

12. Ibid O 29A r 17.
13. Ibid O 29A r 18.
14. Ibid O 29A r 18A.
15. Ibid O 29A r 20.
16. Ibid O 29A r 21(1).

**[325-705] Expedited List** Cases entered in the Expedited List (the 'List') are conducted under the supervision of a judge appointed by the Chief Justice to be an Expedited List judge (a 'List judge').<sup>2</sup> A party to a proceeding may apply<sup>3</sup> to have it entered<sup>4</sup> in the List maintained by the Registrar.<sup>5</sup> Where a case is entered in the List the heading of every document must show the words 'Expedited List'<sup>6</sup> and the party obtaining the order for entry must, within seven days, file and serve a summons for directions<sup>7</sup> setting out a proposed timetable for interlocutory steps as well as other directions sought.<sup>8</sup> Other parties must, two clear days before the return date of the summons for directions, provide all other parties with a memorandum setting out the proposed directions that are consented to and those that are opposed.<sup>9</sup> The List judge may on the application of a party or of his or her own motion give directions, regardless of whether these are inconsistent with any other provision of the rules, for the speedy and inexpensive determination of the real issues between the parties.<sup>10</sup>

#### Notes

1. (WA) Rules of the Supreme Court O 31A. See also (WA) Consolidated Practice Directions Practice Direction 4.6.2 (expedited processes for urgent orders) (reproduced in Seaman P, *Civil Procedure Western Australia*, LexisNexis [7020.6.2]).
2. (WA) Rules of the Supreme Court O 31A r 1.
3. Whether a case is entered into the List depends upon the nature of the proceeding and whether it is amenable to the special procedures of the List: *Rothwells Ltd (in liq) v Peng* [1990] 1 WAR 380 at 382.
4. A proceeding is entered in the List only upon an order of a List judge: (WA) Rules of the Supreme Court O 31A r 2.
5. Ibid O 31A r 1.
6. Ibid O 31A r 3.
7. Ibid O 29 r 5(1).
8. Ibid O 31A r 4.
9. Ibid O 31A r 4(3).
10. Ibid O 31A r 5(3).

[The next page is 594,225]

## (4) COMMENCEMENT

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  - Choice of forum
  - Choice of originating process
  - Claims in foreign currency
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## (4) COMMENCEMENT OF PROCEEDINGS

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List judge: (WA) Rules

This chapter was updated by

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### (a) INTRODUCTION

**[325-1000] Forms of originating process** The essential requirement that underlies all rules concerning the commencement of proceedings is that any proceeding must be commenced by an authentic court document which states the nature and extent of the claim made or the remedy or relief sought. Proceedings are commenced when originating process is issued<sup>1</sup> or, where the rules so provide, when filed.<sup>2</sup> Except where there is a requirement that leave to institute proceedings be obtained, the issue of originating process is a matter of right.<sup>3</sup>

Proceedings instituted within any relevant limitation period by solicitors acting without the authority of the named plaintiff or applicant may be ratified by the person so named,<sup>4</sup> even after the expiration of that relevant limitation period.<sup>5</sup> Whether proceedings may be ordered to be taken as having been commenced on an earlier date *nunc pro tunc*<sup>6</sup> appears to be an open question.<sup>7</sup>

The forms of originating process that originated in England with the enactment of the (UK) Supreme Court of Judicature Act 1873 (repealed) and the (UK) Supreme Court of Judicature Act 1875 (repealed) were the writ of summons, originating summons, petition and originating motion. Those forms of process were adopted in the High Court of Australia and in the Supreme Courts of the States by rules that largely followed the (UK) Rules of the Supreme Court made in 1883. Those rules drew a distinction between the various forms of originating process on the basis that an action<sup>8</sup> was commenced by writ of summons, a written application to the court was made by petition,<sup>9</sup> an oral application to the court was made on motion and an application to a judge in chambers<sup>10</sup> was made by summons.

The rules in force in Western Australia retain these forms of originating process.<sup>11</sup> The rules in force in Tasmania largely follow the 1883 English rules but provide for different forms of originating process.<sup>12</sup> The rules of the other Australian jurisdictions provide for other forms of originating process.<sup>13</sup>

#### Notes

1. *The Espanoleto* [1920] P 223 at 225; (1920) 125 LT 121 per Hill J; *Cheney v Spooner* (1929) 41 CLR 532 at 536-7; [1929] ALR 173 per Isaacs and Gavan Duffy JJ; *Staples v Staples* [1952] VLR 25 at 27; [1952] ALR 62 per Barry J; *Rauzon v Williams* [1984] 2 Qd R 287.
2. (CTH) High Court Rules 2004 r 20.01 (public law relief, applications for removal to High Court of Australia, and election matters are commenced when originating process is filed, but writ of summons is commenced when summons is issued)  
(CTH) Federal Court Rules O 4 r 1(1)  
(ACT) Court Procedures Rules 2006 r 32(1)  
(NSW) Uniform Civil Procedure Rules 2005 r 6.2(1)

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(SA) Supreme Court Civil Rules 2006 r 34(1)

(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.11.

There are no equivalent provisions in the other jurisdictions.

3. *The PLM* 8 [1920] P 236 at 241; (1920) 123 LT 560 per Hill J; *Clarke v Bradlaugh* (1881) 8 QBD 63 at 68-9; [1881-85] All ER Rep 1002 per Brett LJ, CA; *Findlay v Trevor* (1993) 11 ACLC 483 at 487 per Malcolm CJ, SC(WA).
4. *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680; [1951] 1 All ER 925, CA; *Omega Estates Pty Ltd v Ganke* [1963] NSWLR 1416; (1962) 80 WN (NSW) 1218; *Victoria Teachers Credit Union Ltd v KPMG* (2000) 1 VR 654 at 662 per Tadgell JA, at 664 per Ormiston JA; [2000] VSCA 23; BC200000809. Similarly, proceedings instituted on behalf of a corporation by a director without the corporation's authority may be ratified by the corporation: *Re Manias*; *Ex parte Edsill Pty Ltd* (1986) 15 FCR 1.
5. *Presentaciones Musicales SA v Secunda* [1994] Ch 271; [1994] 2 All ER 737; [1994] 2 WLR 660, CA; *Adams v Elphinstone* (unreported, SC(TAS), Zeeman J, 22 June 1993, BC9300066) noted (1993) 2 Tas R (NC) N14.
6. *Toronto Railway Co v King* [1908] AC 260 at 270; (1908) 98 LT 650, PC.
7. *Cash v FH Stephens Pty Ltd* (unreported, SC(TAS), Burbury CJ, 7 June 1965) noted [1965] Tas SR (NC) N10.
8. *Herbert Berry Assocs Ltd v IRC* [1978] 1 All ER 161 at 170; [1977] 1 WLR 1437 per Lord Simon, HL (meaning of 'action' is the invocation of the jurisdiction of the court by writ); *Parkin v James* (1905) 2 CLR 315 at 342 sub nom *In the Will of Lister (dec'd)*; *Parkin v James* (1905) 2 CLR 315; 11 ALR 142 (some jurisdictions no longer employ the term 'action' and other jurisdictions have defined the term so that proceedings other than those commenced by writ fall within it).
9. A 'petition' is a written statement addressed to the court setting forth facts upon the basis of which the petitioner prays for a particular remedy or relief: see, for example, *Williams' Civil Procedure Victoria*, LexisNexis, Vol 1, [I 4.01.25].
10. The distinction between court and chambers has not been maintained in all jurisdictions: see, for example, *Medical Board of Victoria v Meyer* (1937) 58 CLR 62 at 93-6; [1937] ALR 573; (1937) 11 ALJ 194 per Dixon J (origins of the practice of judges sitting in chambers). As to the distinction between court and chambers generally see COURTS AND JUDICIAL SYSTEM.
11. As to originating process in Western Australia see [325-1085]-[325-1095].
12. As to originating process in Tasmania see [325-1085]-[325-1095].
13. As to originating process in the other jurisdictions see [325-1025]-[325-1080].

**[325-1005] Choice of forum** A plaintiff or applicant has the initial choice of forum in which to commence an originating proceeding. Ordinarily, a defendant will be entitled to an order for a stay or dismissal of a proceeding upon persuading the court in which the proceeding has been commenced that it is clearly an inappropriate forum by reason of the availability of a non-Australian tribunal to whose jurisdiction the defendant is amenable and which would entertain the matter.<sup>1</sup> The question whether the court in which the proceeding has been commenced is clearly an inappropriate forum requires attention to be directed to the inappropriateness of that court and not to the appropriateness or comparative appropriateness of the suggested non-Australian tribunal.<sup>2</sup> A defendant will not be entitled to an order for a stay or dismissal of proceedings on the basis that the selected forum is inappropriate by reason of the availability of some other Australian tribunal to whose jurisdiction the defendant is amenable unless there is something amounting to vexation, oppression or injustice to the defendant.<sup>3</sup> The cross-vesting legislation<sup>4</sup> confers

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upon each State and Territory Supreme Court the original and appellate jurisdiction of each of the others and of the Federal Court of Australia and the Family Court of Australia, except in criminal matters and therefore limits the circumstances in which it may be said that a court lacks jurisdiction, as distinct from the court being an inappropriate forum.

## Notes

1. *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538; 97 ALR 124; 65 ALJR 83; *Balescope Pty Ltd v Pegasus Leasing Ltd* (1994) 125 ALR 483, SC(SA) (stating that *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538; 97 ALR 124; 65 ALJR 83 only applies to an Australian tribunal or court); *ZP v PS* (1994) 181 CLR 639; 122 ALR 1 at 7; 17 Fam LR 600 per Mason CJ, Toohey and McHugh JJ, HC of A (inappropriate forum test is for competitions between Australian courts and overseas tribunals). As to the inappropriate forum test see further CONFLICT OF LAWS [85-470].
2. *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 at 564-5; 97 ALR 124; 65 ALJR 83 per Mason CJ, Deane, Dawson and Gaudron JJ; *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197 at 247-8; 79 ALR 9; 62 ALJR 389 per Deane J; *Spiliada Maritime Corp v Cansulex Ltd (The Spiliada)* [1987] AC 460 at 477-8; [1986] 3 All ER 843; [1986] 3 WLR 972 per Lord Goff LJ.
3. *Cope Allman (Aust) Ltd v Celermajer* (1968) 11 FLR 488; *Balescope Pty Ltd v Pegasus Leasing Ltd* (1994) 125 ALR 483, SC(SA).
4. (CTH) Jurisdiction of Courts (Cross-vesting) Act 1987  
(ACT) Jurisdiction of Courts (Cross-vesting) Act 1993  
(NT) Jurisdiction of Courts (Cross-vesting) Act 1987  
(NSW) Jurisdiction of Courts (Cross-vesting) Act 1987  
(QLD) Jurisdiction of Courts (Cross-vesting) Act 1987  
(SA) Jurisdiction of Courts (Cross-vesting) Act 1987  
(TAS) Jurisdiction of Courts (Cross-vesting) Act 1987  
(VIC) Jurisdiction of Courts (Cross-vesting) Act 1987  
(WA) Jurisdiction of Courts (Cross-vesting) Act 1987.  
As to transfer of proceedings under the cross-vesting scheme generally see [325-240]-[325-275].

**[325-1010] Choice of originating process** The appropriate form of originating process is largely provided for by the relevant rules of court.<sup>1</sup> In some jurisdictions, the rules expressly provide that where the rules make no provision or the matter is doubtful, an order may be made as to the appropriate form in which proposed proceedings are to be commenced.<sup>2</sup>

In some jurisdictions, the consequences of commencing proceedings by the wrong form of originating process are alleviated by provisions:

- (1) that the court must not wholly set aside proceedings or the originating process by which they were commenced on the ground that the wrong form of originating process has been used;<sup>3</sup>
- (2) to the effect that the use of the wrong form of originating process does not render the proceeding a nullity<sup>4</sup> or does not have such effect unless otherwise ordered;<sup>5</sup> or
- (3) that permit the making of an order relieving a party from the consequences of having commenced proceedings by means of the wrong form of originating process.<sup>6</sup>

## Notes

1. As to the various forms of originating process, see [325-1020]-[325-1030]. Lists, proceedings are commenced in a particular way to indicate the appropriate jurisdiction. See [325-615]-[325-705].
2. (CTH) Federal Court Rules 1977 for commencing a proceeding in an appropriate direction. (NT) Supreme Court Rules 1971 for commencing a proceeding in an appropriate direction. (VIC) Supreme Court Rules 1986 in that manner or form or is doubtful the court is the appropriate court. There are no equivalent rules in the other jurisdictions.
3. (NT) Supreme Court Rules 1971 (NSW) Uniform Civil Procedure Rules 1972 (QLD) Uniform Civil Procedure Rules 1972 (VIC) Supreme Court Rules 1986 (WA) Rules of Court 1971. There are no equivalent rules in the other jurisdictions.
4. (ACT) Court Proceedings (Regulation of Proceedings) Act 1987. An irregularity only. (NT) Supreme Court Rules 1971. (NSW) Civil Procedure Rules 1972. Irregularity only. (QLD) Uniform Civil Procedure Rules 1972. It is an irregularity only. (TAS) Supreme Court Rules 1971. That it was commenced in the wrong form. (VIC) Supreme Court Rules 1986. (WA) Rules of Court 1971. There are no equivalent rules in the other jurisdictions.
5. (CTH) High Court Rules 1971. (ACT) Court Proceedings (Regulation of Proceedings) Act 1987. (TAS) Supreme Court Rules 1971. A proceeding void. There are no equivalent rules in the other jurisdictions.
6. (CTH) High Court Rules 1971. (ACT) Court Proceedings (Regulation of Proceedings) Act 1987. (TAS) Supreme Court Rules 1971. With an irregularity. (NT) Supreme Court Rules 1971. Should have been commenced in the correct form. (NSW) Uniform Civil Procedure Rules 1972. Consequences of having commenced in the wrong form. (QLD) Uniform Civil Procedure Rules 1972. Proceedings continued. (VIC) Supreme Court Rules 1986. That an action will be allowed to proceed. (WA) Rules of Court 1971. That an application for an order is made.

## Notes

1. As to the varying rules for the different jurisdictions generally see [325-1020]-[325-1095]. In those jurisdictions where provision is made for specialist lists, proceedings are generally commenced by marking the originating process in a way to indicate that proceedings are to be entered into the relevant list: see [325-615]-[325-705].
2. (CTH) Federal Court Rules O 1 r 9(1) (where the manner or form of the procedure for commencing a proceeding is not prescribed or is doubtful the court may give appropriate directions)  
(NT) Supreme Court Rules r 1.11(1) (where the manner or form of the procedure for commencing a proceeding is not prescribed or is doubtful the court may give appropriate directions)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 1.15(1) (where the manner or form of the procedure for commencing a proceeding is not prescribed or is doubtful the court may give appropriate directions).  
There are no equivalent provisions in the other jurisdictions.
3. (NT) Supreme Court Rules r 2.02  
(NSW) Uniform Civil Procedure Rules 2005 rr 6.5, 6.6  
(QLD) Uniform Civil Procedure Rules 1999 r 373  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 2.02  
(WA) Rules of the Supreme Court O 2 r 1(3).  
There are no equivalent provisions in the other jurisdictions.
4. (ACT) Court Procedures Rules 2006 r 1450(1) (noncompliance with the rules is an irregularity only)  
(NT) Supreme Court Rules r 2.01(1)  
(NSW) Civil Procedure Act 2005 s 63(2) (noncompliance with the rules is an irregularity only)  
(QLD) Uniform Civil Procedure Rules 1999 r 371 (noncompliance with the rules is an irregularity only)  
(TAS) Supreme Court Rules 2000 r 15 (a proceeding is not void solely on grounds that it was commenced by the wrong process)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 2.01(1)  
(WA) Rules of the Supreme Court O 2 r 1(1).  
There are no equivalent provisions in the other jurisdictions.
5. (CTH) High Court Rules 2004 r 2.03  
(ACT) Court Procedures Rules 2006 rr 38, 39  
(TAS) Supreme Court Rules 2000 r 13 (noncompliance with rules does not render a proceeding void unless so ordered).  
There are no equivalent provisions in the other jurisdictions.
6. (CTH) High Court Rules 2004 r 2.03.3(b) (court may make an order for amendment)  
(ACT) Court Procedures Rules 2006 r 39 (court or a judge may make orders dealing with an irregularity)  
(NT) Supreme Court Rules r 4.07 (if an originating motion is used when a writ should have been used the court may order that the proceeding continue as if it had been commenced by writ)  
(NSW) Uniform Civil Procedure Rules 2005 rr 6.5 (plaintiff may be relieved of the consequences of having commenced by statement of claim, proceedings that should have been commenced by summons), 6.6 (proceedings that should have been commenced by statement of claim)  
(QLD) Uniform Civil Procedure Rules 1999 rr 13(2), 14(2) (court may order that proceeding continue as if started by correct originating process and may give directions and make orders it considers appropriate)  
(TAS) Supreme Court Rules 2000 r 95 (court or a judge may at any time order that an action will proceed as if it had been begun by application and vice versa, or that an application to the court or a judge be continued in chambers or before the court)

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proceedings are commenced in the prescribed form,<sup>10</sup> and the writ of claim.<sup>11</sup> The writ of date it is issued.<sup>12</sup> The event of choice of the

Notes

1. (CTH) High C
2. Ibid r 25.01.
3. Ibid r 26.01.
4. Ibid rr 25.01(a), applications).
5. Ibid rr 25.01(f)
6. Ibid rr 25.01(g)
7. Ibid r 30.01.
8. Ibid r 30.02.
9. Ibid r 30.04.
10. Ibid r 27.01(a).
11. Ibid r 27.01(c).
12. Ibid r 27.01(f).
13. However ibid r 27.01 has been failure

## (c) FE

- [325-1025] **Comme**  
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referred to as 'proceed

## Notes

1. (CTH) Federal
2. Ibid s 4.

- [325-1030] Form of the Federal Court of rules otherwise provided must be in the prescribed form. Any claim for an exemption from the determination of a question must be accompanied by a statement of the facts. The application must be addressed to the solicitor. If the application must be in

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proceedings are commenced by a writ of summons which must be in the prescribed form,<sup>10</sup> and may be generally endorsed, or endorsed with a statement of claim.<sup>11</sup> The writ of summons must be served within 12 months after the date it is issued.<sup>12</sup> The rules make no provision for what is to happen in the event of choice of the wrong originating process.<sup>13</sup>

## Notes

1. (CTH) High Court Rules 2004 r 20.01.
2. Ibid r 25.01.
3. Ibid r 26.01.
4. Ibid rr 25.01(a), 26.01(a), Sch 1 Form 12 (show cause applications), 17 (removal applications).
5. Ibid rr 25.01(f) (show cause applications), 26.01(f), 26.02 (removal applications).
6. Ibid rr 25.01(g) (show cause applications), 26.01(g) (removal applications).
7. Ibid r 30.01.
8. Ibid r 30.02.
9. Ibid r 30.04.
10. Ibid r 27.01(a), Sch 1 Form 20.
11. Ibid r 27.01(c).
12. Ibid r 27.01(f).
13. However ibid r 2.03 allows the High Court of Australia to make orders when there has been failure to comply with a prescribed procedure.

## (c) FEDERAL COURT OF AUSTRALIA

**[325-1025] Commencement of proceedings** The Federal Court of Australia is created by statute<sup>1</sup> and has had conferred upon it substantive jurisdiction by various Commonwealth statutes. All proceedings in the court are referred to as 'proceedings' whether they are between parties or not.<sup>2</sup>

## Notes

1. (CTH) Federal Court of Australia Act 1976.
2. Ibid s 4.

**[325-1030] Form of originating process** All originating proceedings in the Federal Court of Australia are to be commenced by application unless the rules otherwise provide<sup>1</sup> or it is otherwise provided by statute.<sup>2</sup> An application must be in the prescribed form<sup>3</sup> and must set out the relief claimed, specifically claim any exemplary damages sought, specify any Act relied upon and, if the determination of a question is sought, specify the question.<sup>4</sup> The application must be accompanied by a statement of claim or be supported by an affidavit.<sup>5</sup> The application must disclose an address for service<sup>6</sup> and the names and addresses of the applicant,<sup>7</sup> the applicant's solicitor<sup>8</sup> and any agent of that solicitor.<sup>9</sup> If the applicant brings the proceeding in a representative capacity the application must be indorsed to that effect.<sup>10</sup>

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## Notes

1. (CTH) Federal Court Rules O 4 r 1. Note that the rules do not otherwise provide.
2. *Linehan v Australian Public Service Assn (Fourth Division Officers)* (1982) 44 ALR 281, 66 FLR 90; 2 IR 470.
3. (CTH) Federal Court Rules O 4 r 1.
4. *Ibid* O 4 r 3.
5. *Ibid* O 4 r 6(1). A statement of claim is required when an applicant seeks to rely on an allegation of fraud, misrepresentation, breach of trust, wilful default or undue influence: *ibid* O 4 r 6(1A). While the rules are otherwise silent on the matter, in general terms an application that involves a disputed question of fact should be accompanied by a statement of claim and an application that substantially concerns a question of law to be determined on undisputed facts should be accompanied by an affidavit.
6. *Ibid* O 4 r 4(1)(e).
7. *Ibid* O 4 r 4(1)(a).
8. *Ibid* O 4 r 4(1)(c).
9. *Ibid* O 4 r 4(1)(d).
10. *Ibid* O 4 r 4(1)(b).

## (d) AUSTRALIAN CAPITAL TERRITORY

**[325-1035] Commencement of proceedings** In the Australian Capital Territory, proceedings (other than criminal proceedings and appeals) are commenced by filing an 'originating claim' or an 'originating application', or following an 'oral originating application'.<sup>1</sup> If a proceeding is commenced by oral application, an originating application in the same terms must be filed as soon as practicable.<sup>2</sup>

## Notes

1. (ACT) Court Procedures Rules 2006 rr 32, 37.
2. *Ibid* r 37(6).

**[325-1040] Form of originating process** Proceedings must be started by originating application in a number of specified circumstances<sup>1</sup> and may be started thus if there is unlikely to be a substantial dispute of fact, if there is no opposing party, or if there is insufficient time to prepare an originating claim.<sup>2</sup> Otherwise proceedings must be commenced by originating claim.<sup>3</sup> Originating process must be in accordance with the prescribed form and include:

- (1) the full name of the plaintiff, along with the plaintiff's address for service;
- (2) details of capacity if the party sues in a representative capacity; and
- (3) the name of the party's solicitors (if represented).

Originating claims must briefly state the nature of the claim made and the relief sought, including any claim for exemplary or aggravated damages and interest to the date of judgment, and a statement of claim must be attached.<sup>4</sup> Originating applications must state the relief sought, list supporting affidavits and state any statute pursuant to which they are made.<sup>6</sup>

## Notes

1. (ACT) Court Procedures Rules 2006 rr 32, 37.
2. *Ibid* r 35.
3. *Ibid* r 33.
4. *Ibid* rr 50(4) (originating claim), 50(2), 50(3).
5. *Ibid* r 50(1), 50(2), 50(3).
6. *Ibid* r 60(3), 60(4), 60(5).

## (e) NORTHERN TERRITORY

**[325-1045] Commencement of proceedings** Proceedings provided for by the originating motion must be commenced by originating motion, where an Act of Parliament provides otherwise, and where the rules so require. Particular rules require proceedings to be commenced by originating motion in the following circumstances:

- (1) application for process in a colony;<sup>4</sup>
- (2) application for re-examination of a colony;<sup>4</sup>
- (3) application for a declaration of a colony;<sup>4</sup>
- (4) application for a declaration of a colony;<sup>4</sup>
- (5) application for a declaration of a colony;<sup>4</sup>
- (6) application for a declaration of a colony;<sup>4</sup>
- (7) application for a declaration of a colony;<sup>4</sup>
- (8) application for a declaration of a colony;<sup>4</sup>
- (9) application for a declaration of a colony;<sup>4</sup>
- (10) application for a declaration of a colony;<sup>4</sup>

An originating motion must be commenced by originating motion, where an Act of Parliament provides otherwise, and where the rules so require. Particular rules require proceedings to be commenced by originating motion in the following circumstances:

## Notes

1. (NT) Supreme Court Rules 1971 r 35.
2. (NT) Supreme Court Rules 1971 r 35.
3. (NT) Supreme Court Rules 1971 r 35.

*Notes*

1. (ACT) Court Procedures Rules 2006 r 34.
2. Ibid r 35.
3. Ibid r 33.
4. Ibid rr 50(4) (originating claims), 60(7) (originating applications).
5. Ibid r 50(1), 50(2), 50(5). See also Approved forms 2.1-2.6 under these Rules.
6. Ibid r 60(3), 60(4), 60(8).

### (e) NORTHERN TERRITORY AND VICTORIA

**[325-1045] Commencement of proceedings** The forms of originating process provided for by the rules are a writ and an originating motion.<sup>1</sup> An originating motion must be used where there is no defendant to the proceedings, where an Act authorises an application to be made to the court and where the rules so require.<sup>2</sup>

Particular rules require that the following originating proceedings be commenced by originating motion:

- (1) application for punishment for contempt;<sup>3</sup>
- (2) application for relief in the nature of that formerly given by writ of *habeas corpus*; <sup>4</sup>
- (3) application for directions as to how to commence proceedings;<sup>5</sup>
- (4) application for family provision;<sup>6</sup>
- (5) application for an order for the inspection or preservation of property against a prospective defendant;<sup>7</sup>
- (6) application for interpleader relief by a person sued in the court for or in respect of the disputed property;<sup>8</sup>
- (7) application for discovery to identify a defendant or for discovery from a prospective defendant;<sup>9</sup>
- (8) application for a stop order for funds in court;<sup>10</sup>
- (9) application for the substituted service of foreign process;<sup>11</sup>
- (10) application for the recovery of land by way of summary proceeding;<sup>12</sup> and
- (11) application that a minor be made a ward of court.<sup>13</sup>

An originating motion may be used where it is unlikely that there will be any substantial dispute of fact and for that reason it is appropriate that there be no pleadings or discovery.<sup>14</sup>

Apart from proceedings that are or may be commenced by originating motion, proceedings must be commenced by writ,<sup>15</sup> except where a statute provides that proceedings must be commenced by petition.<sup>16</sup>

*Notes*

1. (NT) Supreme Court Rules r 4.01  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.01.
2. (NT) Supreme Court Rules r 4.05  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.05.
3. (NT) Supreme Court Rules r 75.06(1) (summons or originating motion)

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- (VIC) Supreme Court (General Civil Procedure) Rules 2005 r 75.06(1) (summons or originating motion).
4. Ibid r 57.10.  
There are no equivalent provisions in the Northern Territory.  
For the meaning of '*ne exeat colonia*' see *Glover v Walters* (1950) 80 CLR 172-3; ALJ 663; [1950] ALR 179.
  5. (NT) Supreme Court Rules r 1.11(3)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 1.15(3).
  6. (VIC) Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 r 16.03  
There are no equivalent provisions in the Northern Territory.
  7. (NT) Supreme Court Rules r 37.03(3)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 37.03(3).
  8. (NT) Supreme Court Rules r 12.02(4)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 12.02(4).
  9. (NT) Supreme Court Rules r 32.08(1)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 32.08(1).
  10. (NT) Supreme Court Rules r 73.12(3) (by originating motion if there is no proceeding for which the funds are in court; if there is such a proceeding, the application must be made by summons in that proceeding)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 73.12(3) (by originating motion if there is no proceeding for which the funds are in court; if there is such a proceeding, the application must be made by summons in that proceeding).
  11. (NT) Supreme Court Rules r 80.03(4) (to be commenced by the Attorney-General)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 80.03(4) (to be commenced by the Attorney-General).
  12. (NT) Supreme Court Rules r 53.02(2)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 53.02(2).
  13. (VIC) Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 r 19.02(1)  
There are no equivalent provisions in the Northern Territory.
  14. (NT) Supreme Court Rules r 4.06  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.06.
  15. (NT) Supreme Court Rules r 4.04  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.04.
  16. Ibid r 1.12.  
There are no equivalent provisions in the Northern Territory.

**[325-1050] Form of originating process** Originating process must be in the prescribed form.<sup>1</sup>

A writ must contain an indorsement of claim which must be a statement of claim or a statement sufficient to give with reasonable particularity notice of the nature and cause of the claim and of the relief or remedy sought,<sup>2</sup> as well as a statement of the place and mode of trial desired.<sup>3</sup> An originating motion must state the relief or remedy sought, any Act under which the claim is made and any question sought to be answered.<sup>4</sup>

Where proceedings are commenced by writ and the only claim made by the plaintiff is for a debt,<sup>5</sup> the writ must be indorsed to the effect that the defendant may within the time limited for appearance pay the amount claimed and costs whereupon the proceedings come to an end, subject to the right of the defendant to have the plaintiff's costs taxed.<sup>6</sup>

Any originating process must state the name and address of the plaintiff, and, where the plaintiff is a corporation, the name of the person who is the plaintiff for the purposes of the jurisdiction, an address for service, or is sued in a representative capacity, with a statement of the claim.

## Notes

1. (NT) Supreme Court Rules r 1.11(3)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 1.15(3).
2. (NT) Supreme Court Rules r 12.02(4)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 12.02(4).  
As to the meaning of '*ne exeat colonia*' see *Glover v Walters* (1950) 80 CLR 172-3; [1950] ALR 179.
3. (NT) Supreme Court Rules r 73.12(3)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 73.12(3).
4. (NT) Supreme Court Rules r 12.02(4)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 12.02(4).
5. For the meaning of '*ne exeat colonia*' see *Glover v Walters* (1950) 80 CLR 172-3; [1950] ALR 179.
6. (NT) Supreme Court Rules r 1.11(3)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 1.15(3).
7. (NT) Supreme Court Rules r 12.02(4)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 12.02(4).
8. (NT) Supreme Court Rules r 12.02(4)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 12.02(4).

**[325-1055] Commencement of process** The process must be commenced in the prescribed form in which there is no requirement that the process must be commenced in the prescribed form.

- (1) for relief
- (2) made for
- (3) based on
- (4) made for or damages
- (5) for relief in writing
- (6) for the plaintiff
- (7) under the writ
- (8) in relation to the claim

A summons must be in the prescribed form.

- (1) a writ or summons
- (2) an order
- (3) the application
- (4) a declaration
- (5) an injunction

Any originating process must be indorsed with the addresses of the parties, the name and address of the plaintiff's solicitor and of the agent of such solicitor and, where the plaintiff sues in person and discloses an address outside the jurisdiction, an address for service within the jurisdiction.<sup>7</sup> Where a party sues or is sued in a representative capacity, the originating process must be indorsed with a statement showing that capacity.<sup>8</sup>

## Notes

1. (NT) Supreme Court Rules r 5.02  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.02.
2. (NT) Supreme Court Rules r 5.04  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.04.  
As to the amendment of the indorsement on originating process see [325-2915]-[325-2925].
3. (NT) Supreme Court Rules r 5.04 (place of trial only)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.08.
4. (NT) Supreme Court Rules r 5.05  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.05.
5. For the meaning of 'debt' see [325-1090] note 4.
6. (NT) Supreme Court Rules r 5.09  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.09.
7. (NT) Supreme Court Rules r 5.07(1)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.07(1).
8. (NT) Supreme Court Rules r 5.06  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 5.06.

## (f) NEW SOUTH WALES

[325-1055] **Commencement of proceedings** The forms of originating process provided for are the summons and the statement of claim.<sup>1</sup> Proceedings in which there is no defendant must be commenced by summons.<sup>2</sup> Proceedings that must be commenced by a statement of claim include claims:<sup>3</sup>

- (1) for relief in relation to a debt or liquidated claim;
- (2) made for any relief or remedy in tort;
- (3) based on an allegation of fraud;
- (4) made for damages for breach of duty in respect of death, personal injury or damage to property;
- (5) for relief in respect of any trust which is not an express trust wholly in writing;
- (6) for the possession of land;
- (7) under the (NSW) Property (Relationships) Act 1984; and
- (8) in relation to the publication of defamatory matter.

A summons may be used to initiate proceedings for:<sup>4</sup>

- (1) a writ of *habeas corpus*;
- (2) an order relating to the custody of a minor;
- (3) the appointment of a tutor;
- (4) a declaration of right;
- (5) an injunction;

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