

SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA

(Last updated 16 July 2008)

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PRACTICE DIRECTIONS

1. Practice Direction No 1/92 - Corporations Law

In pursuance of section 72 of the *Supreme Court Act*, I direct as follows -

An order for the winding up of a company will not be made unless –

- (a) there has been compliance with section 470(1) of the *Corporations Law*; and
- (b) the judge or master making the order is satisfied that no prior order for the winding up of the company has been made by any court in the Commonwealth of Australia having jurisdiction to make orders for the winding up of a company.

The fact that, on the day on which a winding up order is sought, a search was made of the records of the Australian Securities and Investments Commission at its Darwin office and that no prior order for winding up was found by that search, shall be sufficient evidence for the purposes of par 1(b).

Evidence of the matters required by this practice direction shall be adduced by affidavit.

April 1992

2. Practice Direction No 3/92 - Usual undertaking as to damages

Where, in relation to an interlocutory injunction or undertaking to the court, an undertaking as to damages is to be given, a "*usual undertaking as to damages*" will be an undertaking to pay to any party adversely affected by the interlocutory injunction or undertaking such compensation (if any) as the court thinks just, in such manner as the court directs.

13 November 1992

3. Practice Direction No 4/93 - Delivery of decision by other than trial Judge

Pursuant to section 72 of the *Supreme Court Act*, I direct that:

When any proceeding, after being fully heard before a judge, is ordered to stand for judgment and the judge is absent from the Northern Territory and the judgment and reasons for judgment have been reduced to writing by the judge, then the same may be made and published by any other judge in the Northern Territory. In any such case the judgment and reasons shall have the same force and effect as if the judge whose judgment and reasons so made and published had been present in court in the Territory and had made and delivered the same in person.

21 September 1993

4. Practice Direction 1/97 - Jury lists

I, Brian Frank Martin, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to section 72 of the *Supreme Court Act*, direct that the list of jurors required pursuant to section 434 of the *Criminal Code* to be given to accused persons may not be given to an accused person, or the prosecution, earlier than 7 days before the accused person is required to plead to the indictment.

20 June 1997

5. Practice Direction No 2/98 - Applications for appointment as a Public Notary

1. Application for appointment as a Public Notary will be made by Originating Motion (*Form 5D*) supported by affidavit.
2. The Originating Motion and supporting affidavit shall be served on the Law Society Northern Territory.
3. The applicant's affidavit shall have annexed to it a copy of a notice in the *Northern Territory News* of the applicant's intended application, which shall state the date, time and place of the hearing of the application.
4. It is not necessary for the applicant to take out a summons in accordance with Rule 45.04(2).
5. The Law Society Northern Territory is not required to enter an appearance to the Motion and shall be entitled to be heard at the hearing hereof.
6. The advertisement referred to in paragraph 3 above shall be placed once in the Public Notices column of the *Northern Territory News* at least 7 days prior to the date of hearing.
7. The Notice of Motion and supporting affidavit shall be served upon the Law Society Northern Territory at least 2 clear days prior to the hearing.
8. A person other than the Law Society Northern Territory shall not be heard in opposition to the application except by leave of the Court.

2 September 1998

6. *Practice Direction No 2/99 - Court Attire – Wigs*

With certain exceptions, the Judges of the Supreme Court will not wear wigs when exercising the civil jurisdiction of the Court including on appeal to the Court at first instance, and on appeal from the Court to the Court of Appeal and matters referred to the Full Court as from 1 July 1999. The exceptions apply to ceremonial sittings and sittings of the Full Court for the admission or discipline of legal practitioners and where a Judge or Judges decide otherwise in particular circumstances.

Wigs will not be worn by counsel when wigs are not worn by the member or members of the Court.

14 May 1999

7. Practice Direction No 3/99 - Insurance of property arrested under the Admiralty Act 1988

The *Admiralty Act* 1988 (Clth) provides for the arrest of property (*including vessels*) by the Marshall in actions *in rem*. The Marshall will obtain indemnity insurance for the period the vessel is in the possession of the Marshall. The costs of that insurance will be an expense incurred by the Marshall payable by the party issuing the writ for the arrest of the vessel. The Court may require that party to undertake to pay the cost of that insurance at the time the writ is issued.

The Marshall does not, at any time during the period of arrest, hold commercial insurance for the benefit of any person who has an interest in the arrested property, including cargo. Persons with an interest in the arrested property and their solicitors may wish to consider the question of insuring the amount of their interest against consequential risks, including risks occasioned by any movement of the vessel.

9 July 1999

8. Practice Direction No 1/00 - Criminal trials

With a view to ensuring the orderly and expeditious discharge of the business of the court by increasing the opportunity for judicial management of the preparation for criminal trials, it is directed that:

- . once a trial date has been allocated the Sheriff will notify the Judge before whom the trial is to take place;
- . the Judge may call the parties together at any time upon reasonable notice and conduct a conference at which the parties attend in person or by telephone or video link, for any purpose connected with the conduct of the trial;
- . the parties shall attend at that conference and the Judge may make such orders as the Judge thinks fit in relation to disposing of applications prior to trial and in the conduct of the trial;
- . "*parties*" means the Director of Public Prosecutions, the legal representative of the accused, or, if unrepresented, the accused.

This Practice Direction applies as well to all cases presently set down for trial.

20 April 2000

9. Practice Direction No 2/00 - Criminal trials as backups to civil trials in Alice Springs

With a view to ensuring the orderly and expeditious discharge of the business of the court and in an attempt to make use of court time which might otherwise be lost when civil trials in Alice Springs do not proceed, and there being no other civil trial to fill the time made available, the following procedure has been agreed upon by interested parties and is directed to be implemented as from 1 May 2000.

- . a callover of all civil and criminal matters in the list for hearing at Alice Springs will take place at or near the end of each criminal sittings in Alice Springs by the Judge then present;
- . before the callover the Director of Public Prosecutions and representatives of the Central Australian Aboriginal Legal Aid Service and the Northern Territory Legal Aid Commission will seek to identify criminal trials suitable to be listed as backups for the civil sittings to commence not less than seven weeks from the date;
- . the presiding Judge will list any suitable criminal trial as a backup to a civil trial.
- . approximately one week before the commencement of the civil sittings the Judge who is to preside will conduct a conference by video link in which the calendar for the sittings will be reviewed and backups confirmed or vacated as appropriate.

20 April 2000

10. Practice Direction No 3/00 - General Rules of Procedure in criminal proceedings - Pre-trial Conference

It is anticipated that the Rules will come into operation by notification in the Gazette on 1 May 2000.

With a view to ensuring the orderly and expeditious discharge of the business of the court, and to minimise cost and inconvenience in relation to the conduct of a pre-trial conference, it is directed that:

- . the Director of Public Prosecutions and the accused's legal representative, or, if the accused is unrepresented, the accused, shall, not less than 24 hours prior to the time fixed for the pre-trial conference, deliver to the Criminal Registrar who is to conduct the conference, by leaving it at the Criminal Registrar's office or by post or facsimile transmission, a document in the form of Schedule 2 to the Rules, upon which answers to the questions have been written;
- . the form shall be signed by the Director or the accused's legal representative or the accused as the case may be;
- . a copy of the completed and signed form shall also be delivered to the other party in person or by post or facsimile transmission prior to the time fixed for the pre-trial conference;
- . forms for this purpose will be available from all Criminal Registrars. The Director and legal representatives may make copies for their purposes, but for the sake of consistency, a copy must be made of the form provided;
- . any notice required to be given by the Director under r81A.16(2)(c) shall be in writing signed by the Director and delivered to the Criminal Registrar with the Schedule 2 form.

20 April 2000

11. Practice Direction No 4/00 - Goods and Services Tax

In taxing costs under Order 63, the Taxing Master may allow a reasonable amount for GST paid or payable pursuant to the GST law as defined in *A New Tax System (Goods and Services Tax) Act 1999*, on the taxed costs.

Practitioners claiming GST are required to account for any savings that may result from the implementation of the New Tax System.

July 2000

12. Practice Direction No 2/2001 - Places of sitting

Pursuant to s 13(2) of the *Supreme Court Act* it is directed that the Court shall have power to sit and act at any time at any of the undermentioned places for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged:

Alice Springs
Katherine

Other places may be the subject of such a direction as occasion requires.

31 January 2001

13. Practice Direction No 3/2001 - Medical evidence – Hospital records

Section 12(2) of the *Evidence Act* provides:

“(2) A Medical practitioner shall not, without the consent of his patient, divulge in any civil proceedings (unless the sanity of the patient is the matter in dispute) any communication made to him in his professional character by the patient, and necessary to enable him to prescribe or act for the patient.”

If a medical practitioner is asked or subpoenaed to give evidence, it is the obligation of the legal practitioner to inform the medical practitioner of s12(2).

Medical records should be produced to the Registrar in accordance with O.42.06 or to the Court on the return date of the subpoena. It will be for the Court to determine whether and to what extent the parties may be permitted access to the records.

31 January 2001

14. Practice Direction No 4/2001 - Settlements – Persons under disability

On application to the Court to approve a settlement on behalf of a person under disability, it is necessary to satisfy the Court by evidence that the proposed compromise is in all the circumstances of the case a proper one, and reasonably in the interest of the person under disability: see generally *Katundi v Hay* (1940) St.R.QD. 39; *Gillespie v Alperstein* (1964) V.R. 749; *McWilliams v McWilliams* (1967) 87 WN (Pt.1) (NSW) 6.

In the usual case, the evidence will be in the form of 2 affidavits, one by the next friend (*litigation guardian*) of the plaintiff, the other by the plaintiff's solicitor.

In his affidavit, the next friend (*litigation guardian*) should state that he has considered the compromise, that he has discussed it with his solicitor or barrister, and that he is satisfied that it is a proper one for the benefit of the person under disability.

The affidavit by the plaintiff's solicitor should state that he too has considered the proposed compromise, and that, in his opinion, it is a satisfactory one, and in the best interests of the plaintiff. That opinion should be supported by sufficient facts and other information as to the circumstances giving rise to the plaintiff's claim, as well as by copies of medical reports and an opinion of counsel, as will enable the Court to reach a proper conclusion on the application.

Except in special circumstances, settlement for a sum inclusive of costs will not be sanctioned by the Court, and where costs have been agreed at the time the approval is sought, the Court will need to be satisfied that the costs were the subject of negotiation, independently of, and subsequent to, the settlement.

31 January 2001

15. Practice Direction No 5/2001 - Appointment of Liquidators by the Court on winding up of a company

There will be established an “A”, “B” and “C” list.

The “A” list shall consist of local resident liquidators, ie those who reside in, and operate from, Darwin, or the place in the Northern Territory where the company had its registered office or operation. The “B” list shall consist of liquidators with Darwin offices or offices in the place in the Northern Territory where the company had its registered office or operation, but who do not reside there. The “C” list shall consist of liquidators who neither reside nor have offices in Darwin or in the place in the Northern Territory where the company had its registered office or operation.

On appointing a liquidator (*whether as a provisional liquidator or otherwise*), the Court will give preference to those liquidators on the “A” list. Where there are reasons why the appointment of a liquidator on that list cannot be made (*eg conflict of interest*), the next preference will be given to the liquidators on the “B” list. Where there are good reasons why no liquidator on either the “A” list or the “B” list should be appointed, (*eg where the company is part of a group of companies and the main or principle company has had a liquidator appointed out of the Territory*), then a liquidator from the “C” list may be appointed. In the case of the example given, the liquidator approved will be the liquidator who was appointed out of the Territory.

To be on the “B” list, a liquidator will have to undertake in writing to the Master that;

- he or she can operate from his or her Darwin office or the office in the place in the Northern Territory where the company had its office or operation;
- he or she will pay regular visits to Darwin or to the place in the Northern Territory where the company had its office or operation; and
- the costs of any interstate travel and of any additional costs involved in a liquidation by reason of the liquidator’s being resident out of the Northern Territory will be absorbed by him or her or his or her firm.

In any event, any such costs claimed in a liquidation will be disallowed.

Where in an application for winding up a company the appointment of a liquidator who is on the “B” or “C” list is sought, the applicant shall, before the hearing, file an affidavit setting out the grounds upon which the appointment of such a liquidator is sought. Such an affidavit may be made by the applicant’s solicitor on the basis of information and belief.

A liquidator whose name is entered on any of the above lists shall notify the Registrar in writing of –

- (a) any change of the address of his place of business;
- (b) such changes as –
 - (i) the merger of his firm with that of another firm; or
 - (ii) his retirement from business; and
- (c) any other changes in his circumstances which may be relevant to his being or remaining on any of the lists.

A liquidator shall give notice of any such change as soon as possible after it has occurred.

31 January 2001

16. Practice Direction No 7/2001 - Document Exchange

Pursuant to Rule 6.06(5) of the *Supreme Court Rules* each of the following are approved as a Document Exchange for the purposes of Rule 6.06(1)(d):

- The document exchange facility maintained by the Law Society Northern Territory situated at Level 2, Supreme Court Building, State Square, Darwin.
- The document exchange facility on the ground floor of the Law Courts Building at Alice Springs.

31 January 2001

79. Practice Direction No 8/2001 - Signatures

Where documents referred to in any of the *Supreme Court Rules, Corporations Law Rules or Motor Accidents (Compensation) Appeal Tribunal Rules* are required to be settled, issued, signed or sealed by the Master or Registrar, they may be settled, issued, signed or sealed by the Master or Registrar or any person from time to time authorised in writing by the Master or Registrar as the case may be. Any such signature may be by means of a rubber stamp containing a facsimile of the Master or Registrar's signature as the case requires.

31 January 2001

18. Practice Direction No 11/2001 - Alice Springs sittings – Callovers generally

At or near the conclusion of each sittings of the court at Alice Springs the Judge will conduct a callover of all matters listed for hearing at the next sittings.

The purpose of the callover will be to ascertain which of the matters listed will or will not proceed, the time required for the hearing of each matter which will proceed, and to determine what time, if any, will be available to hear any other matters, criminal or civil.

31 January 2001

19. Practice Direction No 12/2001 - General Rules of procedure in Criminal proceedings – Procedure wanting or in doubt

1. Where the manner or form of the procedure -
 - (a) for commencing or for taking a step in a criminal proceeding; or
 - (b) by which the jurisdiction, power or authority of the court is exercisable,

is not prescribed by Chapter 1A of the *Supreme Court Rules*, a direction under s72 of the Act or by or under any other Act, or for any other reason there is doubt as to the manner or form of that procedure, the court shall determine what procedure is to be adopted and may give directions.

2. An act done in accordance with the determination or direction under this practice direction is regular and sufficient.

31 January 2001

20. Practice Direction No 13/2001 - Public access to Civil jurisdiction court files

1. Whether to permit an inspection of the court files or any part thereof, is in the discretion of the Registrar or the Master.
2. In respect of any documents not included in the following list, or where Registry staff are unsure, the request for inspection is to be referred to the Registrar or the Master for determination.

Subject to the above, the following documents filed in the civil registry of the Court are available for search by the general public:

1. Pleadings

- Originating process
- Statement of Claim
- Defence
- Reply
- Request for further and better particulars
- Further and better particulars
- Counterclaim
- Defence to counterclaim
- Contribution notice
- Third party notice
- Amended pleadings
- Book of pleadings

2. Appearances etc

- Appearance
- Conditional appearance
- Appearance to counterclaim
- Notice of acting
- Notice of ceasing to act
- Notice of change of address for service

3. Concluded interlocutory applications

- Summonses which have been dealt with
(Note: affidavits in support of summonses which have been dealt with are to be referred to the Registrar or Master for determination)

4. ***Listing of matters***
 - Counsel's certificate
 - Subpoena
 - Notice of dispute
 - Notice to admit

5. ***Transcript***
 - Transcript of proceedings in open court
 - Report of listing
 - Report of callover
 - List of exhibits

6. ***Directions/orders***
 - Notices under Rule 48
 - Minutes of order
 - Orders
 - Judgments
 - Reasons for judgment
 - Rulings
 - Certificate of Master
 - Terms of settlement

7. ***Notices of appeal***

8. ***Execution***
 - Warrant of Seizure and Sale
 - Warrant of Possession

9. ***Miscellaneous***
 - Affidavit of service
 - Notice of discontinuance

The following documents are ***not*** available for public search:

1. ***Current interlocutory applications***
 - Interlocutory summonses which have not been dealt with or have been adjourned
 - Affidavits in support of interlocutory summonses or which have not been dealt with or have been adjourned

2. ***Discovery***
 - Lists of documents
 - Notice to produce

3. Interrogation

- Interrogatories
 - *(Answers to interrogatories are to be referred to the Master or Registrar for determination)*
4. Any document the court orders remain confidential
5. Any evidentiary material that has not been received into evidence

31 January 2001

21. Practice Direction No 14 of 2001 - After Hours Duty Judge

Practice Direction 1/99 is rescinded.

A regular system for contacting Judges for urgent matters out of normal court hours is in place.

Initial contact is to be made by the party seeking to bring a matter before a Judge by telephone call to 0401 115 454. The telephone will be held either by the Sheriff or the Registrar.

Details of the nature of the application and reasons for urgency are to be given to the Sheriff or Registrar who will then contact the Judge on duty.

The Judge will give appropriate directions.

6 March 2001

22. Practice Direction No 15 of 2001 - Sittings at Oenpelli

I, Brian Frank Martin, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to Section 13(2) of the *Supreme Court Act*, direct that the Court shall have power to sit and act at any time at Oenpelli in the Northern Territory for the transaction of any part of the business of the Court or for the discharge of any law in force in the Territory that is required to be discharged.

5 May 2001

23. Practice Direction No 1 of 2002 - Pre-Trial hearings – crime

Judges will not robe when conducting pre-trial hearings under the Criminal Rules of Court except where it is anticipated an accused will be present. The hearings may normally be treated as analogous to interlocutory applications in the civil jurisdiction.

Counsel appearing on such a hearing may care to follow the same practice.

11 January 2002

24. Practice Direction 2 of 2002 - Guidelines for the use of information technology in any civil matter

Part 1 - Discovery

Introduction

1. The primary purpose of this Practice Direction is to encourage the use of information technology during the discovery process in civil litigation in the Court but parties are also encouraged to consider the use of information technology during trial. Parties are encouraged to consider these issues from the commencement of proceedings.
2. The Court may issue further Practice Directions about the use of information technology during discovery and at trial. A benefit of an agreed protocol for exchange of electronic data during discovery is the more efficient use of information technology at the hearing.
3. Parties to any civil proceedings are encouraged, where appropriate to:
 - (a) use electronic data to create lists of discoverable documents;
 - (b) undertake discovery by exchanging electronic data created in accordance with an agreed protocol;
 - (c) exchange electronic versions of documents such as pleadings and statements;
 - (d) arrange for inspection of discovered material by using electronic data, including images, where appropriate; and
 - (e) consider the use of electronic data at trial.
4. If the parties believe that they will be discovering more than 500 documents between them, they are encouraged to agree, before commencement of discovery, upon a protocol for exchanging documents and indexes in electronic format.
5. Where the parties have agreed that discovery should be undertaken by exchanging documents and indexes in electronic format, they are encouraged to:
 - (a) endeavour to reach agreement on the protocol to be used;
 - (b) seek a consent order from the Court with respect to the agreed protocol to be used; or

- (c) seek a direction from the Court as to the protocol to be used if the parties cannot agree.
6. Where the parties agree to decide on a protocol for exchanging electronic data, the protocol should include;
 - (a) the exchange of court documents and statements in electronic format;
 - (b) the exchange of discovery lists and documents in electronic format (including images, where appropriate);
 - (c) the appropriate medium for exchange of electronic data during discovery; and
 - (d) the use of technology at the trial.
 7. This Practice Direction provides assistance for the parties to agree upon a protocol and guidance on how to collect electronic data.
 8. Parties may find the Technology Check List set out in Annexure A useful to define the information technology protocols to be agreed upon during the course of proceedings.
 9. Annexure B provides guidance on the fields of data the parties should consider using to collect electronic data.
 10. The Court also encourages parties, in appropriate cases, to deliver the court documents in electronic format to the trial Judge's Associate prior to the hearing. These will supplement the hard copy documents filed with the Registry.
 11. Technical terms used in this Practice Direction are defined in the Glossary.

Electronic exchange of court documents

12. Where a party serves a pleading, affidavit, statement, list of documents or interrogatories upon another party, the recipient may ask that party to provide a copy of that document in an electronic format.
13. The Court expects parties to accede to reasonable requests for copies of documents in an electronic format.
14. Subject to 16 below, where a party provides a document in electronic format, that document must contain the same text as the paper copy.

15. Where appropriate, the parties may wish to prepare a document in a structured format, such as HTML, so that hypertext links can be made where appropriate. For example, if a document refers to a Document ID, a hypertext link can be made to the relevant document image.
16. Where a document contains annexures, the party will normally be expected to provide an electronic version of those annexures together with the electronic version of the host document, provided those annexures are documents created in electronic format by or on behalf of the party or its solicitors for the purposes of the litigation.
17. The Court expects parties to make all reasonable efforts to agree on such matters as;
 - (a) the format in which electronic versions of Court documents will be provided;
 - (b) the methods by which electronic versions of Court documents are to be exchanged; and
 - (c) the terms and conditions on which electronic versions of Court documents are to be exchanged.
18. In general, it will not be regarded as unreasonable for a party to provide documents in an electronic format subject to a condition that it is the responsibility of the recipient to test for viruses.
19. The Court may direct a party to provide the Court with copies of court documents in a specified electronic format. Subject to 16 above, where a party provides the Court with a document in electronic format, that document shall be in the same format and contain the same text as the paper copy. The Court expects the party providing documents in electronic format to provide appropriate written warnings about the need to test for viruses.

Electronic exchange of discovery lists and documents

20. The parties are encouraged, from the commencement of proceedings, to consider ways to use information technology to manage the discovery and inspection process more efficiently.
21. The most appropriate use of information technology will usually depend on the volume and categories of documents that are to be discovered. That in turn may depend on any agreement between the parties, or any direction from the Court limiting the scope of discovery
22. Decisions about the appropriate use of technology will be better informed if the parties have identified the scope of discovery and the categories of documents likely to be discoverable.

23. At directions hearings, the Court may make orders that parties;
 - (a) meet to discuss how best to use technology to exchange information about their discoverable documents or imaged copies of the documents; and
 - (b) make written submissions on how best to use technology to;
 - (i) exchange information about their discoverable documents or imaged copies of the documents; and
 - (ii) manage information in the proceedings generally.

24. The Court will expect the parties to make all reasonable efforts to agree on such matters as;
 - (a) the medium to be used to exchange data concerning discoverable documents and/or images of the documents;
 - (b) how data should be delimited;
 - (c) the format of the data (for example, whether it should be in ASCII text or some other agreed format);
 - (d) how the parties will record the date of service of the electronic data and ensure that the party providing the data and the nature of the data may be readily identified (for example, by appropriate labels on disks, CD-Roms or other medium used to exchange data);
 - (e) the terms and conditions on which data and/or images will be exchanged.

25. In general, it will not be regarded as unreasonable for a party to provide electronic data on the condition that it is the responsibility of the recipient to test it for viruses.

26. As a general rule, at the next directions hearing after the use of information technology has been raised, parties will be expected;
 - (a) to have ascertained the number and categories of documents likely to be discoverable by that party, taking into account any limits on discovery that may be agreed between the parties or the subject of a direction by the Court;
 - (b) to have attempted to agree with each other party on whether and how to use technology to exchange lists of discoverable documents and/or imaged copies of the documents;

- (c) to be able to make informed submissions about whether and how information technology should be used to exchange lists of discoverable documents and/or imaged copies of the documents.
27. Parties wishing to use a database to record and exchange discovery data may refer to the table in Annexure 2. This sets out a list of fields that could be included in such a database for both discovery and case management purposes. Parties should feel free to add, modify or disregard the suggested fields to suit the requirements of the litigation.
28. Parties should also consider the possibility that data relating to their discoverable documents can be provided to the Court electronically (in addition to any hard copy list).

Technology for the hearing

29. If parties have exchanged electronic data by electronic means to facilitate discovery and inspection, they should also consider and make submissions to the Court regarding how best to use information technology at the hearing.
30. For example, the parties' electronic data could form the basis for an index to an agreed bundle, for lists to assist with the tendering process, or for the creation of a database of documents admitted into evidence and rulings on the admissibility of documents.
31. More generally, parties should consider;
- (a) the equipment and services (including appropriate hardware, software and additional infrastructure) that they and the Court may require at the trial; and
 - (b) the arrangements that may need to be made between the parties, the Court and any third party service providers to ensure that appropriate equipment and services are available at the hearing.

13 February 2002

Annexure A

SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA

INFORMATION TECHNOLOGY CHECK LIST

Parties are encouraged to use this checklist to identify information technology issues that may arise during proceedings. Ideally, this checklist should be completed at the time proceedings are commenced.

1. **Checklist for court documents and witness statements**

(a) **Document Format**

Select which document format that will be used for Court Documents and Witness Statements:

- Hard copy only
- Electronic only
- Hard copy and electronic copy

(b) **Electronic Document Format**

If electronic Court Documents and Witness Statements are to be exchanged between parties, it is suggested that documents be created in a Structured Format so that parties wishing to use tools such as hypertext links can do so.

Select which electronic format/s are to be used for preparation of Court Documents and Witness Statements:

- ASCII text file
- Word Perfect, Version
- Microsoft Word, Version
- Word Pro, Version
- RTF
- PDF
- HTML
- Other

2. **Document lists**

(a) **List Format**

Select the format in which Document Lists are to be prepared:

- Hard copy only
- Electronic only
- Hard copy and electronic copy

(b) **Electronic List Format**

If Document Lists are to be prepared in electronic format, select the format/s in which they will be prepared:

- ASCII text file
- Word Perfect, Version
- Microsoft Word, Version
- Word Pro, Version
- RTF
- PDF
- HTML
- Other

(c) **Data Collection Repositories**

Consideration should be given to which data collection repositories the parties will use. Some examples are:

- Microsoft Access
- Lotus Notes
- Filemaker Pro
- SQLBase
- Excel Spreadsheet

3. **Document inspection**

(a) **Document Inspection Format**

Select the format/s in which documents are to be offered for inspection:

- Hard copy only
- Electronic format and/or images of hard copy
- Both hard copy and electronic copy

- Non paper format ie an object that is not a paper document
- Combination of hard, electronic and non paper format (non paper objects should be noted in electronic data)
- Other medium

(b) *Electronic Image Type*

If documents are to be imaged for inspection, select the image type/s that will be used:

- TIFF
- PDF
- JPEG
- GIF
- Black and White
- Colour
- Other

(c) *Electronic Image Structure*

If documents are to be imaged for inspection, select the image structure to be used:

- Multi-Page
- Single-Page

(d) *Image Resolution*

It is suggested that images should be scanned in at around 200 dpi; any greater and file size may be unworkable.

(e) **File name Structure**

It is suggested that images should be named identically to the relevant Document ID.

(f) **Special Considerations**

Consideration should be given to whether there are any special requirements such as redacting or masking.

4. **Exchange of agreed bundle/court book indexes**

(a) **Document Inspection Format**

Select the format in which the agreed bundle/court book index will be prepared:

- Hard copy only
- Electronic format and/or images of hard copy
- Both hard copy and electronic copy
- Other medium

(b) **Electronic Document Index Format**

If an electronic document index is to be used, select the format in which the index will be prepared:

- Delimited ASCII text file
- Word Processing Format
- Excel Spreadsheet
- Database Tables
- Other

5. **Document exchange method**

Select the method by which Court Documents and Witness Statements, Documents Lists and Indexes are to be exchanged:

- DX

- Court Box
- Courier
- Australia Post
- Floppy disk
- CD-Rom

- Electronic Mail
- Internet
- Intranet

Annexure B

**SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA**

SUGGESTED FIELDS

SUGGESTED FIELD	DATA TYPE AND LENGTH OF FIELD	NOTES
Document ID	Text and Numbers; length depends on field structure.	<p>Each document should be uniquely identified. The parties should agree upon a consistent format for capturing <i>Document ID</i> before discovery is commenced. Some suggestions for capture of <i>Document ID</i> are set out below.</p> <p>The field may be broken into different components such as First Page and Last Page. The field or fields might comprise a 4 part number in the form of AAA.NNN.NNN.NNNN where “AAA” represents an alphabetic shorthand for the party name. The other 3 sets of numbers could be used to suit the convenience of the parties. It may be useful if the first set is used to refer to an archive box number, the second to the number of the folder within the box, and the third to the page number.</p> <p>Consideration should be given to number those pages or documents that are accidentally omitted; a suffix may be added to the <i>Document ID</i>, for example, if a page has a <i>Document ID</i> XXX.001.001.0002 and a page has to be added, the added page <i>Document ID</i> may be XXX.001.001.0002_A.</p> <p>The parties should consider whether each page should be individually numbered or agree on some other satisfactory arrangement. If agreement is not reached then the parties should seek the Court’s direction.</p> <p>If the parties agree not to number each page, consideration should be given to an</p>

		<p>additional field recording the number of pages in each document.</p> <p>Attachments to documents may be separately listed and numbered. Attachments can be numbered sequentially following the host document. For example, if a host document was numbered XXX.001.001.0001 then its attachments would be numbered as XXX.001.001.0002, XXX.001.001.0003 and XXX.001.001.0004.</p> <p>If documents are to be imaged, the parties may agree on additional information about document identification.</p> <p>Some image file names may be restricted to a maximum of 8 characters; this may affect the <i>Document ID</i> structure if documents are to be imaged and image files are to be named identically to the <i>Document ID</i></p>
Attachments	Text and Numbers; length depends on the number of attachments	<p>The <i>Attachments</i> field does not include documents that are only referred to in a discovered document.</p> <p>Each attachment can be listed separately, with its own discovery number and details.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Attachments</i>; for example, if a comma is used as a separator, this may cause problems in some exchange formats such as comma delimited files.</p>
Host Document Number	Text and Numbers; length depends on <i>Document ID</i> structure	<p>The <i>Host Document</i> Number field contains First Page and, if agreed, Last Page of the host document to which an attachment is attached. Each attachment should only ever have one host document.</p>
Document Group	Text, 3	<p>Suggested naming conventions for the <i>Document Group</i> field are:</p> <p>HWA: Host with attachment HNA: Host no attachment ATT: Attachment</p> <p>The <i>Document Group</i> field may be</p>

		required if parties agree to exchange image files.
Date	Date, 10, or Text, 25 (to be agreed)	Depending on the databases used, and exchange formats agreed, the <i>Date</i> filed may be a Date field or a Text field. If a date range is to be used (for example, where Bundles of Documents are being referred to), then a text field should be used; alternatively, the parties may agree that instead of using one <i>Date</i> field, two date fields may be used eg "Date From" and "Date To".
		<p><i>Date</i> can be inserted as: DD/MM/YYYY for example 05/09/1996 Where DD=Day, MM-Month and YYYY=Year</p> <p>If there is no way of ascertaining the date of the document, then the parties may agree upon what naming convention to use, for example, "Undated", or 00/00/0000, however, it should be noted that some database formats may not recognise these codes.</p> <p>It is suggested that documents with only the month and year (ie. August 1997) can be coded as 01/08/1997 and an entry made in the <i>Estimated Date</i> field.</p> <p>Documents with the day and month but no year should be considered as undated documents. For example a document dated 04/04 will be coded as if it were undated.</p>
Estimated Date	Text, 3	<p>The <i>Estimated Date</i> field should be left blank if a date is clearly evident on the document (for example 04/08/1963).</p> <p>This field should be completed as "Yes" where the actual date of the document cannot be ascertained for certain. For example if a partial date is shown on the document (eg. August 1979), the date has been stamped on, the date has been amended by hand or the only visible date is on a fax machine print out, then this field should be marked "Yes".</p>

		<p>If a document contains what may be an original date as well as a subsequent date (possibly as a result of alterations being made to the document), it is suggested that the later date should be taken as the document date and the <i>Estimated Date</i> field should be left blank.</p> <p>If, for example, a newspaper clipping has a handwritten date only, then it is suggested that the handwritten date should be recorded and that the <i>Estimated Date</i> field should be marked "Yes".</p> <p>Other options that may be considered for this field are:</p> <ul style="list-style-type: none"> • AFT=After • BEF=Before • MTH=Month • ABT=About
Document Type	Text, 254	<p>The <i>Document Type</i> field can be completed using commonly received document types, for example: "Letter", "Memo", "Deed", "Coversheet".</p> <p>Parties should endeavour to create a list of agreed <i>Document Types</i> prior to discovery.</p> <p>If the document has been faxed, this field can include "Facsimile".</p> <p>If a group of documents is being discovered as a bundle, this field may be completed as "Bundle of <i>Document Type</i>".</p>
Document Classification	Text, 254	<p>The <i>Document Classification</i> field can specify whether the document is handwritten, draft, a duplicate or a fax. For example, <i>Document Type</i> may be "Coversheet" and <i>Document Classification</i> may be "Fax".</p>
Privilege	Text, 6	<p>The <i>Privilege</i> field identifies whether privilege has been claimed over the document. The permissible entries in this field are "Yes", "No", and "Part".</p> <p>If this field is completed with "Yes", or "Part", the <i>Privilege Basis</i> field should also</p>

		be completed.
Privilege Basis	Text, 50 (or combination of text and numbers)	The <i>Privilege Basis</i> field identifies the basis on which privilege is claimed over the document. Parties may agree on the way in which privilege may be claimed. One possibility is to set out the type of privilege claimed, or the section or sections of any statute on which a party relies to claim that a document is privileged.
Status	Text 10	The <i>Status</i> field will simply be either “Copy” or “Original”
Author	Text, 254 or as appropriate	<p>The <i>Author</i> field identifies the person or persons who wrote the document. This field should be completed using information on the face of the document.</p> <p>It is important that names of persons be captured consistently and parties should agree on a consistent name capture format. A suggested way to capture names is to use surname first, followed by the person’s initial, for example, “Smith, A”. It is also important to ensure that people of the same name are not captured in different ways, for example, “Smith, A” may be Anthony Smith who is also called Tony: there is a danger that this person may be captured as “Smith, T”.</p> <p>If a document has multiple <i>Authors</i>, then it is important to agree upon which separator symbols will be used. For example, these names may be captured as “Brown J/Jones J ...” etc, or as “Brown J, Jones J ...” etc.</p> <p>It is important to agree upon the separator to be used; for example, if a comma is used as a separator, this may cause problems in some exchange formats such as comma delimited files.</p>
Author Organisation	Text, 254 or as appropriate	The <i>Author Organisation</i> field captures the organisation from which the document was produced. This field should be completed from the information on the face of the document.

		<p>The standard spellings and/or abbreviations to be used to identify <i>Organisations</i> should be agreed by the parties prior to document preparation being commenced.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Author Organisations</i> (see explanation in <i>Author</i> above).</p>
Addressee	Text, 254 or as appropriate	<p>The <i>Addressee</i> field identifies the person or persons to whom the document is addressed. This field may include persons to whom copies are circulated. This field is to be completed from information on the face of the document.</p> <p>See explanation in <i>Author</i> above for a suggested way to capture names.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Addressees</i> (see explanation in <i>Author</i> above).</p>
Addressee Organisation	Text, 254 or as appropriate	<p>The <i>Addressee Organisation</i> field identifies the organisation to which the document is addressed. This field is to be completed from information on the face of the document.</p> <p>The standard spellings and/or abbreviations to be used to identify <i>Addressee Organisations</i> should be agreed by the parties prior to document preparation being commenced.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Addressee Organisations</i>; for example (see explanation in <i>Author</i> above).</p>
Parties	Text, 254 or as appropriate	<p>The <i>Parties</i> field identifies the parties to an agreement or other legal document (not correspondence).</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Parties</i> (see explanation in <i>Author</i> above).</p>
Source	Text, 20 or as	Parties may find the <i>Source</i> field useful to

	appropriate	<p>identify documents that have been obtained from someone other than the party making discovery; for example, documents that have been obtained on subpoena or through some other compulsory process of obtaining access to documents.</p> <p>This field would identify the party from whom such documents were obtained.</p>
Non-Paper Record	Text, 3	<p>The <i>Non-Paper Record</i> field can be used to identify discoverable items that are not “documents”. These items may be objects such as video and audio tapes, disks, etc. Entries should be either “Yes” or “No”.</p>

Annexure C

SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA

GLOSSARY

ASCII (American Standard Code for Information Interchange)

ASCII is the most common format for text files used by computers. In an ASCII file, each alphabetic, numeric, or special character is represented with a 7-bit binary number.

CD-Rom

This is a medium that can store digital data. A CD-Rom's storage capacity is approximately 650 megabytes.

Database

A database is a collection of data that is organised so that its contents can easily be accessed, managed and updated.

Delimiter

A delimiter is a character that identifies the beginning or the end of a character string (a contiguous sequence of characters).

Diskette (Floppy Disk)

A diskette is a random access, removable data storage medium that can be used with personal computers. A Floppy Disk's storage capacity is approximately 1.44 megabytes.

DPI (Dots Per Inch)

This is a measure of resolution for digital images and is also used for printers, scanners and displays.

Electronic Data

Electronic data is information that can be used on a computer. The electronic data may have been information in hard copy that has been converted to an electronic format so that it is more convenient to move or process than hard copy. Alternatively, the electronic data may have been created in electronic format.

Field

A Field represents a column of data within a database. Each record (row) can be made up of a number of pieces of information and, therefore, consists of a number of fields. These fields may be displayed as a box to enter or display data (in a form or report).

GIF (Graphics Interchange Format)

A GIF is one of the two most common file formats for graphic images on the World Wide Web. The other is JPEG.

HTML (Hypertext Markup Language)

HTML is the set of “markup” symbols or codes inserted in a file intended for display on a World Wide Web browser.

JPEG (Joint Photographics Experts Group)

A standard algorithm for the compression of digital images. JPEG format allows a digital image to be stored as a compressed file.

Image

An image is a picture that has been created or copied and stored in electronic form; it is like an electronic photocopy.

Medium

A medium is a third-party or element through which information is communicated.

PDF (Portable Document Format)

PDF has been developed by Adobe Systems Inc. It is a file format for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents. Software to read PDF files is freely available on the Internet at www.adobe.com

A PDF file can describe documents containing any combination of text, graphics, and images in a device-independent and resolution independent format. These documents can be one page or thousands of pages, very simple or extremely complex with a rich use of fonts, graphics, colour and images.

Redacting

A method of masking, or “blacking out” text, such as confidential information within a document.

RTF (Rich Text Format)

RTF is a file format that allows text files to be exchanged between different word processors in different operating systems.

SQL (Structured Query Language)

SQL is a standard interactive and programming language for getting information from and updating a database.

Structured Format

Electronic documents that are created in a structured format means that parts of the document can be recognised by a computer in a certain way. For example, if a “mark”, or “tag” is placed next to a Document ID noted in a Witness Statement, a computer program can be written to recognise that Document ID and place a hypertext link to the image of the document.

TIF or TIFF (Tagged Imaged File Format)

TIFF is a common format for exchanging raster (bitmapped) images between application programs, including those used for scanning images.

Virus

A virus is a piece of programming code inserted into other programming to cause some unexpected and, for the victim, usually undesirable event. Viruses can be transmitted by downloading programs from infected sites (including Internet sites) or they may be present on an electronic file received from an infected system.

57. Practice Direction No 1 of 2003 - Early return of subpoenas

In order to avoid unnecessary cost and delay involved in applications to set aside some subpoenas for production I make the following direction;

A party to a proceeding seeking the production of a document or thing for evidence by way of a subpoena that is not returnable on a date fixed for trial or other related hearing, and is not issued pursuant to O.42.09, shall first obtain leave. It may be convenient to apply for such leave at a directions hearing or a listing hearing.

3 March 2003

26. *Practice Direction No 1 of 2004 – Court of Appeal/Court of Criminal Appeal – Unrepresented Litigants*

If a litigant before the Court of Appeal or Court of Criminal Appeal is unrepresented, subject to any direction by the presiding Judge to the contrary, not less than 10 days prior to the time fixed for the hearing of the appeal, the Registrar or Sheriff shall advise the presiding Judge that the litigant is unrepresented.

Unless otherwise determined by the presiding Judge, a directions hearing will be held before the presiding Judge or another Judge not less than 7 days before the date listed for the hearing of the appeal for the purposes of managing the progress of the appeal and other matters including issues concerning the unrepresented litigant's knowledge of his or her rights and legal representation.

18 June 2004

27. Practice Direction No 3 of 2004 – Guidelines – Disclosure by Insolvency Practitioners of fees to be charged

1. The Insolvency Practitioners Association of Australia no longer publishes a Scale of Rates in respect of fees.
2. Where application is made to the Court for an order that a company be wound up or for an official liquidator to be appointed as a provisional liquidator of a company, an official liquidator must consent in writing to be appointed: see *Corporations Act 2001* (Cth) ('the Act'), subs 532(9); *Corporations Law Rules* ('the Rules') 6.1(2). Form 8 requires disclosure of the hourly rates currently (as at the signing of the "consent" charged in respect of work done as a liquidator or provisional liquidator (as the case may be) by the person signing the consent, and by that person's partners and employees who may perform work in the administration in question.
3. The provisions referred to in 2 above have no application, however, to appointments of persons as external administrators:
 - . otherwise than by the Court; or
 - . by the Court otherwise than as liquidator or as liquidator provisionally.

Moreover, even in the case of appointments as liquidators or as liquidators provisionally, the provisions referred to in 2 above do not touch on changes in the hourly rates after the signing of the Form 8 consent.

4. Various provisions of the Act empower the Court, in certain circumstances, to determine or review the remuneration of insolvency practitioners when they are filling the office of various forms of external administrator: see ss 425, 449E, 473(2), (3), (5) and (6) and 504.
5. With the exception of Form 8 where it is applicable, the provisions referred to in 2 above do not indicate a standard of disclosure of fees to be charged which the Court might regard as appropriate in any situation in which it may be relevant for the Court to take into account whether an insolvency practitioner has followed a practice of making adequate disclosure of such fees.
6. The guidelines in 7 and 8 below are intended to fill that gap. Those guidelines are not, however, intended to limit the judicial discretion available in any particular case, or to require non-observance of the guidelines to be taken into account where that would not be relevant to the exercise of a judicial discretion.

All external administrators (including persons appointed as liquidators or as liquidators provisionally) should, in their first report to creditors;

- . disclose the hourly rate of fees which are being charged by them and by any of their partners and employees who may work in the administration; and
 - . give their best estimate of the cost of the administration to completion or to a specified milestone identified in the report.
8. If, at any time after an external administrator has reported in accordance with 7, the hourly rates are to change, or the administrator has reason to believe that the estimate given to creditors is no longer reliable, he or she should report to creditors, disclosing the new hourly rates and giving a revised estimate.

Note: These guidelines are not intended:

- . to prevent an external administrator from charging hourly rates or revising estimates if he or she is otherwise lawfully permitted to do so; or
- . to authorise an external administrator to change hourly rates or revise estimates if he or she is not otherwise lawfully permitted to do so.

3 August 2004

28. Practice Direction No 4 of 2004 – Order 48 – Litigation Plan

Pursuant to Rule 48.28 and for the purpose of considering the practicality of changing Order 48, it is directed that the following new procedure is to apply to all matters commenced after the date of this direction.

The period during which the direction is to apply is 12 months after the date of commencement.

There is substituted for Rule 48.06(1)(d) the following;

- “(d) if the originating process has been served and an appearance has been entered –
- (i) consider whether the order referred to R 48.02(2) ought to be made and, if appropriate, make such an order;
 - (ii) determine whether a defence has been filed and served and, if not, to give such directions in that regard as the Master thinks fit.”

There is substituted for Rules 48.07, 48.08, 48.16, 48.17 and 48.18 the following which is hereafter referred to as the “litigation plan” –

1. The Master or a Judge may dispense with the whole or any part of the litigation plan and restore the same at any time as he thinks fit.
2. If the Master or a Judge dispenses with the whole of the litigation plan, the rules for which the litigation plan is substituted shall be revived.
3. In the litigation plan Master includes Registrar.

LITIGATION PLAN

1. One month after pleadings have closed each party shall file and serve on each other party to a proceeding a *litigation plan* which shall state:
 - 1.1 what the party contends are the primary legal and factual issues and which of those issues, if any, are capable of being agreed;
 - 1.2 what the party contends is the necessary evidence to prove his or her or its case;
 - 1.3 what the party contends are the outstanding and required interlocutory steps to be completed prior to the proceeding being ready for trial;
 - 1.4 what the party contends is a possible timetable for the completion of all outstanding steps prior to trial;
 - 1.5 the numbers of witnesses the party has spoken to as at the date of filing the litigation plan;

- 1.6 how many proofs of evidence the party has obtained as at the date of filing the litigation plan;
- 1.7 how many more witnesses the party needs to contact and obtain statements from prior to trial;
- 1.8 the date by which it is anticipated all necessary proofs of evidence will be obtained and reasons for time required to obtain such proofs of evidence;
- 1.9 the number of expert witnesses that are likely to be called at trial, the field of expertise and what expert reports have been obtained;
- 1.10 what steps can be taken to shorten the duration of the proceeding;
- 1.11 the date when the proceeding is likely to be ready for trial and why such time is necessary to get the matter ready for trial;
- 1.12 what attempts have been made to settle the proceeding;
- 1.13 the names of the legal practitioners who have the conduct of the proceeding;
- 1.14 how many counsel will be briefed;
- 1.15 a preliminary list of documents that are likely to be tendered in evidence at trial by agreement or otherwise. The list should identify the issues in the proceeding to which the documents relate;
- 1.16 what directions are required;
- 1.17 what aspects of the proceeding may be appropriate for separate determination or for mediation;
- 1.18 that the party has been given an estimate as to costs incurred to date and the costs likely to be incurred in the resolution of the proceeding.

The litigation plan shall be signed by the solicitor who has the conduct of the proceeding and, if the solicitor who has the conduct of the proceeding is not a partner in the firm representing the party, a partner.

2. The Master shall arrange a directions hearing to take place six weeks after pleadings have closed.
3. At the directions hearing the Master shall:
 - 3.1 examine the parties legal representatives as to their litigation plans and the progress of the proceeding;

- 3.2 make whatever directions are necessary; and
- 3.3 list the proceeding for trial at a sittings.
- 4. There will be four sittings a year presided over by two Judges. There may be more proceedings listed than can be heard during a sittings in the anticipation that some will not proceed.
- 5. There will be a callover by a Judge two months before a sittings is due to commence. The Judge will allocate dates for hearing and make whatever directions that are necessary.
- 6. This direction will commence on 1 January 2005.
- 7. Proceedings commenced prior to the date for commencement of this direction will be listed for trial at a sittings.

13 October 2004

29. Practice direction No 2 of 2005 - Application for bail – Service on Director of Public Prosecutions and evidence

Practice direction number 10/2001 is rescinded. The following practice direction will take its place.

Notice of an application for bail under Rule 93.02 of the *Supreme Court Rules* shall be given to the Director of Public Prosecutions by serving the application and supporting affidavit upon the Director not less than 2 days before the hearing of the application.

Service on the Director may be affected by delivering a copy of the documents to the office of the Director, in either Darwin or Alice Springs, or by leaving the same in the Director's box at the facility maintained by the Law Society Northern Territory at the Supreme Court building in Darwin or Law Courts building in Alice Springs.

If the Director wishes to rely upon evidence in opposition to the application, it should be by affidavit filed in the Registry. A copy shall be served on the applicant or the applicant's legal representative.

The deponent to any affidavit may be required by the opposing party to attend for cross-examination, and if he or she fails to attend, the affidavit shall not be used except by special leave of the court.

12 May 2005

30. Practice direction No 3 of 2005 - Sexual Assault Matters

1. After committal when a defendant first appears before the arraignment judge, the defendant should be arraigned. At this time the Sheriff will advise the judge of the first available plea or trial date, or date for recording the complainant's evidence, and the date will be allocated by the judge. The trial judge will then supervise the case management and list the matter for a pre-trial hearing.

If the matter is not ready to proceed to arraignment on the first arraignment date, an arraignment date will be set before a judge. If reasonably possible the new arraignment date will be within 14 days.

2. The first arraignment judge will be advised in writing on the arraignment list if an extension order under s 3A(4) of the *Sexual Offences (Evidence and Procedure) Act* is required.
3. The Deputy Sheriff is to maintain the Court Calendar with any matters that require a further extension and will draw that requirement to the attention of the trial judge or the judge on arraignment.
4. Upon confirmation of a trial listing, associates are required to list a pre-trial hearing within 28 days to commence case management. The associate is required to notify the judge that an extension order may be required.

1 July 2005

31. Practice direction No 4 of 2005 – Sittings at Yarralin

I, *Brian Ross Martin*, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to Section 13(2) of the *Supreme Court Act*, direct that the Supreme Court shall have power to sit and act at any time at Yarralin in the Northern Territory for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged.

4 August 2005

32. Practice Direction No 1 of 2006 – Sittings at Nhulunbuy

I, *Brian Ross Martin*, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to Section 13(2) of the *Supreme Court Act*, direct that the Supreme Court shall have power to sit and act at any time at Nhulunbuy in the Northern Territory for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged.

1 August 2006

33. Practice Direction No 2 of 2006 – Ex Parte restraining orders – Criminal Property Forfeiture Act

1. Practitioners are reminded of the duty of full and frank disclosure to the Court of any matters which might be put in opposition to an application for an ex parte restraining order and of the need for the plaintiff to give the usual undertaking as to damages: see O 92.11.
2. Order 92.02 provides that, with certain exceptions, the rules in Chapter 1 apply to matters brought under the Criminal Property Forfeiture Act. Therefore, the form of the order must comply with O 60 (especially O 60.05(2)(d) which requires the recitals to specify the terms of an undertaking by a party) and O 66.10(3)(b) if it is proposed to enforce the order by committal or sequestration for non-compliance.
3. Practitioners are also reminded of the need for a restraining order to be expressed clearly and to precisely indicate to the defendant exactly what it is he or she is restrained from doing. Failure in this respect might result in the order being unenforceable. It is not sufficient that an order merely states that “the following property is restrained...” even if a notice complying with s 47(5) of the Act is also served. To assist practitioners it is recommended that a draft minute of the order in the form set out below be handed to the Judge at the time the order is sought for settling by the Judge in accordance with O 60.03(2).
4. Note that each ground for the making of the order **must** be set out in the order: see s 45(1)(b) of the Act, and O 60.05(2)(c) of the Rules. It is not sufficient compliance with the Act or the Rules for the order to refer only to the section of the Act grounding the making of the order.

20 October 2006

DRAFT MINUTE OF ORDER

FORM 60C

Rule 60.08

MINUTES OF ORDER

(Heading as in originating process)

ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS: Ex parte application filed (date)

HOW OBTAINED: On hearing of ex parte application by the plaintiff

APPEARANCE: (name) Counsel for the plaintiff

OTHER MATTERS: The plaintiff by its counsel undertakes to abide by any order which this Court may make as to damages, should this Court be of the opinion that the defendant shall have sustained damages, by reason of this Order which the plaintiff ought to pay.

- (1) The Court found that (there are reasonable grounds for suspecting that the property below described is crime-used or crime-derived property (s 43(2)(a) of the *Criminal Property Forfeiture Act 2002*) (or as the case may be: see s 43(2)(a) (b) or (c) or s 44(1)(a) (b) or (c)).

THE COURT ORDERS THAT:

1. Subject to paragraph 2 (or as the case may be) the following property is restrained pursuant to the provisions of the *Criminal Property Forfeiture Act 2002* for a period of three (3) months (or such lesser time as the Judge orders) from the date of this Order:

(Here set out a full description of the property restrained)

2. Pursuant to:
 - a. S 46(1)(b) of the *Criminal Property Forfeiture Act 2002* direct that the following property is not to be moved except

- b. S 46(1)(d) of the said Act direct that the following persons have leave to occupy the premises being
 - c. (any other orders under s 46(1))
3. The parties have liberty to apply.

DATE AUTHENTICATED:

REGISTRAR

TO THE DEFENDANTS: (here insert defendants' names)

TAKE NOTICE THAT:

1. The effect of this Order is that whilst this Order is in force, the property restrained by this Order cannot be dealt with. That means that you must not do or cause or permit to be done, or attempt to do, cause or permit to be done, any of the following in relation to the restrained property:
 - a. sell the property or give it away;
 - b. dispose of the property in any other way;
 - c. move or use the property;
 - d. accept the property as a gift;
 - e. take any profit, benefit or proceeds from the property;
 - f. create, increase or alter any legal or equitable right or obligation in relation to the property;
 - g. effect a change in the effective control of the property.

However, you may make reasonable and necessary use of the property for the ordinary daily requirements of life.
2. This order does not prevent ... (see s 46(1)(b), s 56(3) and s 57) – *insert this if required*).
3. It is an offence for a person to deal with restrained property in any way other than as permitted by this Order or by the *Criminal Property Forfeiture Act 2002* punishable by a fine of up to 1,000 penalty units or the value of the property (whichever is the greater) or imprisonment for five (5) years (or as the case may be).

4. The plaintiff has the right to apply to the Court for an order that all or some of the property is forfeit to the Northern Territory.
5. You must within seven (7) days of service of this Order upon you make a statutory declaration as to the matters set out in s 48(2) of the Criminal Property Forfeiture Act 2002 and file that declaration with the Registrar's office, Supreme Court of the Northern Territory, State Square, Darwin, NT, 0800

Section 48(2) of the Criminal Property Forfeiture Act 2002 provides -

- (2) In a statutory declaration under this section, the declarant must -
 - (a) state the name and, if known, the address of any other person of whom the declarant is aware who has, may have or claims to have an interest in the property that is subject to the restraining order; or
 - (b) if the declarant is not aware of any person who has, may have or claims to have an interest in property that is subject to the restraining notice – make a statement to that effect.

If you fail to make and file this statutory declaration you may be charged with an offence against s 48 of the Act. The maximum penalty for that offence is 2,000 penalty units or imprisonment for two (2) years.

6. You have the right to file in the Court an objection to the restraining order within 28 days after the day on which this Order is served upon you or within 28 days of your becoming aware or could reasonably have been expected to have become aware of this Order or within such further time as the Court allows.
7. You (*here include the defendant's name[s]*) ARE ALSO LIABLE TO IMPRISONMENT and to sequestration of the property restrained by this Order pursuant to O 66.05(2) of the Supreme Court Rules if you disobey this Order.

34. Practice Direction No 3 of 2006 – Special Hearings – Pre-recorded Evidence - Editing

1. Rules 81A.27A – 81A.27J apply to special hearings conducted under s 21B of the Evidence Act.
2. Unless a Judge orders otherwise, the Sheriff is to make a duplicate copy of the recording of the special hearing pursuant to r 81A.27E within seven days of the completion of the special hearing.
3. Upon completion of the duplicate copy of the recording, the Sheriff shall forthwith advise the parties that the duplicate recording has been completed and is available for editing.
4. If the prosecution or the defence are of the view that the duplicate recording should be edited before being played to a jury, an application for an order pursuant to r 81A.27F relating to the editing is to be made within 14 days of advice from the Sheriff that the duplicate recording is available.
5. The primary purpose of editing a recording of a special hearing is to remove from the recording to be played to the jury any part of the recording which contains the following:
 - material that is plainly both inadmissible and unfairly prejudicial to an accused;
 - any part of the proceedings which, had the witness been giving evidence in front of a jury, would plainly have occurred in the absence of the jury;
 - any part of the proceedings which occurred in the absence of the witness or while communication between the Court and the witness was muted.
6. Usually, editing for “cosmetic” purposes is inappropriate. For example, usually it is not appropriate to edit evidence, objections or discussions which occurred while communication between the Court and the witness was live and which, had the witness been giving evidence in the presence of the jury, would have occurred in the presence of the jury.
7. Editing of those parts of the recording which fall within paragraph 5 of this practice direction, and which both the prosecution and defence agree should be edited, may occur without leave of a Judge. In the absence of agreement, a ruling of the trial Judge must be sought.
8. If it is thought by either party that editing should occur for reasons other than those identified in paragraph 5 of this practice direction, editing may only occur with the leave of the trial Judge.
9. Should a ruling of the trial Judge be required pursuant to paragraphs 7 or 8 of this Practice Direction, an application is to be made for a

directions hearing and, in advance of the directions hearing, the Judge is to be provided with a copy of the relevant pages of the transcript with the proposed passages to be edited highlighted.

10. The edited version of the duplicate recording is to be provided to the Sheriff pursuant to r 81A.27F not less than seven days prior to the date listed for the commencement of the trial before the jury.\

35. Practice Direction No 4 of 2006 – Use of Audio/Video evidence in Court

1. Audio and video recordings for use in Court must be compatible with the Court's playing equipment. For this purpose, unless the Court otherwise orders, audio recordings must be in WAV format and video recordings must be in VOB format on a DVD-R disc.
2. Any audio and video recording sought to be used in Court must be produced to the Court at least 24 hours prior to its intended use to enable it to be tested on the Court's playing equipment.

27 November 2006

- 36. Practice Direction No 5 of 2006 – Freezing orders (also known as ‘Mareva orders’ or ‘asset preservation orders’)**
1. This Practice Direction supplements Order 37A of the *Supreme Court Rules* relating to freezing orders (also known as ‘Mareva orders’ after *Mareva Compania Naviera SA v International Bulkcarriers SA (The Mareva)* [1975] 2 Lloyd’s Rep 509, or ‘asset preservation orders’).
 2. This Practice Direction addresses (among other things) the Court’s usual practice relating to the making of a freezing order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and the example form of order annexed to it do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.
 3. Words and expressions in this Practice Direction that are defined in Order 37A have the meanings given to them in that Order.
 4. An example form of ex parte freezing order is annexed to this Practice Direction. The example form may be adapted to meet the circumstances of the particular case. It may be adapted for an inter partes freezing order as indicated in the footnotes to the example form (the footnotes and references to footnotes should not form part of the order as made). The example form contains provisions aimed at achieving the permissible objectives of the order consistently with the proper protection of the respondent and third parties.
 5. The purpose of a freezing order is to prevent frustration or abuse of the process of the Court, not to provide security in respect of a judgment or order.
 6. A freezing order should be viewed as an extraordinary interim remedy because it can restrict the right to deal with assets even before judgment, and is commonly granted ex parte.
 7. The respondent is often the person said to be liable on a substantive cause of action of the applicant. However, the respondent may also be a third party, in the sense of a person who has possession, custody or control, or even ownership, of assets which he or she may be obliged ultimately to disgorge to help satisfy a judgment against another person. Subrule 5(5) addresses the minimum requirements that must ordinarily be satisfied on an application for a freezing order against such a third party before the discretion is enlivened. The third party will not necessarily be a party to the substantive proceeding, (see *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380) but will be a respondent to the application for the freezing or ancillary order. Where a freezing order against a third party seeks only to freeze the assets of another person in the third party’s possession, custody or control (but not ownership), the example form will require adaptation. In particular, the references to your *assets*’ and ‘*in your name*’ should be

changed to refer to the other person's assets or name (e.g. '*John Smith's assets*', '*in John Smith's name*').

8. A freezing or ancillary order may be limited to assets in Australia or in a defined part of Australia, or may extend to assets anywhere in the world, and may cover all assets without limitation, assets of a particular class, or specific assets (such as the amounts standing to the credit of identified bank accounts).
9. The duration of an ex parte freezing order should be limited to a period terminating on the return date of the motion, which should be as early as practicable (usually not more than a day or two) after the order is made, when the respondent will have the opportunity to be heard. The applicant will then bear the onus of satisfying the Court that the order should be continued or renewed.
10. A freezing order should reserve liberty for the respondent to apply on short notice. An application by the respondent to discharge or vary a freezing order will normally be treated by the Court as urgent.
11. The value of the assets covered by a freezing order should not exceed the likely maximum amount of the applicant's claim, including interest and costs. Sometimes it may not be possible to satisfy this principle (for example, an employer may discover that an employee has been making fraudulent misappropriations, but does not know how much has been misappropriated at the time of the discovery and at the time of the approach to the Court).
12. The order should exclude dealings by the respondent with its assets for legitimate purposes, in particular:
 - (a) payment of ordinary living expenses;
 - (b) payment of reasonable legal expenses;
 - (c) dealings and dispositions in the ordinary and proper course of the respondent's business, including paying business expenses bona fide and properly incurred; and
 - (d) dealings and dispositions in the discharge of obligations bona fide and properly incurred under a contract entered into before the order was made.
13. Where a freezing order extends to assets outside Australia, the order should provide for the protection of persons outside Australia and third parties. Such provisions are included in the example form of freezing order.
14. The Court may make ancillary orders. The most common example of an ancillary order is an order for disclosure of assets. The annexed example form provides for such an order and for the privilege against self-incrimination.

15. The rules of court confirm that certain restrictions expressed in *The Siskina* [1979] AC 210 do not apply in this jurisdiction. First, the Court may make a freezing order before a cause of action has accrued (a 'prospective' cause of action). Secondly, the Court may make a free-standing freezing order in aid of foreign proceedings in prescribed circumstances. Thirdly, where there are assets in Australia, service out of Australia is permitted under a new 'long arm' service rule.
16. As a condition of the making of a freezing order, the Court will normally require appropriate undertakings by the applicant to the Court, including the usual undertaking as to damages.
17. If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to support the undertaking by providing security. There is provision for such security in the example form of freezing order.
18. The order to be served should be endorsed with a notice which meets the requirements of O 66.10.
19. An applicant for an ex parte freezing order is under a duty to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.
20. The affidavits relied on in support of an application for a freezing or ancillary order should, if possible, address the following:
 - (a) information about the judgment that has been obtained, or, if no judgment has been obtained, the following information about the cause of action:
 - (i) the basis of the claim for substantive relief;
 - (ii) the amount of the claim; and
 - (iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence;
 - (b) the nature and value of the respondent's assets, so far as they are known to the applicant, within and outside Australia;
 - (c) the matters referred to in rule 5 of the Freezing Orders rules of court (Order 37A); and
 - (d) the identity of any person, other than the respondent, who, the applicant believes, may be affected by the order, and how that person may be affected by it.

27 November 2006

Example form of ex parte Freezing Order

Form 60C

Rule 60.08

GENERAL FORM OF ORDER

[Title of Proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU:

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

OTHER MATTERS: The Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order¹.

TO: *[name of person against whom the order is made]*

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
 (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by *[insert time and date]*².
2. Subject to the next paragraph, this order has effect up to and including *[insert date]* (**'the Return Date'**). On the Return Date at *[insert time]* am/pm there will be a further hearing in respect of this order before Justice *[insert name of Judge]*³.
3. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
4. In this order:
 - (a) 'applicant', if there is more than one applicant, includes all the applicants;
 - (b) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation;
 - (c) 'third party' means a person other than you and the applicant;
 - (d) 'unencumbered value' means value free of mortgages, charges, liens or other encumbrances.

¹ The words '*and after the Court has read the affidavits listed in Schedule B to this order*' are appropriate only in the case of an ex parte order.

² Paragraph 1 is appropriate only in the case of an ex parte order.

³ Paragraph 2 is only appropriate in the case of an ex parte order.

5. (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

FREEZING OF ASSETS

[For order limited to assets in Australia]

6. (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$ **("the Relevant Amount")**.
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.

[If the Court makes a worldwide order, the following additional paragraph (c) also applies.]

- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia ('ex-Australian assets'):
 - (i) You must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the Relevant Amount; and
 - (ii) You may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the Relevant Amount.

[For either form of order]

7. For the purposes of this order,
 - (1) your assets include:
 - (a) all your assets, whether or not they are in your name and whether they are solely or co-owned;
 - (b) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (c) the following assets in particular:
- (i) the property known as *[title/address]* or, if it has been sold, the net proceeds of the sale;
 - (ii) the assets of your business [known as *[name]*] [carried on at *[address]*] or, if any or all of the assets have been sold, the net proceeds of the sale ; and
 - (iii) any money in account *[numbered account number]* *[in the name of]* at *[name of bank and name and address of branch]*.
- (2) the value of your assets is the value of the interest you have individually in your assets.

PROVISION OF INFORMATION⁴

8. Subject to paragraph 9, you must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in [Australia] [world wide], giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
 - (b) within [] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.
9. (a) This paragraph (9) applies if you are not a corporation and you wish to object that compliance with paragraph 8 may tend to incriminate you or make you liable to a civil penalty;
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object that compliance may tend to incriminate them respectively or make them respectively liable to a civil penalty;
- (c) You must, at or before the further hearing on the return date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in (b) wish to take such objection and identify the extent of the objection;
- (d) If you give such notice, you need comply with paragraph 8 only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken; and

⁴ See Practice Direction paragraph 14.

- (e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out such matters as you or the persons referred to in (b) wish to place before the Court in support of the objection.

EXCEPTIONS TO THIS ORDER

10. This order does not prohibit you from:
- (a) paying [up to \$..... a weekday on] [your ordinary] living expenses;
 - (b) paying [\$..... on] [your reasonable] legal expenses;
 - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
 - (d) in relation to matters not falling within (a), (b) or (c), dealing with 'or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
11. You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
12. (a) This order will cease to have effect if you:
- (i) pay the sum of \$..... into Court; or
 - (ii) pay that sum into a joint bank account in the name of your solicitor and the solicitor for the applicant as agreed in writing between them; or
 - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant (a), you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

COSTS

13. The costs of this application are reserved to the judge hearing the application on the Return Date.

PERSONS OTHER THAN THE APPLICANT AND RESPONDENT**14. Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

15. Bank withdrawals by the respondent

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

[For worldwide order]

16. Persons outside Australia

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
 - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
 - (ii) any person (including a bank or financial institution) who:
 - (A) is subject to the jurisdiction of this Court; and
 - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
 - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
 - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

[For world wide order]

17. Assets located outside Australia

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

SCHEDULE A**UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon the respondent copies of
 - (a) this order;
 - (b) the application for this order for hearing on the return date;
 - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
 - (i) affidavits (or draft affidavits);
 - (ii) exhibits capable of being copied;
 - (iii) any written submission; and
 - (iv) any other document that was provided to the Court.
 - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
 - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect⁵ the applicant will promptly take all reasonable steps to inform in writing anyone to who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.

⁵ For example, if the respondent pays money into Court or provides security, as provided for in paragraph 12 of this Order.

(7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.

[(8) The applicant will:

(a) on or before [date] cause an irrevocable undertaking to pay in the sum of \$ to be issued by a bank with a place of business within Australia, in respect of any order the court may make pursuant to undertaking (1) above; and

(b) immediately upon issue of the irrevocable undertaking, cause a copy of it to be served on the respondent.]⁶

⁶ See Practice Direction paragraph 17.

SCHEDULE B⁷**AFFIDAVITS RELIED ON**

	<i>Name of Deponent</i>	<i>Date affidavit made</i>
(1)		
(2)		
(3)		

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The applicant's legal representatives are:

[Name, address, reference, fax and telephone numbers both in and out of office hours and email]

⁷ Schedule B is appropriate only in the case of an ex parte order.

37. Practice Direction NO 6 of 2006 – Search orders (also known as ‘Anton Piller orders’)

1. This Practice Direction supplements Order 37B of the Supreme Court Rules relating to search orders (also known as *Anton Piller* orders, after *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55).
2. This Practice Direction addresses (among other things) the Court’s usual practice relating to the making of a search order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and the example form of order annexed to it do not, and can not, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.
3. Words and expressions in this Practice Direction that are defined in Order 37B have the meanings given to them in that Order.
4. Ordinarily, a search order is made *ex parte* and compels the respondent to permit persons specified in the order (*‘search party’*) to enter premises and to search for, inspect, copy and remove the things described in the order. The order is designed to preserve important evidence pending the hearing and determination of the applicant’s claim in a proceeding brought or to be brought by the applicant against the respondent or against another person. The order is an extraordinary remedy in that it is intrusive, potentially disruptive, and made *ex parte* and prior to judgment.
5. An example form of *ex parte* search order is annexed to this Practice Direction (the footnotes and references to footnotes in the example form should not form part of the order as made). The example form may be adapted to meet the circumstances of the particular case. It contains provisions which are aimed at achieving the permissible objectives of a search order, while minimising the potential for disruption or damage to the respondent and for abuse of the Court’s process.
6. The search party must include an independent solicitor who will supervise the search and a solicitor or solicitors representing the applicant. It may be necessary that it include other persons, such as an independent computer expert, and a person able to identify things being searched for if difficulties of identification may arise. Ordinarily, the search party should not include the applicant or the applicant’s directors, officers, employees or partners or any other person associated with the applicant (other than the applicant’s solicitor).
7. The order should be clear about the maximum number of persons permitted to be in the search party. The number of people in the search party should be as small as is reasonably practicable. The example form contemplates that they will be named in the order. This is desirable but if it is not possible the order should at least give a description of the class of person who will be there (e.g. ‘one solicitor employed by A, B and Co’).

8. The affidavits in support of an application for a search order should include the following information:
 - (a) a description of the things or the categories of things, in relation to which the order is sought;
 - (b) the address or location of any premises in relation to which the order is sought and whether they are private or business premises;
 - (c) why the order is sought, including why there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in evidence before the Court unless the order is made;
 - (d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;
 - (e) the name, address, firm, and commercial litigation experience of an independent solicitor, who consents to being appointed to serve the order, supervise its execution, and do such other things as the Court considers appropriate; and
 - (f) if the premises to be searched are or include residential premises, whether or not the applicant believes that the only occupant of the premises is likely to be:
 - (i) a female; or
 - (ii) a child under the age of 18; or
 - (iii) any other person (*'vulnerable person'*) that a reasonable person would consider to be in a position of vulnerability because of that person's age, mental capacity, infirmity or English language ability; or
 - (iv) any combination of (i), (ii) and (iii), and any one or more of such persons.
9. If it is envisaged that specialised computer expertise may be required to search the respondent's computers for documents, or if the respondent's computers are to be imaged (i.e. hard drives are to be copied wholesale, thereby reproducing documents referred to in the order and other documents indiscriminately), special provision will need to be made, and an independent computer specialist will need to be appointed who should be required to give undertakings to the Court.
10. The applicant's solicitor must undertake to the Court to pay the reasonable costs and disbursements of the independent solicitor and of any independent computer expert.
11. The independent solicitor is an important safeguard against abuse of the order. The independent solicitor must not be a member or employee of the applicant's firm of solicitors. The independent solicitor should be a solicitor experienced in commercial litigation, preferably in the execution of search orders. The Law Society has been requested to maintain a list of solicitors who have indicated willingness to be appointed as an independent solicitor for the purpose of executing search orders, but it

is not only persons on such a list who may be appointed. The responsibilities of the independent solicitor are important and ordinarily include the following:

- (a) serve the order, the application for it, the affidavits relied on in support of the application, and the originating process;
 - (b) offer to explain, and, if the offer is accepted, explain the terms of the search order to the respondent;
 - (c) explain to the respondent that he or she has the right to obtain legal advice;
 - (d) supervise the carrying out of the order;
 - (e) before removing things from the premises, make a list of them, allow the respondent a reasonable opportunity to check the correctness of the list, sign the list, and provide the parties with a copy of the list;
 - (f) take custody of all things removed from the premises until further order of the Court;
 - (g) if the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically or printing out information in documentary form, remove the computer from the premises for that purpose, and return the computer to the premises within any time prescribed by the order together with a list of any documents that have been copied or printed out;
 - (h) submit a written report to the Court within the time prescribed by the order as to the execution of the order; and
 - (i) attend the hearing on the, return date of the application, and have available to be brought to the Court all things that were removed from the premises. On the return date the independent solicitor may be required to release material in his or her custody which has been removed from the respondent's premises or to provide information to the Court, and may raise any issue before the Court as to execution of the order.
12. Ordinarily, the applicant is not permitted, without the leave of the Court, to inspect things removed from the premises or copies of them, or to be given any information about them by members of the search party.
 13. Ordinarily, a search order should be served between 9:00am and 2:00pm on a business day in order to permit the respondent more readily to obtain legal advice. However, there may be circumstances in which such a restriction is not appropriate.
 14. A search order must not be executed at the same time as the execution of a search warrant by the police or by a regulatory authority.
 15. If the premises are or include residential premises and the applicant is aware that when service of the order is effected the only occupant of the residential premises is likely to be any one or more of a female, a child

under the age of 18, or a vulnerable person, the Court will give consideration to whether:

- (a) if the occupants are likely to include a female or child, the independent solicitor should be a woman or the search party should otherwise include a woman; and
 - (b) if the occupants are likely to include a vulnerable person, the search party should include a person capable of addressing the relevant vulnerability.
16. Any period during which the respondent is to be restrained from informing any other person (other than for the purposes of obtaining legal advice) of the existence of the search order should be as short as possible and not extend beyond 4:30pm on the Return Date.
17. At the *inter partes* hearing of the application on the return date, the Court will consider the following issues:
 - (a) what is to happen to any things removed from the premises or to any copies which have been made;
 - (b) how any commercial confidentiality of the respondent is to be maintained;
 - (c) any claim of privilege by the respondent;
 - (d) any application by a party; and
 - (e) any issue raised by the independent solicitor.
18. Appropriate undertakings to the Court will be required of the applicant, the applicant's solicitor and the independent solicitor, as conditions of the making of the search order. The undertakings required of the applicant will normally include the Court's usual undertaking as to damages. The applicant's solicitor's undertaking includes an undertaking not to disclose to the applicant any information that the solicitor has acquired during or as a result of execution of the search order, without the leave of the Court. Release from this undertaking in whole or in part may be sought on the return date.
19. If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to provide security for the due performance of that undertaking. The security may, for example, take the form of a bank's irrevocable undertaking to pay or a payment into Court. The example form of search order contains provision for an irrevocable undertaking.
20. An applicant *ex parte* for a search order is under a duty to the Court to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any financial information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.

21. The order to be served should be endorsed with a notice which meets the requirements of O 66.10.
22. A search order is subject to the Court's adjudication of any claim of privilege against self-incrimination. The privilege against self-incrimination is available to individuals but not to corporations. The Court will not make an order reducing or limiting that privilege in circumstances where the legislature has not indicated that it may do so.

27 November 2006

Example Form of Search Order

Form 60C

Rule 60.08

GENERAL FORM OF ORDER

[Title of Proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

OTHER MATTERS:

The Court was given the undertakings set out in Schedule B to this order and after the Court read the affidavits listed in Schedule C to this order.

TO: [name of person against whom the order is made]

THE COURT ORDERS:

INTRODUCTION

1. (a) the application for this order is made returnable immediately.
 (b) the time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by *[insert time and date]*.
2. Subject to the next paragraph, this order has effect up to and including *[insert date]* (***the Return Date***). On the Return Date at *[insert time]* am/pm there will be a further hearing in respect of this order before Justice *[insert name of Judge]*.
3. You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to the judge referred to in the immediately preceding paragraph (phone No.).
4. This order may be served only between *[insert time]* am/pm and *[insert time]* am/pm [on a business day]⁸.
5. In this order:
 - (a) ‘applicant’ means the person who applied for this order, and if there is more than one applicant, includes all the applicants.
 - (b) ‘independent computer expert’ means the person (if any) identified as the independent computer expert in the search party referred to in Schedule A to this order.

⁸ Normally the order should be served between 9:00am and 2:00pm on a business day to enable the respondent more readily to obtain legal advice.

- (c) 'independent solicitor' means the person identified as the independent solicitor in the search party referred to in Schedule A to this order.
 - (d) 'listed thing' means any thing referred to in Schedule A to this order.
 - (e) 'premises' means the premises and any of the premises identified in Schedule A to this order, including any vehicles and vessels that are under the respondent's control on or about the premises or that are otherwise identified in Schedule A.
 - (f) 'search party' means the persons identified or described as constituting the search party in Schedule A to this order.
 - (g) 'thing' includes a document.
 - (h) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation.
 - (i) any requirement that something be done in your presence means:
 - (i) in the presence of you or of one of the persons described in (6) below; or
 - (ii) if there is more than one of you, in the presence of each of you, or, in relation to each of you, in the presence of one of the persons described in (6) below.
6. This order must be complied with by you by:
- (a) yourself; or
 - (b) any director, officer, partner, employee or agent of yourself; or
 - (c) any other person having responsible control of the premises.
7. This order must be served by, and be executed under the supervision of, the independent solicitor.

ENTRY, SEARCH AND REMOVAL

8. Subject to paragraphs 10 to 20 below, upon service of this order you must permit members of the search party to enter: the premises so that they can carry out the search and other activities referred to in this order.
9. Having permitted members of the search party to enter the premises, you must:
- (a) permit them to leave and re-enter the premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the listed things and to make or obtain a copy, photograph, film, sample, test or other record of the listed things;
 - (c) disclose to them the whereabouts of all the listed things in the respondent's possession, custody or power, whether at the premises or otherwise;

- (d) disclose to them the whereabouts of all computers, computer disks and electronic information storage devices or systems at the premises in which any documents among the listed things are or may be stored, located or recorded and cause and permit those documents to be printed out;
- (e) do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate computers and providing them with all necessary passwords;
- (f) permit the independent solicitor to remove from the premises into the independent solicitor's custody:
 - (i) the listed things or things which reasonably appear to the independent solicitor to be the listed things and any things the subject of dispute as to whether they are listed things; and
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to above; and
- (g) permit the independent computer expert (if there is one) to search any computer and make a copy or digital copy of any computer hard drive and permit the independent computer expert (if any) or the independent solicitor to remove any computer hard drive and computer from the premises as set out in paragraphs 20 and 21 below.

RESTRICTIONS ON ENTRY, SEARCH AND REMOVAL

- 10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.
- 11. You are not required to permit anyone to enter the premises until:
 - (a) the independent solicitor serves you with copies of this order and any affidavits referred to in Schedule C (confidential exhibits, if any, need not be served until further order of the Court); and
 - (b) you are given an opportunity to read this order and, if you so request, the independent solicitor explains the terms of this order to you.
- 12. Before permitting entry to the premises by anyone other than the independent solicitor, you, for a time (not exceeding two hours from the time of service or such longer period as the independent solicitor may permit):
 - (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided you are not a corporation) may gather together any things which you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent solicitor in (if you wish) a sealed envelope or container; and

- (d) may gather together any documents that passed between you and your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent solicitor in (if you wish) a sealed envelope or container.
13. Subject to paragraph 22 below, the independent solicitor must not inspect or permit to be inspected by anyone, including the applicant and the applicant's solicitors, any thing handed to the independent solicitor in accordance with subparagraphs 12(c) and (d) above and the independent solicitor must deliver it to the Court at or prior to the hearing on the Return Date.
 14. During any period referred to in para 12 above, you must:
 - (a) inform and keep the independent solicitor informed of the steps being taken;
 - (b) permit the independent solicitor to enter the premises but not to start the search;
 - (c) not disturb or remove any listed things; and
 - (d) comply with the terms of paragraphs 25 and 26 below.
 15. Any thing the subject of a dispute as to whether it is a listed thing must promptly be handed by you to the independent solicitor for safekeeping pending resolution of the dispute or further order of the Court.
 16. Before removing any listed things from the premises (other than things referred to in the immediately preceding paragraph), the independent solicitor must supply a list of them to you, give you a reasonable time to check the correctness of the list, and give you and the applicant's solicitors a copy of the list signed by the independent solicitor.
 17. The premises must not be searched, and things must not be removed from the premises, except in the presence of you or of a person who appears to the independent solicitor to be your director, officer, partner, employee, agent or other person acting on your behalf or on your instructions.
 18. If the independent solicitor is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the independent solicitor may permit the search to proceed and the listed things to be removed without full compliance.
 19. The applicant's solicitors and the independent solicitor must not allow the applicant in person to inspect or have copies of any thing removed from the premises nor communicate to the applicant information about its contents or about anything observed at the premises until 4:30pm on the return date or other time fixed by further order of the Court.

COMPUTERS

20. (a) If it is expected that a computer will be searched, the search party must include a computer expert who is independent of the

applicant and of the applicant's solicitors ('the independent computer expert').

- (b) Any search of a computer must be carried out only by the independent computer expert.
 - (c) The independent computer expert may make a copy or digital copy of the computer hard drive and remove that copy or digital copy from the premises.
 - (d) The independent computer expert may search the computer or the copy or digital copy of the computer hard drive at the premises and/or away from the premises for listed things and may copy the listed things electronically or in hard copy or both.
 - (e) The independent computer expert must as soon as practicable and, in any event, prior to the hearing on the return date, deliver the copy or digital copy of the computer hard drive and all electronic and hard copies of listed things to the independent solicitor, together with a report of what the independent computer expert has done including a list of such electronic and hard copies.
 - (f) The independent solicitor must, at or prior to the hearing on the return date, deliver to the Court all things received from the independent computer expert and serve a copy of the latter's report on the parties.
 - (g) If no independent computer expert has been appointed, but the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent solicitor may remove the computer from the premises for that purpose and cause that purpose to be achieved.
21. (a) Unless you are a corporation, you are entitled to object to paragraphs 20(b) to (f) on the ground that they might tend to incriminate you or make you liable to a civil penalty.
- (b) You are also entitled to object to paragraphs 20(b) to (f) on the ground that the computer contains material that is otherwise privileged.
- (c) Upon communicating any objection under para (a) or (b) to the independent solicitor, paragraphs 20(b) to (f) become inoperative to the extent that you have objected to them. In that event, if the applicant's solicitor communicates to the independent solicitor that the applicant proposes to contest the objection:
- (i) the independent computer expert shall remove the computer hard drive (or, if that is not practicable, the computer) from the premises and deliver it into the custody of the independent solicitor who shall deliver it to the Court at or prior to the Return Date.

- (ii) on the Return Date or on another date, the applicant may apply to the Court for orders to similar effect as paragraphs 20(b) to (f) and if you object, the Court may adjudicate upon your objection.

INSPECTION

- 22. Prior to the Return Date, you or your solicitor or representative shall be entitled, in the presence of the independent solicitor, to inspect any thing removed from the premises and to:
 - (b) make copies of the same; and
 - (c) provide the independent solicitor with a signed list of things which are claimed to be privileged or confidential and which you claim ought not to be inspected by the applicant.

PROVISION OF INFORMATION

- 23. Subject to paragraph 24 below, you must:
 - (b) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing as to:
 - (i) the location of the listed things;
 - (ii) the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;
 - (iii) the name and address of every person to whom you have supplied, or offered to supply, any listed thing; and
 - (iv) details of the dates and quantities of every such supply and offer.
 - (c) within [] working days after being served with this order, make and serve on the applicant an affidavit setting out the above information.
- 24. (a) This paragraph (24) applies if you are not a corporation and you wish to object that compliance with paragraph 23 may tend to incriminate you or make you liable to a civil penalty.
- (b) This paragraph (24) also applies if you are a corporation and all of the persons who are able to comply with paragraph 23 on your behalf and with whom you have been able to communicate, wish to object that compliance may tend to incriminate them or make them liable to a civil penalty.
- (c) You must, at or before the further hearing on the Return Date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in (b) wish to take such objection and identify the extent of the objection.

- (d) If you give such notice, you need comply with paragraph 23 only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken.
- (e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out such matters as you or the persons referred to in (b) wish to place before the Court in support of the objection.

PROHIBITED ACTS

- 25. Except for the sole purpose of obtaining legal advice, you must not, until 4:30pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against you by the applicant.
- 26. Until 4:30pm on the Return Date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of this order or further order of the Court.

COSTS

- 27. The costs of this application are reserved to the Judge hearing the application on the Return Date.

SCHEDULE A**Premises**

The premises located at *[insert address or addresses]* including any vehicle or vehicles under the respondent's control on or about those premises.

Listed Things

- 1.
- 2.
- 3.

Search Party

1. The independent solicitor: *[insert name and address]*
2. The applicant's solicitor or solicitors:
 - (a) *[insert name and address]* [or description e.g. a partner or employed solicitor of A, B and Co].
 - (b) *[insert name and address]* [or description e.g. a partner or employed solicitor of A, B and Co].
 - (c) *[insert name and address]* [or description e.g. a partner or employed solicitor of A, B and Co].
3. Other members of the search party:
 - (a) *[insert name and address]* in the capacity of [e.g. *an independent computer expert*]
 - (b) *[insert name and address]* in the capacity of *[insert capacity]*

SCHEDULE B**UNDERTAKINGS GIVEN TO THE COURT****Undertakings given to the Court by the applicant:**

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) The applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (3) The applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
- (4) If the applicant has not already done so, as soon as practicable the applicant will file a notice of motion for hearing on the Return Date and an originating process [in the form of the draft produced to the Court].
- [(5) The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value⁹ .]
- [(6) The applicant will¹⁰:
 - (a) on or before [*insert date*] cause a written irrevocable undertaking to pay in the sum of \$[*insert amount*] to be issued from a bank with a place of business within Australia, in respect of any order the Court may make referred to in the undertaking as to damages contained in paragraph (1) above; and
 - (b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.]

Undertakings given to the Court by the applicant's solicitor

- (1) The applicant's solicitor will pay the reasonable costs and disbursements of the independent solicitor and of any independent computer expert.
- (2) The applicant's solicitor will provide to the independent solicitor for service on the respondent copies of the following documents:
 - (a) this order;
 - (b) the application for this order for hearing on the Return Date;

⁹ Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required.

¹⁰ See Practice Direction paragraph 19.

- (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
 - (i) affidavits (or draft affidavits)
 - (ii) exhibits capable of being copied (other than confidential exhibits);
 - (iii) any written submission; and
 - (iv) any other document that was provided to the Court.
 - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court; and
 - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) The applicant's solicitor will answer to the best of his or her ability any question as to whether a particular thing is a listed thing.
 - (4) The applicant's solicitor will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
 - (5) The applicant's solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
 - (6) The applicant's solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
 - (7) The applicant's solicitor will not disclose to the applicant any information that the solicitor acquires during or as a result of execution of the search order, without the leave of the Court.
 - (8) The applicant's solicitor will use best endeavours to follow all directions of the independent solicitor.

Undertakings given to the Court by the independent solicitor

- (1) The independent solicitor will use his or her best endeavours to serve the respondent with this order and the other documents referred to in undertaking (2) of the above undertakings by the applicant's solicitor or solicitors.
- (2) Before entering the premises, the independent solicitor will:
 - (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and
 - (b) inform the respondent of his or her right to take legal advice.

- (3) Subject to undertaking (4) below, the independent solicitor will retain custody of all things removed from the premises by the independent solicitor pursuant to this order until delivery to the Court or further order of the Court.
- (4) At or before the hearing on the Return Date, the independent solicitor will provide a written report on the carrying out of the order to the Court and provide a copy to the applicant's solicitors and to the respondent or the respondent's solicitors. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an independent computer expert.
- (5) The independent solicitor will use best endeavours to ensure that members of the search party act in conformity with the order and that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent, and will give such reasonable directions to other members of the search party as are necessary or convenient for the execution of the order.
- (6) The independent solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (7) The independent solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

Undertakings given to the Court by the independent computer expert

- (1) The independent computer expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the independent computer expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
- (2) The independent computer expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (3) The independent computer expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
- (4) The independent computer expert will use best endeavours to follow all directions of the independent solicitor.

SCHEDULE C**AFFIDAVITS RELIED ON**

	Name of Deponent	Date affidavit made
(1)		
(2)		
(3)		

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The applicant's legal representatives are:

[Name, address, reference, fax and telephone numbers both in and out of office hours and email]

38. Practice Direction No 1/2007 – Disposal of Exhibits

Practice Direction No 9 of 2001 is rescinded. The following Practice Direction will take its place.

1. Subject to paragraph 2 of this Practice Direction, Rules 81A.32 – 81A.35 will continue to apply to criminal proceedings and Rule 86.24 is to be treated as having been repealed.
2. Subject to an order by a Judge to the contrary, exhibits tendered at the trial and any other property that comes into the possession of the Court shall be returned as follows:
 - (i) If no appeal is lodged, at the expiration of six months after the period to appeal expires.
 - (ii) If an appeal is lodged, at the expiration of six months after disposition of the appeal.
 - (iii) If the property comprises or contains medical or other private or confidential records or documents, to the owner of those records or documents at the expense of the legal practitioner acting for the party on whose behalf the property was produced to the Court.
 - (iv) Property other than such confidential records or documents not tendered as an exhibit, to the legal practitioner acting for the party on whose behalf the property was produced to the Court.
3. Rules 81A.32 – 81A.35 and this Practice Direction are to be treated as applying to civil proceedings *mutatis mutandis*.

25 May 2007

39. Practice Direction No 2/2007 – Citation of Authorities

In view of the increasing citation of unauthorised reports of authorities, the following Practice Direction is given with respect to the citation of authorities.

1. If an authority is reported in an authorised report, the authorised report is to be cited or a photocopy of that report provided to the Court.
 - (i) The authorised reports of decisions in the Northern Territory are the NTR (prior to 1991) and the NTLR.
 - (ii) In other Australian jurisdictions, the authorised reports are the CLR, FCR and State Reports.
 - (iii) The authorised English reports include the AC, QB, Ch and P.
2. In the absence of a report in an authorised report, reports are to be cited (or a photocopy provided) according to the following order of precedence:
 - (i) An unauthorised report (such as the ALJR, ALR, FLR, A Crim R, NTJs as published in the series 1918 – 1950 and 1957 – 1976, the NTJs in the series kept by the Supreme Court Library, WLR, All ER, TLR and Cr App R).
 - (ii) A photocopy of the actual judgment.
 - (iii) Butterworths or Internet.

25 May 2007

40. .Practice Direction No 3/2007 –Accused in charge of the Jury

Commencing 28 May 2007, the following wording is to be used when placing an accused in charge of the jury:

“Ladies and Gentlemen of the jury, the accused stands charged with and he/she has pleaded not guilty to this charge. You are the jurors selected to say whether the accused is guilty or not guilty. Your task is to listen carefully to the evidence and to return a verdict according to the evidence and in accordance with your duty as jurors.

Your Honour, the accused is now in the charge of the jury.”

25 May 2007

41. Practice Direction No 4/2007 – Preparation of Transcript

In order to avoid confusion as to the preparation of transcripts, the following directions are given:

1. Subject to paragraph 5 of this Practice Direction, in the criminal jurisdiction the only transcripts that will be transcribed automatically are as follows:
 - (i) Evidence and submissions during jury trials, including proceedings after the trial has commenced in the absence of the jury such as submissions, reasons for decisions delivered orally, voir dire, Basha enquiries and special hearings.
 - (ii) Reasons for sentence.
2. In particular, in criminal trials the transcript of opening and closing addresses and the summing up will not be transcribed automatically.
3. If an appeal against conviction is filed, the summing up will be transcribed.
4. Subject to paragraph 5 of this Practice Direction, in the civil jurisdiction no transcripts will be transcribed automatically.
5. In the appellate jurisdiction, oral extempore reasons for decision will be transcribed automatically.
6. Subject to an order of a Judge or the Master to the contrary, transcripts not automatically transcribed will be provided on request at the cost of the person making the request.
7. Transcripts not automatically transcribed and sought without payment of a fee will only be transcribed by order of a Judge or the Master.

2 July 2007

42. Practice Direction No 5/2007 – Appointment of Senior Counsel

1. As from 25 May 2007, for new appointees the title Queen's Counsel will be replaced with the title Senior Counsel.
2. Pending the completion of rules governing the appointment of Senior Counsel, the existing Protocol will continue to apply with amendments appropriate to the removal of the Administrator and Executive Council from the process of appointment.
3. The time for applications to be made in writing to the Chief Justice for appointment as Senior Counsel is extended to 5 pm on Friday 28 September 2007.

28 August 2007

43. Practice Direction No 6/2007 – Admission Ceremonies

1. Commencing in 2008 Admission Ceremonies will be held in the months of April, July, October and December.

31 August 2007

44. Practice Direction No 7/2007 – Extension of Practice Direction No 4 of 2004

Pursuant to Rule 48.28, Practice Direction No 4 of 2004 is renewed for a period of 12 months from 1 January 2008.

28 September 2007

45 .Practice Direction No 8/2007 – Solicitors costs

I, BRIAN ROSS MARTIN, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to paragraph 4 of Part 1 of the Appendix to Order 63, and after considering the recommendation of the Master, declare that the rate per unit applicable under paragraph 3 of that Part will, from 1 January 2008, be as follows:-

- (a) for a solicitor \$ 20.00 per unit; and
- (b) for a clerk \$ 11.00 per unit

8 November 2007

46. *Practice Direction No 9 of 2007 - Private audio recording of proceedings*

1. The audio recording of Court proceedings produced by Merrill Legal Solutions is and will remain the authoritative audio record of proceedings.
2. Representatives of news/media agencies are permitted to make a private audio recording of Court proceedings provided it is done unobtrusively and without interruption to the proceedings. For that purpose, a hand-held recorder may be taken into a courtroom and activated.
3. The purpose of permitting such recording is to maintain accuracy in the reporting of Court proceedings. The audio content of the recording may not be broadcast, copied, downloaded or provided to any other person or organisation unless provision is to legal advisors for the purposes of obtaining legal advice in connection with the recording and publication of its content.
4. The person who makes the private audio recording or the employer for whom the recording is made must retain possession of the recording and not edit or delete the recording for a minimum period of three months following the making of the recording or for such period as a Judge of the Court may order.
5. This Practice Direction does not impinge on the right of a Judge to revise, subsequently, a judgment delivered extempore; or a Judge's right, in a particular case, to prohibit recording should the Judge consider prohibition necessary or desirable.

19 November 2007

47. Practice Direction No 10 of 2007 - Vulnerable Witnesses – Recording Trial Evidence.

Section 21E of the *Evidence Act* provides that if a vulnerable witness is to give evidence in criminal proceedings, and facilities are available for making an audio visual record of the evidence, the Court may direct that an audio visual record be made of the witness's evidence.

1. If a party to criminal proceedings intends to call a vulnerable witness, not less than seven days prior to the date fixed for the commencement of the trial the party shall give notice of that intention to the Court and to the other party.
2. The notice shall provide sufficient particulars of the vulnerable witness to identify the age of the vulnerable witness and whether the witness is a complainant or otherwise.
3. The notice shall include advice as to whether the party calling the witness will seek an order that an audio visual record of the evidence of the witness be made and brief reasons why the order should be made.
4. Not less than two days prior to the date fixed for the commencement of the trial the other party shall file and serve a notice stating whether the order will be opposed and, if it will, brief reasons for the opposition.

10 December 2007

48. Practice Direction No 1 of 2008 – Sittings at Groote Eylandt

I, *Brian Ross Martin*, Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to Section 13(2) of the *Supreme Court Act*, direct that the Supreme Court shall have power to sit and act at any time at Groote Eylandt in the Northern Territory for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged.

18 April 2008

49. Practice Direction No 2 of 2008 - Mediation

Pursuant to O 48.28, and for the purpose of considering the practicality of changing O 48, it is directed that O 48.13 be amended by substituting subrule (2) with the following subrule:

“(2) The mediator may be a Judge, the Master, a Registrar, or a person appointed from the list kept under subrule (9).”

26 May 2008

50. Practice Direction No 3 of 2008 – Court Dress

Practice Direction No 1 of 1987 is rescinded

15 July 2008

51. Practice Direction No 4 of 2008 – Criminal Trials as backups trials in Alice Springs

Practice Direction 2 of 2000 is amended by deleting the following words:

“... but not for the first week of the Civil sittings. It is anticipated that Justices Appeals and Pleas will be listed during the first week and, if time is available, elsewhere during the sittings as time permits.”

52. Practice Direction No 5 of 2008 – List of Authorities and Submissions

Practice Direction No 6 of 2001 is rescinded and replaced by the following Practice Direction.

In all proceedings before a single Judge at first instance, if authorities or legislation will be relied upon, a list of authorities and legislation must be filed and served no later than 24 hours before the time the proceeding is to be heard.

In relation to all appeals, practitioners are referred to the time requirements specified in O.84.17. By force of this Practice Direction, Orders 84.17, 84.18 and 84.19 apply mutatis mutandis to appeals to which O.83 applies.

On filing, list of authorities and summaries of submissions will be sent to the hearing Judge's Associate or, if there is more than one Judge, the senior Judge's Associate, who will arrange to have the authorities available for the use of the Court. In the event that these documents are not filed within time, it will be incumbent on the practitioner involved to notify the Associate as to the reason for the failure and provide sufficient copies of the authorities for the use of the Court.

15 July 2008

53. Practice Direction No 6 of 2008 – Document Exchange

Practice Direction No 7 of 2001 is amended as follows:

- (i) By deleting the word *Act* and by inserting in its place the word *Rules*.
- (ii) By deleting reference to sub-paragraph (a) of Rule 6.06(1) and replacing it with reference to sub-paragraph (d) of Rule 6.06(1).

15 July 2008

