice of acceptance in writing on the offeror before:

(a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 28 days after the offer is made; or

(b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,

whichever is sooner.

(6) An offer shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.

(7) An offer is open to be accepted within the period referred to in subrule (5) notwithstanding that during that period the party to whom the offer (the “first offer”) is made makes an offer (the “second offer”) to

the party who made the first offer whether or not the second offer is made in accordance with this Part.

(8) The time prescribed for the purposes of subrules (1) and (5) and Part 25 Rule 33 (3) is after the Court or Registrar gives a decision or begins to give reasons for a judgment (except an interlocutory judgment).

(9) Where an offer is accepted under this Rule, a party to the compromise may request the Court or Registrar to order in accordance with the compromise.

Time for payment

4. An offer providing for the payment of a sum of money, or for the doing of any other act, shall, unless the notice of offer otherwise provides, be taken to provide for the payment of that sum or the doing of that act within 28 days after acceptance of the offer.

Withdrawal of acceptance

5. (1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance:

- (a) where the offer provides for payment of a sum of money or the doing of any other act and the sum is not paid or the act is not done within 28 days after acceptance of the offer or within such other time as the offer provides; or
- (b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceedings taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may:

- (a) give directions under subrule (2);
- (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
- (c) give directions for the further conduct of the proceedings.

Offer without prejudice

6. An offer made in accordance with this Part shall be taken to have been made without prejudice, unless the notice of offer otherwise provides.

Disclosure of offer to Court

7. (1) No statement of the fact that an offer has been made shall be contained in any process, document or affidavit.

(2) Where an offer has not been accepted, then, except as provided by Part 25 Rule 33 (9), no communication with respect to the offer shall be made to the Court at the hearing until after all questions of liability and the relief to be granted have been determined.

(3) Subrules (1) and (2) shall not apply:

- (a) where a notice of offer provides that the offer is not made without prejudice; or
- (b) in so far as disclosure is necessary to enable the offer to be taken into account for the purpose of determining whether any amount or a reduced amount of interest will be ordered under section 157 of the Act.

Failure to comply with accepted offer

8. (1) Where a party to an accepted offer fails to comply with the terms of the offer, then, unless for special cause the Court otherwise orders, the other party shall be entitled, as that party may elect, to:

- (a) such order as is appropriate to give effect to the terms of the accepted offer; or
- (b) where the party in default is the applicant, an order that the proceedings be dismissed, and, where the party in default is the respondent, that any defence be dismissed, and in either case that there be judgment accordingly.

(2) Where a party to an accepted offer fails to comply with the terms of the offer, and a respondent in the proceedings has made a cross-claim which is not the subject of the accepted offer, the Court may make such order or give such judgment under subrule (1) and make such order that the proceeding on the cross-claim be continued as it thinks fit.

Multiple respondents

9. Where 2 or more respondents are alleged to be jointly or jointly and severally liable to the applicant and rights of contribution or indemnity appear to exist between the respondents, Part 25 Rule 33 shall not apply to an offer unless:

- (a) in the case of an offer made by the applicant—the offer is made to all respondents, and is an offer to compromise the claim against all of them; or
- (b) in the case of an offer made to the applicant:

- (i) the offer is to compromise the claim against all respondents; and
- (ii) where the offer is made by 2 or more respondents—by the terms of the offer the respondents who made the offer are jointly or jointly and severally liable to the applicant for the whole amount of the offer.

PART 19—WITHDRAWALS AND DISCONTINUANCE

Withdrawal of appearance

1. A party who has entered an appearance may withdraw the appearance at any time with the leave of the Court.

Discontinuance

2. A party may, before the beginning of the hearing of any proceedings, discontinue the proceedings so far as concerns the whole or any part of any application made by that party:

- (a) where the party or the party's solicitor certifies that the party does not represent any other person and all other parties having an address for service in the proceedings consent; or
- (b) with the leave of the Court.

Withdrawal of process in the nature of defence, reply etc.

3. (1) A party raising any matter in process by way of a defence or reply or in a subsequent process may withdraw that matter at any time.

(2) Subrule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party.

Terms of leave

4. The Court may give leave under Rule 2 or Rule 3 on terms.

Mode of discontinuance or withdrawal

5. (1) A discontinuance or withdrawal under Rule 2 or Rule 3 shall be made by filing a notice in form 37 stating the extent of the discontinuance or withdrawal.

(2) Where the discontinuance or withdrawal is by consent, the notice under subrule (1) must bear the consent of each consenting party.

Service

6. A party filing a notice under Rule 5 shall, on the day of filing, serve the notice on each other party.

Effect of discontinuance

7. A discontinuance under this Part as to any cause of action shall not, subject to the terms of any leave to discontinue, prevent a person from bringing fresh proceedings or claiming the same relief in fresh proceedings.

Stay to secure costs**8. Where:**

- (a) a party discontinues proceedings so far as concerns the whole or any part of any claim for relief and is, by reason of the discontinuance, liable to pay the costs of another party occasioned by the proceedings; and
- (b) before payment of the costs, brings against that other party further proceedings on the same or substantially the same cause of action as that on which the discontinued proceedings were brought, the Court may stay the further proceedings until those costs are paid.

PART 20—TIME**Month**

1. In any order and in any document in any proceeding, unless the context or subject matter otherwise indicates or requires, “**month**” means calendar month.

Reckoning of time

2. (1) Any period of time fixed by Rules or by any order or by any document in any proceeding, shall be reckoned in accordance with this Rule.

(2) Where a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Where, apart from this subrule, the period in question, being a period 5 days or less, would include a day on which the Registry is closed, that day shall be excluded.

(4) Where the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.

(5) Section 36 of the Interpretation Act 1987 does not apply to these Rules.

Extension and abridgment

3. (1) The Court may, on terms, by order, extend or abridge any time fixed by the Rules or by any order.

(2) The Court may extend the time under subrule (1) as well after as before the time expires whether or not an application for the extension is made before the time expires.

(3) The period within which a person is required by Rules or by any order to serve, file or amend any process or other document may be extended by consent without an order for extension.

Fixing time period

4. Where no time is fixed by these Rules for the doing of any thing in or in connection with any proceeding before the Court, the Court may fix the time within which the thing is to be done.

PART 21—MEDIATION

Division 1—Preliminary

Commencement of mediation

1. (1) The Court at any time, on its own motion or upon application by a party to proceedings, order that the proceedings, part of the proceedings, or any matter arising out of proceedings, undergo mediation before the Court or be referred to a mediator.

(2) Where an order under subrule (1) has been made, the mediation must proceed in accordance with this Part unless the Court orders otherwise.

Application of Part

2. A Judge of the Court may act as mediator but Division 2 of this Part does not apply if a Judge undertakes a mediation.

If a Judge undertakes mediation

3. If a Judge undertakes a mediation, the Judge may give any directions with respect to the conduct of the mediation that the Judge thinks fit.

Adjournment of proceedings

4. (1) If the Court makes a mediation order in relation to proceedings, the proceedings stand adjourned until the mediator reports back to the Court unless the Court considers that in all the circumstances the proceedings should not be adjourned.

(2) If the Court considers it appropriate, the proceedings may be adjourned to a fixed date when the mediator must report to the Court on progress in the mediation.

Court may terminate mediation

5. (1) Nothing in this Part prevents the Court from:

- (a) terminating a mediation at any time; or
- (b) terminating the appointment of a mediator; or
- (c) appointing a new mediator to replace a mediator who has died, or ceased to hold office, or whose appointment has been terminated.

(2) If the Court appoints a new mediator, the mediation shall continue on whatever basis the Court considers appropriate, but the Court shall take into account any agreed basis for the mediation in determining the basis for the continued mediation.

Division 2—Mediation**Appointment of time and place**

6. (1) As soon as practicable after a mediation order is made, the Registrar must give the parties written notice:

- (a) of the name and address of the mediator; and
- (b) of the time, date and place of mediation; and
- (c) of any further documents that one or more of the parties must give direct to the mediator for the purposes of the mediation.

(2) In fixing the time and date for the mediation, the Registrar must:

- (a) consult the parties to ascertain their wishes; and
- (b) have regard to the time fixed by the Court within which the mediation must be commenced, or completed, or both.

Conduct of mediation conferences

7. (1) A mediation conference must be conducted:

- (a) in accordance with any directions given by the Court; and
- (b) as a structured process in which the mediator assists the parties by encouraging and facilitating discussion between the parties so that:
 - (i) they may communicate effectively with each other about the dispute; and
 - (ii) if agreement is reached and if the parties consent, the agreement can be included in a consent order.

(2) If part only of proceedings before the Court is the subject of a mediation order, the mediator shall, on the conclusion of the mediation, report back to the Court.

Termination of mediation

8. (1) If the mediator considers that a mediation should not continue, the mediator must report back to the Court.

(2) Subject to any order of the Court the mediation shall then be terminated and the proceedings, part of proceedings, or any matters arising out of the proceedings, shall be adjourned back to the Court.

Who may act as mediator

9. (1) The Court may direct that mediation take place before:

- (a) the Registrar; or
- (b) any other officer of the Court specified in its order; or
- (c) a member of the Industrial Relations Commission of New South Wales (including a member who is also a Judge of the Court); or
- (d) any other person specified in its order.

(2) Where a party nominates a person as mediator, the nomination must be accompanied by that person's written consent to act as mediator.

PART 22—EVIDENCE**Form of evidence**

1. In any proceeding before the Court, it may hear evidence either orally or by affidavit or both, whether notice or intention to call such oral evidence has been given or not.

Evidence in other proceedings

2. Subject to the Act, a party may, with the leave of the Court, but subject to all just exceptions, read into proceedings before that Court evidence taken, or an affidavit filed, in other proceedings under the Act (including proceedings before the Registrar, the Industrial Relations Commission of New South Wales or the Industrial Registrar).

Hearsay and copies

3. (1) Subject to subrule (4), subrules (2) and (3) apply where undue delay or hardship would otherwise be caused.

(2) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of and for the information and belief, the statement shall not be inadmissible on the ground that it is hearsay.

(3) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the document shall not be inadmissible as evidence of the contents of the original on the ground that the original is not produced.

(4) This Rule does not apply to evidence on an issue at a hearing.

Witness statements

4. (1) In any proceedings, the Court may give directions to any party to serve on each other party who has an address for service in the proceedings written statements of the oral evidence which the party intends to adduce in chief on any issues of fact to be decided at the hearing.

(2) Each statement shall be signed by the intended witness unless the signature of the intended witness cannot be procured or the Court otherwise orders.

(3) Directions given under subrule (1) may:

- (a) make different provision with regard to different issues of fact or different witnesses; or
- (b) require that statements be filed; or
- (c) require that notice be given of any objection to any of the evidence in a statement and of the grounds of the objection.

(4) Where the party serving the statement calls the witness at the hearing:

- (a) the party may not, except with the leave of the Court, adduce evidence from the witness, the substance of which is not included in the statement served, except in relation to new matters which have arisen in the course of the hearing; and
- (b) the Court may direct that the statement served, or part of it, shall stand as the evidence, or part of the evidence, in chief of the witness.

(5) A party who fails to comply with a direction given under subrule (1) may not adduce evidence to which the direction related, except with the leave of the Court.

(6) Where the Court directs that a statement be filed, then, subject to any direction of the Court, the statement shall not be filed otherwise than in Court by handing it up in Court on the first occasion after the statement is signed that the proceedings are before the Court for any purpose or, with the leave of the Court, on any later occasion.

(7) A statement which has been served shall, before it is handed up under subrule (6), bear a note of the time, place and manner of service.

(8) This Rule shall not deprive any party of the right to treat any communications as privileged or make admissible evidence otherwise inadmissible.

(9) An application by a party to the Court for an order that the party not be required to comply with a direction under subrule (1) in respect of any proposed witness (whether or not the direction has been given) may be made without serving notice of the motion by which the application is made.

Plans, photographs and models

5. (1) Where a party intends to tender any plan, photograph or model at a hearing, the party shall, not less than 7 days before the commencement of the hearing, give the other parties an opportunity to inspect it and to agree to its admission without proof.

(2) Non-compliance with subrule (1) shall not affect the admissibility of a plan, photograph or model.

Proof of Court or Industrial Relations Commission documents

6. (1) A document purporting to be marked with the seal or stamp of the Court or of the Industrial Relations Commission of New South Wales is admissible in evidence without further proof.

(2) An office copy of a document filed in or issued out of the Court or Commission is admissible in evidence in all proceedings and between all parties to the same extent as the original document would be admissible.

(3) A document purporting to be marked with the seal or stamp of the Court or Commission and to be a copy of a document filed in or issued out of the Court or Commission is admissible in evidence as an office copy of the latter document without further proof.

Unstamped documents: undertaking

7. (1) The “solicitor’s usual undertaking as to stamp duty”, if given to the Court by a solicitor in relation to an instrument referred to in section 29 of the Stamp Duties Act 1920, or an unexecuted copy referred to in that section, is an undertaking that the solicitor will cause the instrument or copy to be presented to the Chief Commissioner of Stamp Duties for assessment in accordance with that Act and cause any duty and fine to which the instrument or copy is liable to be paid.

(2) The “party’s usual undertaking as to stamp duty”, if given to the Court by a party in relation to an instrument referred to in section 29 (4) of the Stamp Duties Act 1920, is an undertaking that the party will within 28 days inform the Chief Commissioner of Stamp Duties of the name of the person primarily liable to duty in respect of the instrument and lodge the instrument or a copy of the instrument with the Chief Commissioner.

Consent of trustee etc.

8. (1) A document purporting to contain the written consent of a person to act as tutor, trustee, or receiver, or to act in any other office on appointment by the Court, and purporting to be executed and authenticated in accordance with subrule (2), is evidence of the consent.

(2) A document is sufficiently executed and authenticated for the purposes of subrule (1):

- (a) where the consenting person is not a corporation, if the document is signed by the consenting person and the signature is verified by some other person; or
- (b) where the consenting person is a corporation, if the seal of the corporation is affixed to the document in the presence of and attested by its clerk, secretary or other permanent officer or deputy of such officer, and a member of the board of directors, council or other governing body of the corporation.

Attendance and production

9. (1) The Court may make orders for:

- (a) the attendance of any person for the purpose of being examined; or
- (b) the attendance of any person and production by that person of any document or thing specified or described in the order; or
- (c) production by any corporation of any document or thing specified or described in the order.

(2) An order under subrule (1) may be made for the attendance of any person before, and production by that person to, or for the production by any corporation to, the Court or any officer of the Court, examiner, referee, arbitrator, or other person authorised to take evidence, on any hearing or other occasion.

(3) Subrules (1) and (2) apply whether or not the person required by the order to attend or produce any document or thing has been required to do so by subpoena.

Leading questions to witness

10. Where a person is examined in relation to an investigation, inspection or report made in the course of carrying out public or official duties, the party calling the person may, unless the Court otherwise directs, examine that person by asking leading questions.

Privilege

11. (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel production of that document or thing except production to the Court for the purpose of ruling on the objection.

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

(3) Subrule (1) applies where an order is made for production to, and subrule (2) applies where a question is put to a person in the course of examination before, the Court or any officer of the Court, or any examiner, referee, or other person authorised to receive evidence, whether on a hearing or on any other occasion.

(4) Where a party to any proceedings claims privilege from production of any document, the Court may, if it thinks fit:

- (a) permit evidence in relation to the claim to be given by any other party by affidavit or otherwise; and
- (b) permit cross-examination on any affidavit used in support of the claim.

(5) This Rule does not affect any rule of law which authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.

(6) Subrules (1), (2) and (3) do not apply to an objection to produce any document or thing or to answer any question on the ground mentioned in subrule (5).

Disclosure of experts' reports and medical and hospital reports

12. (1) Subrules (2)–(5) apply:

- (a) to proceedings in relation to a superannuation appeal under Division 4 of Part 4 of Chapter 4 of the Act; and
- (b) to any other proceedings in which the Court may at any time on the application of a party or of its own motion direct that they shall apply.

(2) In this Rule:

- (a) **“expert’s report”** means a statement by an expert in writing which sets out the expert’s opinion and the facts on which the opinion is formed and which contains the substance of the expert’s evidence which the party serving the statement intends to adduce in chief at the hearing;
- (b) **“hospital report”** means a statement in writing concerning a patient made by or on behalf of a hospital which the party serving the statement intends to adduce in evidence in chief at the hearing;
- (c) **“medical report”** means a statement in writing concerning a patient made by or on behalf of a registered medical practitioner which the party serving the statement intends to adduce in evidence in chief at the hearing.

(3) Unless the Court otherwise orders, in proceedings to which this Rule applies, each party in the proceedings shall, at least 21 days before the date set down for hearing, serve experts’ reports, medical reports and hospital reports on each other party who has an address for service in the proceedings.

(4) An application to the Court for an order under subrule (3) (other than an order solely for abridgment or extension of time) may be made without serving notice of the motion.

(5) In proceedings to which this Rule applies, except with the leave of the Court or by consent of the parties:

- (a) the oral expert evidence in chief of any expert is not admissible unless that evidence is covered by the expert's report served in accordance with this Rule; and
- (b) neither an expert's report nor a medical or hospital report is admissible when tendered under section 14B or section 14CE of the Evidence Act 1898, unless it has been served in accordance with this Rule.

(6) For the purpose of subrule (5), evidence is covered by a report if the report contains the substance of the matters sought to be adduced in evidence.

Expert's report admissible at hearing

13. (1) Where an expert's report is served in accordance with Rule 12 or an order is made under Rule 12 (3), the report is admissible as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact, without further evidence, oral or otherwise.

(2) A party may, unless the Court otherwise orders, not later than 7 days before the date set down for hearing, require the attendance for cross-examination of the expert.

(3) The parties may not by consent abridge the time fixed by or under subrule (2).

(4) A requirement under subrule (2) shall be made to the party who served the report.

(5) Where the attendance of an expert is required under subrule (2), the expert's report shall not be tendered under section 14B or section 14CE of the Evidence Act 1898 or otherwise used unless the person attends or is dead or the Court grants leave to use it.

(6) Where an expert attends pursuant to a requirement under subrule (2), the party using the report may re-examine that expert.

PART 23—PREHEARING CONFERENCES**Holding of prehearing conference**

1. A prehearing conference shall be held in any proceeding whenever directed by the Court or the Registrar and shall be held at such time and place as the Court or the Registrar shall direct.

Reopening of application for directions

2. Upon a prehearing conference the Court may reopen and deal with any application for directions in such manner as it sees fit.

Adjournment

3. (1) The Court or Registrar may adjourn a prehearing conference from time to time, and from place to place, as may be seen fit.

(2) Where a conference is adjourned to a particular date it shall not be necessary for any further notice of the adjournment to be given to any party who was represented at the conference when the time of the adjournment was fixed, but the applicant shall notify all the other parties forthwith in writing of the adjourned date.

(3) Where a conference is adjourned to a date to be fixed, the Registrar may, on the application of any party, fix a date for the resumption of the conference and shall notify the parties thereof.

Considerations listed

4. At a prehearing conference consideration shall be given to:
- (a) the desirability of the parties resolving their differences without further resort to litigation; and
 - (b) the possibility of the claim being settled by compromise; and
 - (c) any further simplification of the issues; and
 - (d) the necessity or desirability of amendments to the process filed; and
 - (e) obtaining further admissions of facts and of documents that will avoid unnecessary proof; and
 - (f) the limitation of the number of witnesses or the issues to be covered by their evidence; and
 - (g) the submissions by the parties to the Court of written arguments on issues of law or on issues of mixed law and fact; and
 - (h) any other matters that might facilitate the expeditious conduct and disposition of the proceedings.

Powers of Court and Registrar

5. On a prehearing conference, the Court or Registrar may:
- (a) require any party to prove by affidavit or otherwise such matters as the Court thinks fit; or
 - (b) require any party to produce any document provided that such document would be admissible in evidence at the time of the action; or
 - (c) modify the general practice prescribed by these Rules; or
 - (d) limit the number of expert witnesses or the issues to be covered by their evidence; or
 - (e) require the attendance of any party unless in the circumstances it would not be reasonable for that party to attend; or
 - (f) where any party is other than a single natural person, require the attendance at the conference of a representative of such party who has authority to enter into a compromise on behalf of that party unless in the circumstances it would be unreasonable to require the attendance of such a representative; or
 - (g) give directions about the subsequent course of the proceedings; or
 - (h) prepare a prehearing conference report concerning any matter dealt with at the conference, and authorise any party to make such use as is proper of that report.

Disqualification of judge

6. No judge shall by reason of having conducted a prehearing conference be disqualified from taking any other part in the proceedings unless such judge shall think it proper in the circumstances to disqualify himself or herself.

Failure to comply with any direction

7. Where any party fails to comply with any requirement or direction made pursuant to Rule 5:
- (a) the Court may consider any application made by any other party to deal with the party in default; or
 - (b) the Court may strike out any process of the party in default; or
 - (c) the Court or the Registrar may adjourn the proceedings until the party in default has complied with the requirements or directions given; or
 - (d) the Court or the Registrar may take such other action as is considered appropriate.

PART 24—SOLICITORS AND AGENTS**Solicitors and agents**

1. Every matter or thing which under these Rules is required or permitted to be done by a party may be done by a solicitor or agent for the party.

Effect of change of solicitor or agent

2. (1) A change (including removal or withdrawal) of a solicitor or agent of which notice is required or permitted to be filed has no effect:

- (a) as between a party or solicitor or agent to whom the change relates and the Court until notice of the change is filed; and
- (b) as regards any other party, until notice of the change is filed and served on that party (or the party's solicitor or agent).

(2) Where a notice of change of solicitor or agent has no effect because it has not been filed or served in accordance with subrule (1), the address of the solicitor or agent (or solicitor's agent) may be continued to be used as the address for service.

Adverse parties

3. Where a solicitor or an agent or partner of the solicitor or agent acts as solicitor or agent for any party to any proceedings, or is a party to any proceedings, that solicitor or agent shall not, without leave of the Court, act for any other party to the proceedings not in the same interest.

Change of solicitor or agent

4. (1) Where a solicitor or an agent acts for a party, the party may change that solicitor or agent.

(2) A party who changes a solicitor or agent shall file notice of the change and serve the notice on the other parties and, where practicable, the former solicitor or agent.

Change of solicitor's agent

5. Where a solicitor (in this Rule called the principal solicitor) acts for a party in proceedings and another solicitor acts as agent for the principal solicitor, and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve notice on the other parties and on the former agent solicitor.

Appointment of solicitor or agent

6. A party who acts without a solicitor or agent in any proceedings and afterwards appoints a solicitor or an agent to act in the proceedings shall file notice of the change and serve the notice on the other parties.

Removal of solicitor or agent

7. Where a solicitor or an agent acts for a party in any proceedings and afterwards the party terminates the authority of the solicitor or agent to act:

- (a) the party shall file notice of the change and serve the notice on the other parties and on the former solicitor or agent; and
- (b) the former solicitor or agent may file notice of the change and serve the notice on the parties.

Withdrawal of solicitor or agent

8. (1) Where a solicitor or an agent acts for a party to any proceedings and afterwards ceases to act, the solicitor or agent may, subject to subrule (2), file notice of the change and serve the notice on the parties.

(2) A solicitor or an agent shall not file or serve notice of a change under subrule (1) without leave of the Court unless the solicitor or agent has, not less than 7 days before doing so, served on the former client notice of intention to file and serve the notice of change.

(3) A solicitor or an agent filing a notice of change under subrule (1) shall, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with subrule (2).

(4) A solicitor or an agent may serve a notice under this Rule on the former client by posting it to the former client at the residential or business address of the former client last known to the solicitor.

Signature for solicitor

9. (1) Where any signature by a solicitor (“the Solicitor”) is required or permitted for the purpose of any proceedings, the signature for the Solicitor by any of the following persons shall, as well as the signature of the Solicitor, be sufficient:

- (a) a partner of the Solicitor;
- (b) a solicitor who is agent of the Solicitor for the purpose of the proceedings;

1992—No. 137

- (c) a partner of the agent of the Solicitor;
- (d) a solicitor employed by:
 - (i) the Solicitor;
 - (ii) the agent of the Solicitor;
 - (iii) the Solicitor's employer; or
 - (iv) the firm in which the Solicitor or the agent is a partner; and
- (e) a signatory authorised under subrule (2).

(2) Anything that is required or permitted for the purpose of any proceedings to be signed by a solicitor is to be taken to have been signed by the solicitor (being a solicitor corporation) if

- (a) it has the corporation's seal affixed to it; or
- (b) it is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

(3) A signature made pursuant to this Rule shall be accompanied by a statement of the capacity in which the signature is made.

Actions by a solicitor corporation

10. Where, by or under these Rules:

- (a) any act, matter or thing is authorised or required to be done by a solicitor for a person; and
- (b) the solicitor is a solicitor corporation; and
- (c) the act, matter or thing can, in the circumstances of the case, only be done by a natural person,

the act, matter or thing may be done by a director of the corporation or by an officer or by an employee of the corporation who is a solicitor.

Form of notice

11. Where notice of change, appointment or ceasing to act is required under this Part, such notice shall be in form 38.

PART 25—COSTS**Interpretation**

1. In this Part unless the contrary intention appears:

“**bill**” means bill of costs; and

“**taxed costs**” means costs taxed in accordance with this Part.

Application

2. The provisions of this Part apply to costs payable or to be taxed under any order of the Court, or under the Rules, and costs to be taxed in the Court under any Act.

Costs to be in the discretion of the Court

3. (1) Costs of or incidental to all proceedings in the Court (including proceedings in chambers or before the Registrar) are in the absolute discretion of the Court.

(2) In exercising such discretion, the Court may take into account any factor it considers relevant, including:

- (a) the behaviour of the parties in the proceedings; and
- (b) the merits or otherwise of any application or defence; and
- (c) the extent to which mediation was availed of by the parties; and
- (d) any attempts at settlement or any offers of compromise filed; and
- (e) the importance of the subject matter; and
- (f) the amount in issue; and
- (g) the time the matter took before the Court and the extent to which the behaviour of the parties, or their solicitors or agents, added to or reduced the length of the hearing; and
- (h) any matter which a taxing officer may have regard to under Rule 28.

Disallowance of costs of improper, vexatious or unnecessary matter in documents or proceedings

4. (1) The Court may, at a hearing or upon any application and whether or not objection is taken:

- (a) direct that any costs which have been improperly, unreasonably or negligently incurred be disallowed; or
- (b) direct the taxing officer to examine the costs incurred, and to disallow any such costs found by the taxing officer to have been improperly, unreasonably or negligently incurred; or
- (c) direct that a party whose costs are so disallowed shall pay the other parties the costs incurred by those parties in relation to the proceedings in respect of which costs have been disallowed.

(2) Where the question of costs having been improperly, unreasonably or negligently incurred has not been raised before and dealt with by the Court, it is the duty of the taxing officer to look into that question, and

thereupon the same consequences shall ensue as if the taxing officer had been specially directed under subrule (1) (b).

(3) This Rule does not affect the generality of Rule 3.

Time for dealing with costs

5. (1) The Court may in any proceedings exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

(2) Where the Court makes an order in any proceedings for the payment of costs the Court may require that the costs be paid forthwith notwithstanding that the proceedings are not concluded.

(3) An order for costs of an interlocutory proceeding shall not, unless the Court otherwise orders, entitle a party to have a bill of costs taxed until the principal proceeding in which the interlocutory order was made is concluded.

Taxed costs and other provisions

6. (1) Subject to this Part, where by or under these Rules or any order of the Court costs are to be paid to any person, that person shall be entitled to taxed costs.

(2) Where the Court orders that costs be paid to any person, the Court may further order that as to the whole or any part of the costs specified in the order, instead of taxed costs, that person shall be entitled to:

- (a) a proportion specified in the order of the taxed costs; or
- (b) the taxed costs from or up to a stage of the proceedings specified in the order; or
- (c) a gross sum specified in the order instead of the taxed costs; or
- (d) a sum in respect of costs to be ascertained in such manner as the Court may direct.

Costs in other courts or tribunals

7. Where in a proceeding transferred to or removed into the Court or in a proceeding on an appeal to the Court, the Court makes an order as to the costs of a proceeding before any other court or tribunal, the Court may:

- (a) specify the amount of the costs to be allowed; or
- (b) order that the costs be taxed in accordance with this Part; or

- (c) make orders for the ascertainment of the costs by taxation or otherwise in that other court or tribunal or in such other manner as the Court may direct.

Order for payment

8. Subject to this Part or to the effect of any agreement between the parties, a party to a proceeding in the Court shall not be entitled to recover any costs of and incidental to the proceedings from any other party to the proceeding except under an order of the Court.

Order for taxation when not required

9. Where:

- (a) an order of the Court directs the payment of costs; or
- (b) the proceeding is dismissed with costs; or
- (c) a motion is refused with costs; or
- (d) a party may tax costs on the discontinuance of a proceeding or upon the discontinuance of an appeal; or
- (e) a party may tax costs under Rule 32 on the acceptance of an offer of compromise; or
- (f) a party is otherwise liable under these Rules to pay the costs of another party,

the costs may be taxed without any order directing taxation.

Registrar to tax costs

10. (1) Unless the Court in a particular case otherwise orders, costs and fees which have been directed to be taxed or are under these Rules liable to be taxed without express direction shall be taxed, allowed and certified by a taxing officer appointed under Rule 42.

(2) The taxing officer shall on the application of the party entitled to costs, appoint a time for taxation.

Solicitor or agent to repay costs due to delay or misconduct

11. (1) The Court may, after reference to and report by the taxing officer, order a solicitor or agent to repay to the clients costs ordered to be paid by the client to another party where those costs have been incurred by that party in consequence of delay or misconduct on the part of the solicitor or agent.

(2) The term solicitor in this Rule includes the solicitor's agent,

Scale of costs

12. (1) Except as otherwise ordered, in all proceedings commenced on and after the date these Rules came into operation, solicitors are, subject to these Rules, entitled on taxation to be allowed the fees set forth in the Second Schedule in respect of the matters referred to in that Schedule.

(2) In addition to the fees set forth in the Second Schedule, solicitors are, subject to these Rules, entitled on taxation to be allowed counsel's fees, witnesses' conduct money and expenses, Court fees and such other disbursements as may be allowed under that Schedule.

Costs on claims for recovery of money or for damages

13. (1) Notwithstanding Rule 12, the costs allowable in any claim for money or damages shall, unless the Court otherwise orders, be as follows:

Rate	Where the amount recovered	Percentage of the Second Schedule allowable:
(a)	is less than \$10,000	—Nil
(b)	is more than \$10,000 but less than \$25,000	—25% of the amount.
(c)	is more than \$25,000 but less than \$50,000	—50% of the amount.
(d)	is more than \$50,000 but less than \$75,000	—75% of the amount.
(e)	exceeds \$75,000	—at full scale.

plus, in the case of (b), (c), (d) and (e), the reasonable disbursements, to the extent that they are properly made.

(2) Notwithstanding subrule (1), an applicant who in any claim for money under Division 4 of Part 4 of these Rules fails to recover more than \$40,000 shall not be entitled to the payment of costs unless the Court otherwise orders.

(3) Where a respondent in any claim for money is entitled to an order for costs, the costs allowable to such respondent shall, unless the Court otherwise orders, be that allowable to an applicant as though the amount claimed was the amount recovered.

Costs on other claims

14. Where costs are awarded in an application which does not relate to money, or in which no money amount is claimed in the application, the

Court or the Registrar shall determine what Rate or other percentage of the Scale is appropriate having regard to the nature of the proceedings and their outcome.

Filing and service

15. (1) A party may move to proceed with taxation of a bill by filing the bill in form 39 and a request in form 40, or, if the bill has previously been filed in the proceedings, by requesting the taxing officer (in form 40) to proceed with the taxation.

(2) A party moving under subrule (1) shall, if requested by a taxing officer to do so, lodge any documents required for the purpose of the taxation.

(3) The party filing the bill shall, on the date of filing, serve the bill on each other party interested in the taxation.

(4) This Rule applies unless the Court otherwise orders.

Notice to file objections

16. (1) A notice to file objections in form 41 shall be attached to or subscribed to the bill.

(2) A party filing a notice of objection shall, on the date of filing, serve the notice on each other party interested in the taxation.

(3) Where a notice of objection is filed within the time limited by the notice to file objections, the items to which objection is taken in the notice of objection shall be taxed and the other items shall unless the taxing officer otherwise directs, be allowed.

(4) Where the time limited to serve a notice of objection has expired and the party who filed the bill has not been served with a notice of objection, that party shall file an affidavit verifying service of the bill.

(5) A taxing officer, if satisfied that:

(a) the requirements of this Rule relating to the service of the bill have been complied with; and

(b) the time limited to file a notice of objection has expired; and

(c) a notice of objection has not been filed within the time limited,

may make a certificate in the amount of the costs claimed in the bill or such other amount as the taxing officer thinks fit.

Notice of taxing costs and copy bill

17. (1) Where taxation is required, 7 days' notice of the time appointed for the taxation of costs shall be given by the party whose costs are to be taxed to the other party or the solicitor for the party.

(2) The taxing officer may in cases of urgency direct that not less than 1 day's notice shall be given.

Review of taxation

18. Every taxation of costs and every decision of a taxing officer may be reviewed by the Court on the application of any party.

Taxing officers to assist each other

19. Taxing officers shall assist each other and in the discharge of their duties and, for the proper despatch of the business of the respective officers, the taxing officer may tax or assist in the taxation of a bill of costs which has been referred to another taxing officer for taxation.

Costs of interlocutory proceedings

20. All costs to which a party is entitled under any interlocutory order made in a proceeding shall be included in the final certificate unless the costs have already been paid.

Costs reserved

21. Where the costs of a motion under Part 5 Rule 1 are reserved by the Court, the costs so reserved shall, unless the Court otherwise orders, be included in the final order for costs.

Notice of adjournment of taxation

22. If the taxation of a bill is adjourned for any reason, notice of the adjournment shall be sent by post by the party with the carriage of the taxation to any solicitor or person not present at the time of the adjournment on whom the original bill of costs was served.

Refusal or neglect to procure taxation

23. Where a party entitled to costs refuses or neglects to bring in those costs for taxation or to procure them to be taxed, the taxing officer may, so as to prevent another party being prejudiced by the refusal or neglect:

- (a) certify the costs of the other party and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting to bring in the costs.

Delay before taxing officer

24. Where in a proceeding before the taxing officer a party is guilty of neglect or delay or puts another party to any unnecessary or improper expense, the taxing officer may exercise the powers vested under Rule 23.

Costs to be allowed on taxation

25. On every taxation the taxing officer shall allow all such costs charges and expenses as appear to be reasonable and to have been necessary or proper for the attainment of justice or for maintaining or defending the rights of a party, but, except as against the party who incurred them, costs shall not be allowed which appear to the taxing officer to have been incurred or increased:

- (a) through over-caution, negligence or misconduct; or
- (b) by payment of special fees to counsel or special charges or expenses to witnesses or other persons; or
- (c) by other unusual expenses.

Disbursements in solicitor's bills

26. (1) Subject to subrule (2), a disbursement may be disallowed where it has not been actually paid before the delivery of the bill of costs.

(2) Where the bill expressly states that disbursements have not been made before delivery of the bill and sets out the unpaid items of disbursement under a separate heading in the bill, they may be allowed by the taxing officer if they have been actually paid before the giving of the certificate of taxation and are paid in discharge of an antecedent liability of the solicitor, including counsel's fees, properly incurred on behalf of the client.

Fees not here provided for

27. The taxing officer may allow such sums as the taxing officer thinks just and reasonable having regard to all the circumstances of the case for work and labour properly performed and not specifically provided for in the Second Schedule.

Taxing officers' discretion

28. (1) In the case of a fee or allowance which is discretionary it shall, unless otherwise provided, be allowed at the discretion of the taxing officer.

(2) The taxing officer in the exercise of such discretion shall take into consideration:

- (a) the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which such a fee or allowance applies; and
- (b) the nature and importance of the proceeding; and
- (c) the amount involved; and
- (d) the principle involved; and
- (e) the interest of the parties; and
- (f) the fund, estate or person to bear the costs; and
- (g) the general conduct and cost of the proceeding; and
- (h) all other relevant circumstances.

Extension of time

29. A party applying for an extension of time shall, unless the Court otherwise orders, pay the costs of and occasioned by the application or any order made on or in consequence of the application.

Non-admission of fact

30. Where a party to any proceeding serves a notice disputing a fact under Part 17 Rule 2 and afterwards that fact is proved in the proceeding, the party shall, unless the Court otherwise orders, pay the costs of proof.

Discontinuance

31. (1) Where pursuant to Part 19 a party to any proceeding discontinues the proceeding without leave as to whole or any part of the relief claimed against any other party, the discontinuing party shall, unless the Court otherwise orders, pay the costs of the party against whom the discontinued claim was made incurred before service of notice of the discontinuance and the latter party may request the Court or the Registrar to make an order accordingly.

(2) A party whose costs are payable under subrule (1) may tax the costs.

Offer of compromise

32. (1) Upon the making of an order under Part 18 Rule 3 (9), a party entitled to costs may, unless the Court otherwise orders, tax the same up to and including the day the offer was accepted.

(2) If a notice of offer contains a term which purports to negative or limit the entitlement to costs, that term shall, unless the Court otherwise orders, be of no effect for any purpose under Part 18 or this Rule.

(3) Subrules (4)–(7) apply to an offer which has not been accepted at the time prescribed by Part 18 Rule 3 (8).

(4) Where an offer is made by an applicant and not accepted by the respondent, and the applicant obtains an order on the claim to which the offer relates no less favourable than the terms of the offer, then, unless the Court otherwise orders, the applicant shall be entitled to an order against the respondent for costs in respect of the claim from the day on which the offer was made, taxed on an indemnity basis in addition to costs incurred before and on that day, taxed on a party and party basis.

(5) For the purpose of subrule (4), where the offer was made on the first or a later day of the hearing of the proceedings, then, unless the Court otherwise orders, the applicant shall be entitled to costs in respect of the claim from 11 a.m. on the day following the day on which the offer was made, taxed on an indemnity basis, in addition to costs incurred before that time, taxed on a party and party basis.

(6) Where an offer is made by a respondent and not accepted by the applicant, and the applicant obtains an order on the claim to which the offer relates not more favourable than the terms of the offer, then, unless the Court otherwise orders, the applicant shall be entitled to an order against the respondent for costs in respect of the claim up to and including the day the offer was made, taxed on a party and party basis, and the respondent shall be entitled to an order against the applicant for costs in respect of the claim thereafter, taxed on a party and party basis.

(7) For the purpose of subrule (6), where the offer was made on the first or a later day of the hearing of the proceedings, then, unless the Court otherwise orders, the applicant shall be entitled to costs in respect of the claim up to 11 a.m. on the day following the day on which the offer was made, taxed on a party and party basis, and the respondent shall be entitled to costs in respect of the claim thereafter, taxed on a party and party basis.

(8) Where an applicant obtains an order for the payment of a debt or damages and:

(a) the amount payable under the order includes interest or damages in the nature of interest; or

(b) by or under any Act the Court awards the applicant interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (6), the Court shall disregard so much of the interest as relates to the period after the day the offer was made.

(9) For the purpose only of subrule (8), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

(10) Subrules (4) and (6) shall not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to carry out what the party offered.

Continuance of interlocutory injunction

33. Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

Costs of application or step within proceedings

34. Subject to this Part, the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be deemed to be part of the costs of the cause of the party in whose favour the application or other step is determined and shall be paid and otherwise dealt with in accordance with the provisions of this Part.

Costs of application or step within proceedings where stood over to hearing

35. When a motion, application or other proceeding is ordered to stand over to the hearing and no order is made at the hearing as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the cause.

Counsel's attendance at taxation

36. Costs in respect of counsel attending before the taxing officer shall not be allowed unless the taxing officer certifies the attendance to be proper, or the Court otherwise orders.

Refreshers

37. (1) Where counsel is briefed to appear on a hearing and the hearing occupies more than 4½ hours, the taxing officer may allow refresher fees in such amount as the taxing officer thinks fit for every 4½ hours occupied by the hearing after the first 4½ hours and for the remaining duration of the hearing.

(2) The taxing officer may allow refreshers under subrule (1) whether or not witnesses are examined at the hearing.

Absence of counsel

38. (1) Where counsel is briefed to appear on a hearing, counsel's fees on the brief shall not be allowed unless:

- (a) counsel is present at the hearing for a substantial amount of the relevant period; or
- (b) counsel gives substantial assistance during the relevant period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

(2) In subrule (1), “**relevant period**” means the period of the hearing or, if the hearing lasts more than 4½ hours, the first 4½ hours.

4½ hour periods

39. (1) In reckoning the 4½ hour period mentioned in Rules 37 and 38, the mid-day adjournment shall not be included unless the Court otherwise orders.

(2) Where the commencement or resumption of a hearing is delayed beyond the listed time, the taxing officer may include waiting time in reckoning the 4½ hour period mentioned in Rules 37 and 38.

Unnecessary appearance in Court

40. Where a party appears upon a proceeding before the Court or before the Registrar, in which that party is not interested or upon which, according to the practice of the Court, that party ought not to appear, that party shall not be allowed any costs of appearance unless the Court or Registrar expressly directs the costs to be allowed.

Powers of taxing officer

41. The taxing officer may, for the purpose of taxation of costs:

- (a) summon and examine witnesses either orally or upon affidavit; and

- (b) administer oaths; and
- (c) direct or require the production of books, papers and documents; and
- (d) issue subpoenas; and
- (e) make separate or interim certificates; and
- (f) require a party to be represented by a separate solicitor; and
- (g) do such other acts or take all such other steps as are directed by these Rules or by the Court.

Registrars appointed taxing officers

42. (1) The Registrar and Deputy Registrar are appointed taxing officers.

(2) The Court may appoint any other officer of the Court as a taxing officer.

(3) A taxing officer may, on the motion of the taxing officer, refer any question arising in a taxation for the direction of the Court.

Bill of costs

43. A bill of costs shall contain particulars of:

- (a) work done by or on behalf of the solicitor; and
- (b) costs claimed for such work; and
- (c) disbursements made.

Objection to decision of taxing officer

44. (1) Where a taxing officer allows or disallows, wholly or in part, any item in a bill, or allows some amount in respect of any item, a certificate shall not be given until the expiry of 14 days after the date of that decision, except with the consent of the parties to the taxation.

(2) A party to the taxation who objects to the decision may apply to the taxing officer to reconsider such decision.

(3) An application under subrule (2) shall be made by motion to the taxing officer.

(4) Notice of the motion shall be filed within 14 days after the date of the decision.

(5) The applicant shall file with or subscribe to the notice a statement of the objections.

(6) A statement of objection shall specify by a list the items as to which the applicant objects to the decision of the taxing officer and must state briefly, but specifically, the nature and grounds of each objection.

(7) An applicant under subrule (2) shall, on the date of filing the notice of motion and statement of objections, serve the notice and statement on each party interested.

Reconsideration

45. (1) Upon motion made under Rule 44, the taxing officer:

- (a) shall reconsider the decision to which objection is made and shall give a certificate in accordance with the decision on reconsideration; and
- (b) shall upon request by any party, state, in the certificate or some other document, and by reference to the objections to the previous decision, the reasons for the decision on reconsideration.

(2) On the reconsideration, a party shall not, unless the taxing officer otherwise directs, raise any ground of objection not stated in a statement of objection.

(3) A request under subrule (1) (b) shall be made within 14 days after the date of the decision on reconsideration to which the request relates.

(4) The taxing officer may tax the costs of the objections to the decision and add them to, or deduct them from, any sum payable by or to a party to the taxation.

Review

46. (1) Where a request has been made to a taxing officer pursuant to Rule 45, the Court shall, on motion by any party interested, review the decision of the taxing officer on reconsideration.

(2) Where, during the time within which a request may be made under Rule 45, it becomes impracticable to make the request by reason of the death or incapacity of, or other matter personal to, the taxing officer, subrule (1) shall apply notwithstanding that a request under Rule 45 has not been made.

(3) Notice of the motion shall be filed within 28 days after the certificate is given, but the Court, or the taxing officer when giving a certificate, may extend the time.

(4) On the review, unless the Court by order otherwise directs:

- (a) further evidence shall not be received; and

- (b) a party shall not raise any ground of objection not either stated in a statement of objection or raised before the taxing officer.
- (5) Subject to subrule (4), on the review, the Court may:
 - (a) exercise all the powers and discretions of the taxing officer in relation to the subject matter of the review; and
 - (b) make orders for the alteration of the certificate; and
 - (c) make orders for the remission of any item to the same or any other taxing officer for taxation; and
 - (d) make such other orders as the nature of the case requires.

Certificate of taxation

47. (1) On completion of taxation, the taxing officer shall, issue a certificate of taxation, with sufficient number of office copies as are needed for the parties responsible for the payment of costs.

(2) The certificate of taxation must be served on the party responsible for its payment.

PART 26—PROCEEDINGS RELATING TO PROSECUTION

Prosecutions

1. (1) Proceedings before the Court for an offence (other than contempt) shall, unless otherwise provided, be commenced by application for summons in form 42, shall be accompanied by an affidavit verifying the allegations made in the application and shall state:

- (a) the name and address of the person by whom the proceedings are brought (the prosecutor); and
- (b) the capacity in which the prosecutor is taking the proceedings; and
- (c) the name and address of the person against whom the proceedings are brought (the defendant); and
- (d) the Act and the section under which the application is made; and
- (e) the nature of the breach or offence which is alleged; and
- (f) particulars of any payment which it is alleged the defendant has failed to make, and whether an application is to be made pursuant to section 166 (2) for an order in respect of those payments.

(2) The application shall also be accompanied by a summons in form 43, addressed to the defendant, for signature by or on behalf of the Registrar.

Issue of summons

2. Where an application for a summons has been filed and it appears to the Registrar to be properly filed, the Registrar shall issue the summons, commanding the defendant to appear before the Court on the day and at the place specified.

Service of summons and affidavit verifying

3. (1) The prosecutor shall serve the summons and a copy of the affidavit verifying promptly and not later than 5 days before the return day of the summons unless the Court gives leave for a shorter period of service.

(2) Such service shall be effected in the manner specified in Part 10 Rules 2 (a) or (b), 3 (a), (b) or (c), 4 (2) (a), (b) or (c) or 5 (1) or (2).

(3) An affidavit of service of the summons or a notification of the non-service thereof shall be filed not less than 3 days before the return day of the summons.

(4) The Registrar may give directions with regard to service or for substituted service in accordance with these Rules.

(5) Where a summons has not been served before the return date, the Registrar shall, upon an application being made to the Registrar by the prosecutor and the lodging of that summons and another form of summons with the Registrar, issue a further summons for the attendance of the person summoned at such place and at such time on such date as may be specified therein.

Dismissal for want of prosecution

4. (1) Where the prosecutor fails to appear or otherwise does not proceed with the matter, the Court may dismiss the same.

(2) Any matter which has been dismissed under this Rule may be restored to the list by the Court on such terms as are deemed reasonable where the Court is satisfied that such failure was due to misunderstanding or that there are other special circumstances.

Discontinuance and withdrawal of proceedings

5. Any proceedings under this Part may, with leave of the Court, be discontinued or withdrawn in accordance with Part 19.

Amendment of process

6. (1) The Court may, on the application of any party at any time during the proceedings or made, in writing, to the Registrar, at any time, allow an amendment to be made of any process upon such terms as to adjournment, the times within which any matter or thing may be done in connection with the proceedings, and service of notice of the amendment, as the Court thinks fit.

(2) This power is additional to the power granted by section 170 of the Act.

Motion for writ of injunction

7. (1) A motion for a writ of injunction under section 167 shall be by motion on notice which shall be served as directed by the Court or the Registrar.

(2) Such motion may be endorsed on or annexed to the originating process and served therewith.

(3) The writ of injunction shall be in form 44.

PART 27—CONTEMPT**Division 1—Preliminary****Interpretation**

1. In this Part, “offender” means a person guilty or alleged to be guilty of contempt of the Court.

Division 2—Contempt in the face or hearing of the Court**Arrest**

2. Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court, committed in the face of the Court or within the hearing of the Court, the Court may:

- (a) by oral order direct that the offender be brought before the Court;
or
- (b) issue a warrant for the arrest of the offender.

Charge defence and determination

3. Where the offender is brought before the Court, the Court shall:

- (a) cause the offender to be informed orally of the contempt charged;
and

- (b) require the offender to make a defence to the charge; and
- (c) after hearing the offender, determine the matter of the charge; and
- (d) make an order for the punishment or discharge of the offender.

Interim custody

4. (1) The Court may, pending disposal of the charge:

- (a) direct that the offender be kept in such custody as the Court may determine; or
- (b) direct that the offender be released.

(2) The Court may make a direction under subrule (1) (b) on terms, which may include a requirement that the offender give security, in such sum as the Court directs, for the appearance of the offender in person to answer the charge.

Division 3—Motion or proceedings for punishment

Application

5. This Division does not apply to a case in which the Court proceeds under Division 2.

Procedure generally

6. (1) Where contempt is committed in connection with proceedings in the Court, an application for punishment for the contempt must be made by notice of motion.

(2) Where contempt is committed, but not in connection with proceedings in the Court, proceedings for punishment of the contempt must be commenced by application.

(3) Proceedings for contempt which have not been commenced in the appropriate manner may nevertheless be continued unless the Court otherwise orders.

Statement of charge

7. A statement of charge (that is, a statement specifying the contempt of which the offender is alleged to be guilty) shall be included or filed with the notice of motion or application.

Evidence

8. (1) Subject to subrule (2), the evidence in support of the charge shall be by affidavit.

(2) The Court may, on terms, permit evidence in support of the charge to be given otherwise than by affidavit.

Service

9. The notice of motion or application, the statement of charge and the affidavits shall be served personally on the offender.

Arrest

10. Where:

- (a) notice of a motion for punishment of a contempt has been filed or proceedings have been commenced for punishment of a contempt; and
- (b) it appears to the Court that the offender is likely to abscond or otherwise withdraw from the jurisdiction of the Court,

the Court may issue a warrant for the arrest and detention in custody of the offender until the offender is brought before the Court to answer the charge, unless, in the meantime, security is given in such manner and in such sum as the Court directs, for the appearance in person of the offender to answer the charge and to submit to the order of the Court.

Motion or proceedings by the Registrar

11. (1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court, the Court may, by order, direct the Registrar to apply by motion for, or to commence proceedings for, punishment of the contempt.

(2) Subrule (1) does not affect such right as any person other than the Registrar may have to commence proceedings for punishment of contempt.

Warrant

12. A warrant for the arrest or detention under this Part of an offender shall be addressed to the Sheriff and may be issued under the hand of the judge or officer presiding in the Court directing the arrest or detention,

PART 28—MATTERS BEFORE THE REGISTRAR**Division 1—Preliminary****Interpretation**

1. In this Part, “**decision**” includes an order, opinion, direction, determination or certificate.

Powers

2. The Registrar may exercise the powers of the Court:
- (a) in respect of the matters mentioned in the Third Schedule; and
 - (b) in respect of any matter arising under the Rules; and
 - (c) in respect of any matter remitted to the Registrar by the Court.

Decision or order

3. The Registrar shall, on the disposal of any matter, give such decision or make such order as the nature of the case requires except where the Court or these Rules requires the matter to be disposed of in some other way.

Division 2—Reference and Removal**Reference**

4. The Registrar may, with or without an application by a party, refer any proceedings to the Court.

Removal

5. The Court, before the conclusion of any proceedings before the Registrar, may on its own motion or on application by a party, order that the proceedings be removed into the Court.

Disposal

6. Upon the reference of any proceedings to the Court under Rule 4 or the removal of any proceedings into the Court under Rule 5, the Court may:

- (a) hear and determine any matter in the proceedings in respect of which matter the proceedings were before the Registrar; or
- (b) determine any question arising in the proceedings and remit the proceedings to the Registrar with such directions as the Court thinks fit.

Division 3—Appeals to Court**Appeal to Court**

7. (1) An appeal to the Court lies against any decision of the Registrar's dealt with under Rule 2.

(2) The provisions of Part 7 apply to such appeals.

Division 4—General Powers and Duties**Mandatory order**

8. The Court may by order direct the Registrar to do, in any proceedings, any act relating to the duties of the office of Registrar.

Procedure before Registrar

9. The Registrar may, in relation to any matter committed to the Registrar by the Act or referred to the Registrar by the Court:

- (a)** summon any person to confer, give evidence, produce documents or other things or do all or any combination thereof; or
- (b)** adjourn any hearing; or
- (c)** amend or give leave to amend any process.

Service of appointment before Registrar

10. Notice of an appointment to proceed upon any matter before the Registrar shall be in form 45 or as the Registrar otherwise directs and, unless otherwise directed by the Registrar, shall be issued and served as promptly as possible and at least 3 days before the time appointed.

Application to Registrar for exemption from procedural requirements

11. Unless the Registrar otherwise directs, an application to the Registrar for any order or direction relating to procedural requirements under these Rules or for any exemption therefrom shall be by notice of motion supported by affidavit and may be made ex parte.

PART 29—MISCELLANEOUS**New matters under an award**

1. (1) An application for a certificate that a matter is a “new matter” pursuant to section 202 shall be made by application in form 2.

(2) The certificate shall be in form 46.

Certificate as to unfair contract

2. The certificate pursuant to section 281 (3) that the Court has found a contract to be unfair, harsh or unconscionable, or against the public interest shall be in form 47.

FIRST SCHEDULE

Forms

Form No.	Description	Reference
1	Notice of Motion	Pt. 3 r. 2 (1) Pt. 4 r. 1 (2)
2	General Form of Application	Pt. 4 r. 1 (1)
3	Summons to Show Cause	Pt. 4 r. 1 (3)
4	Affidavit of Service	Pt. 4 r. 3
5	Summons for relief—section 275	Pt. 4 r. 9
6	Summons for relief—section 281	Pt. 4 r. 10
7	Summons for relief—section 133	Pt. 4 r. 11
8	Application for recovery of Money	Pt. 4 r. 12
9	Application for recovery of cost of work	Pt. 4 r. 13
10	Superannuation Appeal	Pt. 4 r. 14
11	Application for relief from victimisation	Pt. 4 r. 15
12	Application for compensation—section 488	Pt. 4 r. 16
13	Reference of question of law	Pt. 6 r. 1
14	Reference by Registrar	Pt. 6 r. 2
15	Reference of question of interpretation, etc.	Pt. 6 r. 3
16	Reference—Industrial Relations Commission	Pt. 6 r. 4
17	Appeal without need for leave	Pt. 7 rr. 1, 2
18	Appeal with application for leave	Pt. 7 rr. 1, 2
19	Application to extend time to appeal	Pt. 7 r. 1 (3)
20	Reference to single Judge	Pt. 7 r. 8
21	Application to State Case	Pt. 7 r. 9
22	Form of Stated Case	Pt. 7 r. 11
23	General Form of Affidavit	Pt. 9 r. 2
24	Notice of appointment	Pt. 10 r. 9
25	Notice of Appearance	Pt. 11 r. 3
26	First page of a document	Pt. 12 r. 1
27	Form of Signature	Pt. 12 r. 3
28	Notice to produce	Pt. 13 r. 4
29	Notice for discovery	Pt. 14 r. 1

1992—No. 137

30	List of Documents	Pt. 14 r. 6
31	Notice to answer interrogatories	Pt. 14 r. 14
32	Subpoena for production	Pt. 15 r. 2 (1) (a)
33	Subpoena to give evidence	Pt. 15 r. 2 (1) (b)
34	Subpoena for production and to give evidence	Pt. 15 r. 2 (1) (c)
35	Notice to admit facts and/or documents	Pt. 17 rr. 2, 5
36	Notice disputing facts or documents	Pt. 17 rr. 2, 5
37	Notice of withdrawal or discontinuance	Pt. 19 r. 5
38	Change of Solicitor or agent	Pt. 24 r. 11
39	Form of Bill of Costs	Pt. 25 r. 15
40	Request for taxation	Pt. 25 r. 15
41	Notice of Objection to Costs	Pt. 25 r. 16
42	Application for summons	Pt. 26 r. 1
43	Summons	Pt. 26 r. 2
44	Writ of injunction	Pt. 26 r. 7
45	Notice to proceed before Registrar	Pt. 28 r. 10
46	Certificate as to new matter	Pt. 29 r. 1
47	Certificate as to unfair contract	Pt. 29 r. 2

1992—No. 137

Form 1

(Notice Of Motion — ICR Pt. 4 r. 1)

A. The applicant will on *(date)* 199 at *(time)* am move the Court at *(address)* for:

1. {
2. { *set out motions to be made, eg, for directions, etc*

B. Grounds and reasons:

1. {
2. { *state briefly but specifically the reasons for the application.*

C. Applicant:

1. Name
(state name of applicant, including capacity in which applicant applies (eg. as an industrial organisation, etc, as the case may be).
2. Address *(if corporation, registered office).*
3. Solicitor or agent.
4. Address for service.

D. Respondent:

(Name and address of those respondent to the application).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this notice on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this notice or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) The parties will be advised if the date time or place is altered. Any enquiries should be made to the Court List Clerk, telephone *(number)*.

(where the time for service has been abridged, add—

The time before which this motion is to be served has been abridged by the Court to 5.00 pm on *(date)*19).

Form 2

(General Form Of Application — ICR Pt. 4 r. 1)

A. The applicant claims:

1. {
 2. { *state the nature of the claim or relief sought.*
- eg. an order that ... *or* an injunction/declaration ... , *etc.*, as the case may be.

B. Grounds and reasons:

1. {
2. { *state briefly but specifically the reasons for the application.*

C. Particulars:

1. {
2. { *state briefly but specifically the matters, etc, on which reliance will be placed.*

D. Applicant:

1. Name *(state name of applicant, including capacity in which applicant applies (eg. as an industrial organisation, etc, as the case may be).*
2. Address *(if corporation, registered office).*
3. Solicitor or agent.
4. Address for service.

E. Respondents:

(Name and address of those respondent to the application).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add—

The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date)19*).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 3

(Summons To Show Cause — ICR Pt. 4 r. 1)

To:
(name)

You are hereby summoned to appear before the Court at *(state address at which attendance required)* on *(date)* 19 at *(time)* am/pm to show cause why:

(State briefly but specifically the nature of the application to be made).

This summons is issued on:

- * the application of . . . *(insert name and address of applicant for summons)*
- * the direction of the Court

Dated:

Registrar

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this summons on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) The parties will be advised if the date time or place is altered. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —
The time before which this summons is to be served has been abridged by the Court to 5.00 pm on *(date)* 19).

*—*delete as appropriate*

Form 4

(Affidavit Of Service — ICR Pt. 4 r. 3)

On *(date)* 19 , I, *(name, address and occupation of deponent)* say on oath:

1. I am *(state occupation or position)*.
2. On *(date)* 19 , I served *(insert description of documents served)* on *(name the person or party served)* by *(state method of service)* at *(state place of service or, in case of service by post, address to which the document was posted)*.

Sworn by the deponent)
at *(place)*)
)
Before me:)

Justice of the Peace

Form 5***(Summons For Relief Under Section 275 — ICR Pt. 4 r. 9)***

A. The applicant
(name, address and occupation)

Whose address for service is
(address)

Claims:

- (1) An order declaring void in whole ab initio *(or as may be claimed)* the contract or arrangement *(specify the contract or arrangement or condition or collateral arrangement in respect of which the application is made)*
- (2) An order that *(specify any other orders claimed)*

B. Grounds:

1. {
2. { *(A brief but specific statement of the grounds of the application)*

C. The award, agreement or determination (if any) by reference to which the claim or any part of it is based:

D. Particulars of the manner in which any amount claimed is calculated:

E. The persons against whom relief is claimed (the Respondents):
(names and addresses)

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this summons on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel solicitor or agent at the time and place specified in this summons or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this summons, the parties will subsequently be advised of the date when and the place where the Court will hear this summons. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this summons is to be served has been abridged by the Court to 5.00 pm on *(date) 19*).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 6

(Summons For Relief Under Section 281 — ICR Pt. 4 r. 10)

- A. Applicant *(name, address and occupation)*
- B. Secretary of *(name of industrial organisation)*
- C. Address for service
4. Industry or calling in which the members of the union are employed:
- D. Work to which the application relates:
- E. Contract under or in pursuance of which it is alleged the work is being or is likely to be carried out or performed:
- F. Grounds
1. { *(A brief but specific statement of the grounds of the application, including the*
 2. { *respects in which it is alleged the contract is unfair or is harsh or unconscionable or is against the public interest)*
- G. Persons or bodies against whom an order is sought or other persons or bodies who or which have an interest in the matters to which the proposed order relates:
(names and addresses)

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this summons on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel solicitor or agent at the time and place specified in this summons or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this summons, the parties will subsequently be advised of the date when and the place where the Court will hear this summons. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —
The time before which this summons is to be served has been abridged by the Court to 5.00 pm on *(date)* 19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 7**(Summons For Relief From Enterprise Agreement Under Section 133 —
ICR Pt. 4 r. 11)**

A. The applicant
(name, address and occupation)

Whose address for service is
(address)

Claims:

(1) An order declaring void in whole ab initio (or as may be claimed) the Enterprise Agreement (specify the enterprise agreement in respect of which the application is made)

(2) An order that (specify any other orders claimed)

B. Grounds:

1. {
2. { (A brief but specific statement of the grounds of the application)

C. Particulars of the manner in which any amount claimed is calculated:

D. The persons against whom relief is claimed (the respondents):
(names and addresses)

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry (address and telephone number) within 7 days of service of this summons on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel solicitor or agent at the time and place specified in this summons or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this summons, the parties will subsequently be advised of the date when and the place where the Court will hear this summons. Any enquiries should be made to the Court List Clerk, telephone (number)

(where the time for service has been abridged, add —
The time before which this summons is to be served has been abridged by the Court to 5.00 pm on (date) 19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 8**(Application For Recovery Of Money — ICR Pt. 4 r. 12)****A. The applicant**

1. Name *(name of person on whose behalf the order is sought)*
2. Address
3. Solicitor or agent *(include details of any solicitor or agent acting, including where an industrial organisation is acting, the name of the secretary or other authorised officer taking action)*
4. Address for service

B. Claims an order that:

(FULL Name and address of person liable to pay the amount claimed)
here called "the respondent"

C. Is liable to pay the applicant the sum of \$ *(amount claimed)* .**D. The particulars of the claim are:**

1. {
2. { *(State briefly but specifically the particulars of the claim, including:*
- etc. }

- (a) the award or agreement under which it is claimed the amount became due;*
- (b) details of how it is alleged the amounts became due;*
- (c) details of how the amount is calculated;*
- (d) details of any contract related to the claim (s.151);*
- (e) details of superannuation funds, etc (s.156).*

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 1 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date)* 19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 9*(Application For Recovery Of Cost Of Work — ICR Pt. 4 r. 13)***A.** The applicant

1. Name *(name of person on whose behalf the order is sought)*
2. Address
3. Solicitor or agent *(include details of any solicitor or agent acting, including where an industrial organisation is acting, the name of the secretary or other authorised officer taking action)*
4. Address for service

B. seeks leave to recover as remuneration for work the sum of \$ *(amount claimed)*:**C.** From—

(FULL Name and address of person liable to pay the amount claimed)
here called "the respondent"

D. The particulars of the claim are:

1
2
etc. { *(State briefly but specifically the particulars of the claim, including:*

- (a) details of the work to which the application relates;*
- (b) the price or rate which is argued should apply to the work;*
- (c) the award or agreement applicable to other work done by the employee;*
- (d) details of how it is alleged the amounts became due;*
- (e) details of how the amount is calculated.)*

E. Reasons why leave should be granted

(Set out briefly but specifically reasons why the Court should grant you leave to take action.)

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above order sought).

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date) 19*).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 10

(Superannuation Appeal — ICR Pt. 4 r. 14)

A. I, *(name of person appealing against Superannuation decision)* of *(address)*

whose solicitor or agent is *(include details of any solicitor or agent acting)*

and whose address for service is *(set out address at which documents can be served on you)*

hereby appeal, pursuant to *(section, Act etc. under which appeal is brought):*

to the Industrial Court of New South Wales from a decision of

(Name and address of person or tribunal appealed against)

here called "the respondent"

dated *(date of decision appealed against)*, a copy of which is attached marked "A".

B. I am appealing against

(set out those parts of the decision that you are appealing against)

C. The reasons why I am appealing are:

1. {
2. { *(State briefly but specifically the grounds and reasons for your appeal etc.)*

D. The orders I am seeking are as follows:

1. {
2. { *(State the orders you are asking the Industrial Court to make.*
- etc. }

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each other party affected by the above appeal)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this appeal on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this appeal or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this appeal, the parties will subsequently be advised of the date when and the place where the Court will hear this appeal. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this appeal is to be served has been abridged by the Court to 5.00 pm on *(date)* 19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 11

(Application for relief from victimisation — ICR Pt. 4 r. 15)

A. The applicant claims an order for:

1. {
2. { *state the orders by way of relief sought.*

(These orders should be set out in terms of section 482 (3) (a)–(e)).

and claims an order for payment of the sum of \$ *(amount)* being for:

1. {
2. { *state the grounds upon which such payment is sought*
(These grounds should be set out in terms of section 482(3)(f)–(g), and should include details of how each amount claimed was calculated).

B. Particulars of victimisation:

1. {
2. { *state briefly but specifically details of the victimisation on which reliance will be placed.*

C. Applicant:

1. Name *(Full name of applicant)*.
2. Address *(if corporation, registered office)*.
3. Solicitor or agent.
4. Address for service.

E. Respondent(s):

(Full name and address of the employer or organisation respondent to the application).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date)*19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 12

(Application For Compensation Under Section 488 — ICR Pt. 4 r. 16)

- A. The applicant claims from the respondent the sum of \$ *(amount)*.
- B. The applicant claims that the respondent, being an officer of the organisation known as *(name of registered organisation)*, did contravene a provision of Subdivision 1 of Division 6 of Part 3 of Chapter 5 of the Act, viz *(state section alleged to be contravened)*;
- C. Particulars of that contravention are:
(state briefly, but specifically details of the contravention alleged. Include, where applicable, details of any conviction of the respondent in relation to such contravention).
- D. The sum claimed is the amount equal to the profit made by the respondent as a result of that contravention* and the amount equal to the loss or damage suffered by the organisation as a result of the contravention*. *(*delete as appropriate).*
- E. Particulars of how the profit or loss and damage have been calculated are as follows:
(state briefly but specifically details of how the amount claimed has been calculated).
- F. Applicant:
1. Name *(state name of applicant, including capacity in which applicant applies (e.g. as an industrial organisation, etc, as the case may be))*.
 2. Address *(if corporation, registered office)*.
 3. Solicitor or agent.
 4. Address for service.
- G. Respondent(s):
(Name and address of the officer(s) respondent to the application).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each officer and any other party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —

The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date)*19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 13

(Reference By Single Members To Full Court — ICR Pt. 6 r. 1)

In pursuance of section 297(2)(c) of the Industrial Relations Act 1991, I refer to the Full Court of the Industrial Court of New South Wales the following question of law:

Dated:
Signed:

Form 14

(Reference By Registrar To The Court — ICR Pt. 6 r. 2)

I hereby refer to the Industrial Court of New South Wales the following:
(state matter or question referred).

Dated:

Registrar

Form 15**(Reference Of Question Of Interpretation, Etc, Of Award Or Agreement —
ICR Pt. 6 r. 3)**

A. The following question of *(state whether interpretation, application or operation)*

B. Concerning *(state full name of award or agreement)*

Is referred to the Court for determination:

C. *(set out question referred).*

D. Capacity of applicant referring question:

(set out qualification to refer question in terms of section 198(2) (a) (b) or (c)).

E. *(Where the question is referred by an employee under section 198(2)(b))*

Reasons why leave to refer should be granted:

(set out briefly but specifically the reason why the Court should grant leave to refer this question).

F. Particulars of reasons for Reference:

(set out briefly but specifically the reasons why the Reference is being made).

G. Applicant:

1. Name *(state full name of applicant)*
2. Address *(if corporation, registered office).*
3. Solicitor or agent.
4. Address for service.

H. The persons (including corporations, organisations, etc) who are interested in or who may be affected by this reference (here called respondent(s)) are:

(state the names and addresses of such persons the applicant believes are so affected).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this reference on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this reference or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this reference, the parties will subsequently be advised of the date when and the place where the Court will hear this reference. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add—

The time before which this reference is to be served has been abridged by the Court to 5.00 pm on *(date)19*).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 16

***(Reference By Industrial Relations Commission Or Industrial Registrar to
Court — ICR Pt. 6 r. 4)***

The Industrial Relations Commission of New South Wales *(or the Industrial Registrar,
as the case may be)* hereby refers, pursuant to section *(insert section number and title of Act)*
the following matter or question to the Industrial Court of New South Wales:
(set out matter or question referred).

Dated:
Signed:

Form 17

(Appeal Where Leave Not Necessary — ICR Pt. 7 rr 1 2)

- A.** The appellant appeals pursuant to
(section and title of Act, etc., under which appeal is brought)
- B.** From a *(state whether a decision, determination, order, refusal, etc., as the case may be)*
- C.** Of *(name of person or tribunal appealed against)*
- D.** On *(date of decision, etc., appealed against)*
- 6.** Matters appealed against are:
(set out brief description of matter(s) complained of, including whether the appeal is against the whole or a part, and if a part, which part or parts, of any decision, etc.).
- E.** Grounds of the appeal are:
(set out briefly but specifically the grounds of appeal in numbered paragraphs).
- F.** Relief claimed:
(set out the orders sought on appeal, or in which way it is claimed the matter appealed against should be varied).
- G.** *(where a stay of the order or decision under appeal is sought)* A stay is sought because:
(set out briefly but specifically the reason why the Court should grant a stay of proceedings)
- H.** Appellant:
1. Name *(state full name of appellant)*
 2. Address *(if corporation, registered office).*
 3. Solicitor or agent.
 4. Address for service.
- I.** Respondent(s):
(Full name and address of the respondents, including all persons who were parties to the proceedings in which the decision, etc., under appeal was made).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this appeal on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this appeal or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this appeal, the parties will subsequently be advised of the date when and the place where the Court will hear this appeal. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add—

The time before which this appeal is to be served has been abridged by the Court to 5.00 pm on *(date)* 19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

1992—No. 137**Form 18*****(Appeal With Application for Leave — ICR Pt. 7 rr 1, 2)***

- A.** The appellant seeks leave to appeal and appeals pursuant to
(section and title of Act, etc., under which appeal is brought)
- B.** From a *(state whether a decision, determination, order, refusal, etc., as the case may be)*
- C.** Of *(name of person or tribunal appealed against)*
- D.** On *(date of decision. etc., appealed against)*
- E.** Matters appealed against are:
(set out brief description of matter(s) complained of, including whether the appeal is against the whole or a part, and if a part, which part or parts, of any decision, etc.).
- F.** The questions raised by the appeal are:
(set out any questions of law for determination by the Court on appeal, should leave be granted).
- G.** Reasons why leave to appeal should be granted
(set out with particularity the reasons, in numbered paragraphs)
- H.** Grounds of the appeal are:
(set out briefly but specifically the grounds of appeal in numbered paragraphs).
- I.** Relief claimed:
(set out the orders sought on appeal, or in which way it is claimed the matter appealed against should be varied).
- J.** *(Where a stay of the order or decision under appeal is sought)* A stay is sought because:
(set out briefly but specifically the reason why the Court should grant a stay of proceedings)
- K.** Appellant:
1. Name *(state full name of appellant)*
 2. Address *(if corporation, registered office).*
 3. Solicitor or agent.
 4. Address for service.
- L.** Respondent(s):
(Full name and address of the respondents, including all persons who were parties to the proceedings in which the decision. etc., under appeal was made).

(Follow the form of conclusion of documents for use by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this appeal on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this appeal or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this appeal, the parties will subsequently be advised of the date when and the place where the Court will hear this appeal. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —
The time before which this appeal is to be served has been abridged by the Court to 5.00 pm on
*(date)*19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 19***(Application To Extend Time To Appeal — ICR Pt. 7 r. 1)***

- A.** The applicant seeks an order extending time to appeal until
(set out details of order sought).
- B.** Appeal brought under
(section and title of the Act, etc, under which the appeal is to be brought).
- C.** From a *(state whether decision, determination, refusal, order, etc, as the case may be).*
- D.** Of *(name of person or tribunal to be appealed against).*
- E.** On *(date of decision, determination, refusal, etc, as the case may be).*
- F.** Reasons why the appeal was not or cannot be filed within time:
(set out briefly but specifically the reasons why the appeal was not filed within time).
- G.** Grounds for claiming an extension of time:
(set out briefly but specifically the grounds and reasons why time should be extended).
- H.** The form of the proposed appeal (including supporting affidavits) is attached.
- I.** Appellant:
1. Name *(state full name of appellant)*
 2. Address *(if corporation, registered office).*
 3. Solicitor or agent.
 4. Address for service.
- J.** Respondent(s):
(Full name and address of the respondents, including all persons who were parties to the proceedings in which the decision, etc., under appeal was made).

(Follow the form of conclusion of documents for me by a party, Form 27).

TO THE RESPONDENT(S):

(name each party affected by the above application)

IMPORTANT NOTICE:

- (1) You are required to file a notice of appearance at the Court Registry *(address and telephone number)* within 7 days of service of this application on you. See Part 11 of the Industrial Court Rules.
- (2) If you do not enter an appearance, or if there is no attendance by you or your counsel, solicitor or agent at the time and place specified in this application or as notified to you subsequently, the proceedings may be heard in your absence and an order may be made against you.
- (3) Unless the time, place and date of hearing are endorsed on this application, the parties will subsequently be advised of the date when and the place where the Court will hear this application. Any enquiries should be made to the Court List Clerk, telephone *(number)*

(where the time for service has been abridged, add —
The time before which this application is to be served has been abridged by the Court to 5.00 pm on *(date)*19).

(Add, where necessary, form of Appointment for Hearing, Form 24)

Form 20

(Reference By Full Court To Single Member — ICR Pt. 7 r. 8)

The Full Court of the Industrial Court of New South Wales hereby refers
(specify functions, matter or part or extent of matter referred).

to *(specify member)*.

Dated:

Signed:

Form 21

(Application To State A Case — ICR Pt. 7 r. 9)

To: *(name)* Magistrate:

The appellant requests you to state and sign a case setting forth the facts and grounds of your determination made on *(date)* for the opinion thereon of the Industrial Court of New South Wales.

The appellant contends that your determination was erroneous in point of law on the grounds that

- 1.
 2. {
 3. { *(set out the grounds, briefly but specifically, in numbered paragraphs.)*
- etc.

Applicant for Case:

1. Name
2. Address *(if corporation, registered office)*.
3. Solicitor or agent.
4. Address for service.

(Follow the form of conclusion of documents for use by a party, Form 27).

Form 22

(Form Of Stated Case — ICR Pt.7 r. 11)

STATED CASE

A. DETERMINATION

(State the determination and the date on which it was made)

B. FACTS:

- 1.
 2. { (State the facts)
 3. {
- etc.

(Where one of the questions stated is whether there was any evidence upon which the justice could make the determination, state that a copy of the evidence is annexed or describe any evidence which is omitted)

C. GROUNDS OF DETERMINATION:

1. {
 2. { (state the grounds)
 3. {
- etc.

D. APPELLANT'S CONTENTION:

The appellant contends that my determination was erroneous in point of law upon the grounds

1. {
 2. { (state the grounds)
 3. {
- etc.

E. The matter to be determined by the Court is whether my determination was erroneous in point of law.

Dated:
Signed:

Magistrate

(This form should be altered appropriately where the case is stated under section 104A of the Justices Act 1902.)

Form 23

(General Form Of Affidavit — ICR Pt. 9 r. 2)

On (date) 19 , I, (name, address and occupation) say on oath —

- 1.
- 2.

Sworn by the deponent)
 at (place))
 Before me:)

Justice of the Peace

(or)

On (date) 19 , I, (name, address and occupation) and on (date) 19 , I, (name, address and occupation) say on oath —

1. We are the *directors of etc.*
2. I the said (name) am *a director of etc.*

Sworn by the deponent)
 at (place))
 Before me:)

Justice of the Peace

(where Part 9 rule 2(4) applies,

It appearing to me that the deponent is blind, (or as the case may be) I certify that this affidavit was read to him in my presence and that he seemed to understand it.)

Form 24

(Notice Of Appointment For Hearing — ICR Pt.10 r. 9)

APPOINTMENT FOR HEARING

TO: (Name and address of persons affected)

The Industrial Court of New South Wales appoints:

(date and time) 19 ,

at *(address of Court)* for *(mention/hearing)*

of this application *(or as the case may be)*.

*The parties who have entered an appearance will be advised orally if date, time or place is altered. Any enquiries should be made to the Court List Clerk, telephone *(number)*

*If there is no attendance by you or your agent, counsel or solicitor at the time and place specified in this Appointment or as notified to you subsequently, the proceedings may be heard and an order may be made in your absence.

Dated:

Registrar

* — these paragraphs may be deleted if this notice is endorsed and completed on the originating document.

Form 25

(Notice Of Appearance — ICR Pt.11 r. 3)

A. *(Name)*

B. *of (address and occupation)*

Appears

(where Part 11 r.4(3) applies add and submits to the orders of the Court, save as to costs).

C. Address for service:
(the office of the respondent's solicitors, or as the case may be)

*Where a respondent wishes to make a request under Part 11 rule 5(3) add:
The Registrar is requested to deal with the copies of this Notice under Part 11 rule 5(3).*

D. Dated

E. Signature

Form 26
(First page of a document — ICR Pt. 12 r.1)

(Leave clear a space of about 50 millimetres from the top of the page.)

**BEFORE THE INDUSTRIAL COURT
OF NEW SOUTH WALES**

No. of 199

*(add Title as required by ICR
Pt. 12 r. 1)*

(Describe the document, eg.)

APPLICATION

*(or, in the case of an
Affidavit)*

AFFIDAVIT

*(and show the name of the
deponent, date of swearing
and for whom filed)*

J Smith
31 March 19
Filed for Applicant

*(and in every document
continue)*

Filed by *(Name of person filing
and the title of the corporation,
organisation, union or other
body on whose behalf the
document is filed)*

Contact name *(Name of person
conducting the matter)*

Address

Telephone
Facsimile
DX

**(and if solicitors or agents are
acting, add)
by their agents**

Name
Address
Telephone
Facsimile
DX

*(Do not describe the document here. The substance of the
document shall be written within this space. A margin of not
less than 25 millimetres shall be kept clear on the left hand
side of the page. The dividing line to the left hand side shall
be about 75 millimetres from the left hand edge of the page.)*

(Note: Documents should be signed in accordance with ICR Pt. 12 r. 3)

Form 27

(Conclusion Of Documents For Signature By A Party — ICR Pt. 12 r.3)

(signature)

Applicant *(or, Applicant's solicitor or agent)*

Filed *(dated, if not filed): (date)* 19

(On originating process or notice of appearance add the full name of the solicitor or agent.)

Form 28

(Notice To Produce — ICR Pt. 13 r. 4)

To the *(applicant/respondent)*

The *(respondent/applicant)* requires you to produce at the hearing *(or otherwise specify the occasion or place)* the following documents *(or things)* for the purpose of evidence —

(Enumerate the documents or things)

123

1992—No. 137

Form 29

(Notice For Discovery — ICR Pt. 14 r. 1)

To the respondent:

The applicant requires you to give discovery of documents with *(or, without)* verification within *(number)* days after service of this notice upon you.

Form 30

(List Of Documents — ICR Pt. 14 r. 6)

Pursuant to notice filed (or order made) on *(date)* 19 , the respondent says:

A. The documents enumerated in Schedule 1 are in the respondent's possession, custody or power.

B. The documents enumerated in Part 2 of Schedule 1 are privileged from production on the ground —

(a) as to documents numbered 4 to 7 inclusive, that *(state the ground)*;

(b) as to documents 8 and 9, that *(state the ground)*.

C. The document enumerated in Schedule 2 has been, but is not now in the respondent's possession, custody, or power.

D. (1) Document 10, referred to in Schedule 2 was last in the respondent's possession, custody or power on *(state when)*;

(2) *(state what has become of it)*; or

(3) to the best of the respondent's knowledge, information and belief,
(state in whose possession, custody or power it is and where it is).

E. To the best of the respondent's knowledge, information and belief, other than the documents enumerated in the said Schedules 1 and 2, there are now no documents relating to any matter in question between the applicant and the respondent, nor have there ever been any such documents, in the possession, custody or power of either the respondent, the respondent's solicitor or any other person on the respondent's behalf.

(to be altered according to the terms of any order made under Part 14 rule 5)

(Describe each document in the schedules as original or copy. See also Part 14 rule 6.)

SCHEDULE 1

Part 1

- 1.
- 2.
- 3.

Part 2

- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

SCHEDULE 2

10.

(Follow the form of conclusion of documents for use by a party, Form 27.)

AFFIDAVIT

On *(date)* 19 , I, *(name, address and occupation)* say on oath—

1. I am the respondent
2. The statements of fact made in paragraphs A, B, C, D and E of the above list are true.

Sworn by the deponent)
 at *(place)*)
)
 Before me:)

Justice of the Peace

CERTIFICATE BY SOLICITOR

I certify that I have explained to *(name of the deponent who made the affidavit or, if the list is unverified, the name of the person instructing the solicitor)* the requirements for disclosure to me of any document which relates to the matter in question in these proceedings and which is or has been in the respondent's *(or as the case may be)* possession, custody or power.

The documents enumerated in Part 1 of Schedule 1 may be inspected at *(address)* on *(date)* , 19 , between *(specify time under Part 14 rule 6)*.

Respondent's solicitor

Form 31***(Notice To Answer Interrogatories — ICR Pt. 14 r.14)***

Within *(number)* days after service of this notice upon each of them respectively, the respondent *(name of a respondent)* is required to answer interrogatories numbered 1 to 8 *(add, if appropriate, and verify the answers)* and the respondent *(name of another respondent)* is required to answer interrogatories numbered 1 to 12 *(add, if appropriate, and verify the answers)*.

INTERROGATORIES

- 1.
 - 2.
 - etc.
- } (state the questions)

(Follow the form of conclusion of documents for use by a party, Form 27).

Form 32
(Subpoena for Production — ICR Pt.15 r.2)

BEFORE THE INDUSTRIAL COURT
OF NEW SOUTH WALES

No. of 199

(Add Title as required by ICR
Pt.12 r.1)

SUBPOENA FOR
PRODUCTION

Filed by

Contact name

Address

Telephone
Facsimile
DX

by agent
Name
Address
Telephone
Facsimile
DX

TO:

Postcode

**YOU ARE ORDERED TO ATTEND AND PRODUCE
the documents or things listed overleaf**

**INFORMATION ABOUT WHERE YOU MUST BRING
DOCUMENTS OR THINGS
YOU MUST EITHER**

A. Deliver the documents or things and this summons

WHERE YOU MUST DELIVER DOCUMENTS:	The Registry of the Industrial Court
ADDRESS:	121 Macquarie Street Sydney Phone:
ON OR BEFORE:	TIME DAY MONTH YEAR

OR

B. Attend with the documents or things and this subpoena

WHERE YOU MUST GO:	The Industrial Court of New South Wales
ADDRESS:	(address where hearing is to take place, including contact number in Registry)
WHEN:	TIME DAY MONTH YEAR

INFORMATION ABOUT THIS SUBPEONA

1. WHO ASKED FOR THIS SUBPOENA:	(name)
ADDRESS:	(address for service Phone)
(This person is required to give you enough money to enable you to produce the documents or things)	
2.WHAT YOU MUST DO:	You must EITHER deliver those documents. etc, to the Registry of the court on or before the date set out in "A" above OR attend with the documents. etc, at the time and place set out in "B" above.

**IF YOU DO NOT OBEY THIS SUBPOENA YOU MAY BE
FINED OR ARRESTED**

Issued by _____ (date)
for Register, Industrial Court. (Signature)

(Reverse side of Form 32)

THESE ARE THE DOCUMENTS OR THINGS YOU MUST PRODUCE

- 1
- 2
- 3
- etc

Form 33
(Subpoena to give evidence — ICR Pt.15. r.2)

BEFORE THE INDUSTRIAL COURT
OF NEW SOUTH WALES

No. of 199

(Add Title as required by ICR
Pt.12 r.1)

TO:

[Empty box for recipient name and address]

Postcode

YOU ARE ORDERED TO ATTEND AND GIVE EVIDENCE

INFORMATION ABOUT THE HEARING

WHERE YOU MUST GO:	Industrial Court
ADDRESS:	(address where hearing is to take place. including contact number in Registry)
WHEN:	TIME DAY MONTH YEAR

SUBPOENA TO GIVE
EVIDENCE

INFORMATION ABOUT THIS SUBPEONA

1. WHO ASKED FOR THIS SUBPOENA	(name)
ADDRESS:	(address for service Phone)
(This person is required to give you enough money to enable you to attend to give evidence)	
2. WHAT YOU MUSTDO:	You must attend the hearing to give evidence at the time and place listed above. You must continue to attend until you are excused by the person conducting the hearing.

Filed by

Contact name

Address

Telephone

Facsimile

DX

by agent

Name

Address

Telephone

Facsimile

DX

IF YOU DO NOT OBEY THIS SUBPOENA YOU MAY BE
FINED OR ARRESTED

Issued by _____ (date)

for Registrar, Industrial Court (Signature)

Form 34
(Subpoena for production and to give evidence — ICR Pt.15 r.2)

**BEFORE THE INDUSTRIAL COURT
OF NEW SOUTH WALES**

No. of 199

*(add Title as required by ICR
Pt.12r.1)*

TO:

Postcode

**YOU ARE ORDERED TO ATTEND AND GIVE EVIDENCE
AND TO PRODUCE the documents or things listed overleaf**

**INFORMATION ABOUT THE HEARING AND WHERE YOU MUST
BRING DOCUMENTS**

WHERE YOU MUST GO:	The Industrial Court of New South Wales
ADDRESS:	<i>(address where hearing is to take place. including contact number in Registry)</i>
WHEN:	TIME DAY MONTH YEAR

**SUBPOENA FOR
PRODUCTION AND
TO GIVE EVIDENCE**

INFORMATION ABOUT THIS SUBPOENA

1. WHO ASKED FOR THIS SUBPOENA:	<i>(name)</i>
	<i>(address for service)</i> <i>Phone</i>

This person is required to give you enough money to enable you to attend to give evidence and to produce the documents or things)

Filed by

Contact name

Address

**Telephone
Facsimile
DX**

**by agent
Name
Address
Telephone
Facsimile
DX**

2. WHAT YOU MUST DO:	(a) You must attend the hearing to give evidence at the time and place listed above. You must continue to attend until you are excused by the person conducting the hearing. (b) You must EITHER bring those documents, etc, with you when you attend the hearing OR deliver them at least 2 days before the hearing to the Court Registry at 121 Macquarie Street Sydney.
ALSO:	

**IF YOU DO NOT OBEY THIS SUBPOENA YOU MAY BE
FINED OR ARRESTED**

Issued by _____ *(date)*
(Signature)

for Registrar, Industrial Court

(Reverse side of Form 34)

THESE ARE THE DOCUMENTS OR THINGS YOU MUST PRODUCE

1
2
3
etc

Form 35

*(Notice To Admit Facts And/Or Authenticity Of Documents
— ICR Pt. 17 rr. 2,5)*

To the *respondent*:

The applicant requires you to admit for the purpose of these proceedings only —

1. {
2. { *(state each fact)*

The applicant requires you to admit for the purpose of these proceedings only the authenticity of the following documents —

1. {
2. { *(describe each document)*

If you do not, within 14 days after service of this notice upon you, serve a notice upon the applicant disputing any fact *(and/or the authenticity of any document)* above specified, that fact *(and/or the authenticity of that document)* shall, for the purpose of these proceedings, be admitted by you in favour of the applicant.

(Follow the form of conclusion of documents for use by a party, Form 27).

Form 36***(Notice Disputing Facts And/Or Authenticity Of Documents
— Pt. 17 rr. 2, 5)***

The respondent disputes the following facts specified in the applicant's notice dated *(date)* 19

1. {
2. { *(state each fact)*

The respondent disputes the authenticity of the following documents which were specified in the applicant's notice *(or list of documents)* dated *(date)* 19

1. {
2. { *(describe each document)*

The respondent admits —

1. {
2. { *(state each fact or describe each document)*

(Follow the form of conclusion of documents for use by a party, Form 27).

Form 37

(Notice Of Withdrawal Or Discontinuance — ICR Pt. 19 r.5)

The (applicant/respondent) (by consent, *if consent is required*; or pursuant to the leave of the Court granted on *(date)* 19 , if leave is obtained) withdraw/discontinues the proceedings (in respect of claims numbered, *or as the case may be*).

(Follow the form of conclusion of documents for use by a party, Form 27).

(Where discontinuance or withdrawal is by consent, each party or that party's solicitor or agent must sign the notice).

1992—No. 137

Form 38***(Notice Of Change or Appointment, etc., of Solicitor or Agent — ICR Pt. 24
r. 11)***

(Use or adapt the appropriate form of Notice of Change)

(Name), whose office is at *(address)*, has been appointed to act as the solicitor for the (applicant/respondent, or as the case may be), in these proceedings in the place of *(name of former solicitor)*.

(Where the solicitor has an agent, (name), whose office is at (address), is the agent of (name of principal solicitor).

(OR)

(Name), whose office is at *(address)*, has been appointed by the solicitor for the (applicant/respondent, or as the case may be), to act as agent in the place of *(name of former agent)*.

(OR)

(Name), whose office is at *(address)*, has been appointed to act as solicitor for the (applicant/respondent, or as the case may be), in these proceedings.

(Where the solicitor has an agent, (name), whose office is at (address), is the solicitor's agent.)

(OR)

I, *(name)*, have determined the authority of *(name of solicitor)* to act as solicitor for me in these proceedings. My address for service of documents is *(address)*

(OR)

I have ceased to act as solicitor for the (applicant/respondent, or as the case may be). I have served on the (applicant/respondent, or as the case may be) notice of my intention to file this notice. The (applicant's/respondent's, or as the case may be) place of business (or abode) last known to me is *(address)* (or, if known, state place of business and of abode).

(In each case, follow the form of conclusion of documents for use by a party, Form 27).

Form 39

(Bill Of Costs — ICR Pt. 25 r.15)

Work done.

- 1.
2. { *(Number the items consecutively)*
3. }

Skill care and responsibility.

- 4.
5. { *(continue the consecutive numbers)*
6. }

Disbursements.

- 7.
8. { *(continue the consecutive numbers)*
9. }

Form 40

(Request For Taxation — ICR Pt. 25 r. 15)

TO: The Registrar, Industrial Court:

Application is hereby made for taxation of the attached Bill of Costs.

1. Matter Number:
2. Date of order by Court that costs be taxed (or as the case may be).
3. Name of applicant for taxation:
4. Address for service:
5. Telephone Number:
6. Name(s) of party/parties liable for costs:
7. Address(es) of those parties:

TO THE PARTY LIABLE TO PAY THE COSTS IN THE WITHIN BILL

Costs claimed in (the attached *or this as the case may require*) bill may be allowed and the taxation may be concluded unless, within 21 days after service on you of this notice, you file at the Court Registry, (*address*), a notice in the required form stating the item or items to which you object and the nature and grounds of your objection.

Signed:
Date:

UNLESS YOU FILE: AN OBJECTION THE BILL MAY BE ALLOWED IN FULL

Form 41

*(Objection To A Bill — ICR Pt. 25 r. 16)***STATEMENT OF OBJECTION TO TAXATION OF BILL OF COSTS***(classify the items and divide them into separate paragraphs according to the nature or grounds of the objection or set them out as follows:*

Number of Item	Page of bill	Item or part objected to	Nature and grounds of objection
----------------	--------------	--------------------------	---------------------------------

7

state these briefly but specifically

10

I *(name)* certify that this objection was served on *(name)* by *(method)* on *(date)*
19 ,

Signed:

Form 42***(Application for summons — ICR Pt. 26 r.1)***

I (*name of prosecutor*) of (*address of prosecutor*) in the State of New South Wales (*add capacity in which prosecutor acts — e.g. inspector, etc*)

alleges that

(*name and address of defendant*)

(“the defendant”),

on (*date*) at (*place of offence*)

DID (*or failed to*)

(set out details of offence(s) and specific description of legislation creating the offence)

AND I hereby apply for the issue of a summons requiring the said (*defendant*) to appear before the Court in answer to the said charge(s)*

My affidavit dated (*date*) verifying the allegations made in this application is attached.

(Follow the form of conclusion of documents for use by a party, Form 27).

* *Where application for an order for the recovery of remuneration or other payment against the defendant will also be made, add:*

At the hearing of the charge, I intend to also seek an order directing the defendant to pay to (*name of employee or worker*) the full amount of any remuneration or payment which has become due to that person by virtue of (*section and title of Act or name of award or agreement*), being an amount of \$(*amount*), (*set out details of amount and how claim is based*).

1992—No. 137

Form 43

(Summons — ICR Pt. 26 r. 2)

TO THE DEFENDANT:
(Full name)

You are required to appear before the Industrial Court of New South Wales at the time and place specified below to answer the charge(s) the prosecutor makes against you, viz:

1. {
2. { *(State offence(s))*
- 3.

The particulars of the charge(s) are

- 1.
 2. { *(State particulars of the offence(s))*
 3. {
- etc.

Further details of those allegations against you are contained in the affidavit of *(name)* dated *(date)* a copy of which is attached.

TAKE NOTICE:

This matter has been listed for hearing/mention† on *(date and time)* at *(place)*.

If you do not appear before the Court at the that time and place, a warrant may be issued for your arrest.*

The prosecutor's name and address for service is *(specify address for service)*

Date:

Registrar

† — delete as appropriate.

* *Where an application for the recovery of remuneration is also to be made, add:*

TAKE FURTHER NOTICE that at the hearing of this charge, the prosecutor will also seek a further order that you pay the sum of \$ *(amount)* to *(name)* being *(set out details on which claim is based)*.

Form 44

(Writ Of Injunction — ICR Pt. 26 r. 7)

To *(name and address of the person restrained)*

Upon the hearing of the application of *(state name and address of the applicant)* alleging that you had committed a breach of the *(specify the Award or Agreement concerned)* and that you did, contrary to the provisions of the Industrial Relations Act 1991, *(state the act complained of)*, I found the same to be true, and I am of the opinion that the said breach was committed by your wilful act or default.

I therefore order that you are perpetually restrained from committing any further or other breaches of the said *(specify the Award or Agreement)*.

Dated at *(place)*,
(date) 19 .

Judge

142

1992—No. 137

Form 45

(Notice To Proceed Before the Registrar — ICR Pt. 28 r. 10)

I appoint *(date)* 19 , at 10.00 am at *(address)*, for the hearing of *(state nature of the matter to be heard)*.

Registrar,
Industrial Court of New South Wales

Form 46

(Certificate as to new matter — ICR Pt. 29 r. 1)

I certify pursuant to section 202 of the Industrial Relations Act 1991 that the following industrial matter
(set out details)

is a "new matter" for the purposes of Part 2 of Chapter 3 of the Industrial Relations Act 1991.

Dated

By the Court

Form 47

(Certificate as to unfair contract — ICR Pt. 29 r. 2)

I certify pursuant to section 281(3) of the *Industrial Relations Act* 1991 that the following contract was, on *(date)* found by the Industrial Court of New South Wales to be unfair, harsh or unconscionable or against the public interest:
(set out details of contract.)

Dated

Registrar

SECOND SCHEDULE

COSTS ALLOWABLE FOR WORK DONE AND SERVICES PERFORMED

Item		\$
	INSTRUCTIONS	
1	To make application or defend or to appeal or for any other originating proceeding	120.00
2	To make or oppose an interlocutory application or motion to the Court or an officer of the Court	52.00
3	For a case for opinion of Counsel or for Counsel to advise (including attendance on Counsel with brief)	51.00
4	For interrogatories, answers to interrogatories or an affidavit (not being a formal affidavit), admissions or a list of documents, and affidavit verifying	73.00
5	For brief to Counsel on application in Chambers or brief notes for Solicitor (where necessary)	66.00
	(or, in respect of items 1 to 5 of this scale, such other sums may be allowed as the taxing officer thinks fit, having regard to all the circumstances of the case)	
6	For brief to Counsel or brief notes for Solicitor (where necessary); such fee may be allowed as the taxing officer thinks fit having regard to all the circumstances of the case.	
7	For a necessary document not otherwise provided for; such fee may be allowed as the taxing officer thinks fit, having regard to all the circumstances of the case	
	DOCUMENTS	
8	Any notice of appearance including copies, filing and service by respondent	67.00
9	Any application, or notice of motion including fixing return day, copies to file and serve and attendance to file	52.00
	— if more than 3 folios – add per folio	3.00
10	Any simple notice or memorandum such as a notice for discovery, including copies, filing (where necessary) and service	44.00
11	Notice to produce, notice to admit or any like notice including copies, filing (when necessary) and service	52.00
	—if more than 3 folios – add per folio	3.00

12	A brief to Counsel (including a brief to hear judgment) and attending Counsel therewith — if more than 3 folios – add per folio — for copy documents to accompany brief; such other charges in this scale as are appropriate.	47.00 5.00
13	Any necessary subpoena including issuing, one copy to serve and arranging for service	37.00
	DRAWING	
14	Any necessary document — per folio	6.00
	ENGROSSING OR TYPING	
15	Any necessary document — per folio	2.00
	COPIES	
16	Of any document including carbon, photographic or machine copy — per page except that where the allowance for 10 or more pages is claimed, in respect of any document or documents, costs allowed for such copies shall be at the discretion of the taxing officer.	1.00
	PERUSAL	
17	Of any document (when necessary) including special letter, telegram or telex if 3 folios or less or per folio	11.00 2.00
18	Where it is not necessary to peruse but it is necessary to scan, a document per page except that where allowance for 10 or more pages is claimed, in respect of any document or documents, costs allowed for scanning shall be at the discretion of the taxing officer.	3.00
	EXAMINATION	
19	Where it is neither necessary to persue nor scan a document, such as, examination of an appeal book for examination per half hour Solicitor Clerk	44.00 11.00
	LETTERS	
20	Short letter — simple form of letter eg formal acknowledgment	9.00
21	Ordinary letter — including letters between principal and agent	14.00

1992—No. 137

22	Circular letter (after the first) —each	5.00
23	Special letter or letter including opinion — or such may be allowed as is reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this scale.	31.00
24	Telegram, facsimile, copy, or telex including attendance to dispatch — or such fee may be allowed as is reasonable in the circumstances.	37.00
25	Receiving and filing any incoming letter (Postage and transmission fees may be claimed as a disbursement properly incurred.)	5.00
	SERVICE	
26	Personal service (other than where service is claimable under other items in this scale) of any documents of which personal service is required — or such fee may be allowed as is reasonable having regard to time occupied, distance travelled and other relevant circumstances.	37.00
27	Service of any document at the office of the address for service either by delivery or by post	11.00
	PREPARATION OF APPEAL BOOKS	
28	Preparation of appeal books including collating all necessary material, attendances on the printer, general oversight of their preparation in cases where the taxing officer is satisfied it has been done efficiently — per hour — Solicitor — Clerk	79.00 18.00
29	Where appeal books are prepared in a solicitor's office, the taxing officer may allow such sum as seems just and reasonable having regard to work and labour properly performed and charges for material used. In exercising such discretion the taxing officer shall have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine made copy costs otherwise allowable in this Schedule.	
	ATTENDANCES	
30	An attendance which is capable of being made by a Clerk, such as at the Court Registry	18.00

31	An attendance which requires the attendance of the Solicitor or Managing Clerk and involves the exercise of skill or legal knowledge (including an attendance to inspect or negotiate) — per quarter hour Solicitor Managing Clerk	35.00 10.00
32	An attendance for which no other provision is made herein	31.00
33	An attendance by telephone which does not involve the exercise of skill or legal knowledge	8.00
34	An attendance on Counsel with brief or papers (where not otherwise provided for) — to appoint a conference or consultation — where appointment made by telephone	18.00 18.00 8.00
35	A necessary conference or consultation with Counsel if half an hour or less — if over half an hour — per hour or part thereof	52.00 79.00
36	In Court or chambers or before the Registrar for a hearing without Counsel: — for each hour or part of an hour of the hearing — for each hour or part of an hour when likely to be heard but not heard not to exceed per day	157.00 157.00 706.00
37	In Court or chambers or before the Registrar — for hearing with Counsel: — for each hour or part of an hour of the attendance during the hearing — for each hour or part of an hour of the attendance when likely to be heard but not heard not to exceed per day if a person other than a solicitor attends in place of a solicitor, for each hour (a) Managing Clerk — not to exceed per day (b) any other Clerk — not to exceed per day	128.00 128.00 580.00 52.00 236.00 28.00 126.00
38	To hear judgment	36.00

39	On taxation of costs: — if a solicitor attends per hour or part of an hour — if a clerk attends per hour or part of an hour	79.00 18.00
40	Where the Solicitor attends at Court or chambers for the hearing of an application or appeal, or on conference with Counsel, at a distance of more than 50 kilometres from the solicitor's place of business when it is neither appropriate nor proper for an agent to attend, the taxing officer may allow for each day of absence from place of business, not being a Saturday, Sunday or public holiday such amount as the taxing officer thinks reasonable not exceeding	179.00
GENERAL CARE AND CONDUCT		
41	Where the case or circumstances warrant it, an allowance may be claimed under this item, in addition to any item which appears in this scale, for general care and conduct (where appropriate) including: (a) the complexity of the matter and the difficulty and novelty of the questions raised or any of them (b) the importance of the matter to the party and the amount involved (c) the skill, labour, specialised knowledge and responsibility involved therein on the part of the Solicitor (d) the number and importance of the documents prepared or perused without regard to length (e) the time expended by the Solicitor (f) research and consideration of questions of law and fact	
COUNSEL'S FEES		
42	It shall be proper for a solicitor to incur such Counsel's fees as appear to be fair and reasonable according to the circumstances of the case and the seniority of Counsel and such Counsel's fees may be claimed as a disbursement. Regard shall be had to the Scale of Counsel's Fees in the Supreme Court Rules.	
43	Where a solicitor appears without counsel, when it would be appropriate to brief Counsel, the taxing officer may allow such sum in the nature of Counsel's fee as the taxing officer thinks just and reasonable (having regard to the Supreme Court Rules).	
WITNESSES EXPENSES		

44	Witnesses called because of their professional, scientific or other special skill or knowledge per day	92.00 to 462.00
45	Witnesses called, other than those covered in item 44, per day	52.00 to 86.00
46	Witnesses remunerated in their occupation by wages, salary or fees; the amount lost by attendance at court.	
47	Where the witness resides more than 50 kilometres from the Court, such sum as the taxing officer thinks reasonable for the actual cost of conveyance, together with a reasonable amount for sustenance or maintenance.	
DISBURSEMENTS		
48	All Court fees and other fees and payments to the extent to which they have been properly and reasonably incurred and paid shall be allowed.	
49	Where a solicitor attends a Court or chambers, or on conference with Counsel, in the circumstances outlined in item 40, the taxing officer may allow reasonable travelling expenses to the extent to which they have been reasonably incurred and paid.	
MISCELLANEOUS		
50	Matters not included in this scale to the extent they are covered by Part 25, rule 25.	

Note:

Bills of costs prepared shall identify costs and disbursements claimed with an item number.

A folio comprises 72 words; there are generally 3 folios to each page.

THIRD SCHEDULE

ADDITIONAL POWERS OF REGISTRAR

Powers of the Registrar, in addition to powers referred to in the Rules:

1. On any matter, the power to conduct mediation in accordance with Part 21 of the Rules, subject to any order of the Court.
2. On any matter remitted by the Court, where the only question for hearing is the amount to be recovered and costs.
3. The hearing of any matter remitted by the Court, where the only matter in question is the matter of costs.
4. Call-overs, directions hearings, readiness hearings, pre-hearing conferences, the recording of pleas and setting matters down before the Court.

EXPLANATORY NOTE

The object of this Regulation is to prescribe interim rules for the Industrial Court pending the making of rules by the Court.
