Commencement: 31 January 2003

CIVIL PROCEDURE RULES

Order 49 of 2002

ARRANGEMENT OF RULES*

**Editor's note: This Arrangement of Rules, and the contents listed at the commencement of each Part, contain links to the body of the Rules (Control + click)*

CIVIL PROCEDURE RULES

To provide for civil procedure rules and court fees.

PART 1 – PRELIMINARY

1.1 Title

These Rules are the Civil Procedure Rules.

1.2 Overriding objective

(1) The overriding objective of these Rules is to enable the courts to deal with cases justly.

(2) Dealing with cases justly includes, so far as is practicable:

(a) ensuring that all parties are on an equal footing; and

(b) saving expense; and

(c) dealing with the case in ways that are proportionate:

(i) to the importance of the case; and

(ii) to the complexity of the issues; and

(iii) to the amount of money involved; and

(iv) to the financial position of each party; and

(d) ensuring that the case is dealt with speedily and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

1.3 Courts to apply overriding objective

The courts must give effect to the overriding objective when they:

(a) do any act under these Rules; or

(b) interpret these Rules.

1.4 Courts' duty to manage cases

(1) In particular, the courts must actively manage cases.

(2) Active case management includes:

(a) encouraging the parties to co-operate with each other during the proceedings; and

(b) identifying the issues at an early stage; and

(c) deciding promptly which issues need full investigation and trial and resolving the others without a hearing; and

(d) deciding the order in which issues are to be resolved; and

(e) encouraging parties to use an alternative dispute resolution procedure if the court considers it appropriate, and facilitating its use; and

(f) helping the parties to settle the whole or part of the case; and

(g) fixing a timetable for the case or otherwise controlling its progress; and

(h) considering whether the likely benefits of taking a particular step justify the costs of taking it; and

(i) dealing with as many aspects of the case as it can at the one time; and

(j) dealing with the case without the parties needing to be at court; and

(k) taking advantage of technology; and

(l) giving directions to ensure that the trial of a case goes ahead quickly and efficiently.

1.5 Duties of the parties

The parties to a proceeding must help the court to act in accordance with the overriding objective.

1.6 Application of these Rules

(1) These Rules apply in all civil proceedings in the Supreme Court and the Magistrates' Court except:

(a) in proceedings of the kind set out in subrule (2); or

(b) where these Rules state they only apply in the Supreme Court or in the Magistrates' Court.

(2) These Rules do not apply to:

(a) a constitutional petition brought under section 218 of the Criminal Procedure Code; or

(b) a proceeding for which other Rules made under an enactment are in force.

(3) In these Rules, a reference to "court" is a reference to either the Supreme Court or the Magistrates' Court or both, depending on the context of the provision.

[NOTE: For applying these Rules to existing cases, see the transitional provisions in Part 19.]

1.7 Position if no provision in Rules

If these Rules do not deal with a proceeding or a step in a proceeding:

(a) the old Rules do not apply; and

(b) the court is to give whatever directions are necessary to ensure the matter is determined according to substantial justice.

1.8 Interpretation

(1) Some words used in these Rules have a particular meaning. They are defined in Part 20.

(2) The Notes in these Rules do not form part of the Rules and are for information only.

[NOTE: The Interpretation Act (Cap. 132) applies to these Rules and may extend the meaning of some words: for example, a singular word includes the plural of that word.]

1.9 Forms

A reference to a Form by number is a reference to the form identified by that number in Schedule 3 at the end of these Rules.

PART 2 – STARTING PROCEEDINGS

2.1 Kinds of proceedings

These Rules provide for the following types of civil proceedings:

(a) claims; and

(b) applications made during a proceeding.

[NOTES: (i) There is another type of proceeding in the Supreme Court, called a petition. Examples of this are: (a) constitutional petitions, sections 218-220 of the Criminal Procedure Code (Cap. 136) and the Rules made under section 220 of that Code; (b) electoral petitions, sections 54-65 of the Representation of the People Act (Cap 146) and the Rules made under section 59 of that Act.

(ii) The Magistrates' Court can only deal with certain matters, see Judicial Services and Courts Act (Cap. 270) and the Magistrates' Court (Civil Jurisdiction)Act (Cap. 130).]

2.2 How to start a proceeding

A proceeding is started by filing a claim.

2.3 Where to start a proceeding – Supreme Court

A proceeding in the Supreme Court is started by filing a claim in an office of the Supreme Court anywhere in Vanuatu.

2.4 Where to start a proceeding – Magistrates' Court

A proceeding in the Magistrates' Court is started by filing a claim in the office of the Magistrates' Court in the district where:

(a) the claimant or defendant lives; or

(b) the actions that led to the proceeding happened; or

(c) the property the subject of the claim is located.

2.5 Change of district – Magistrate

(1) A Magistrate may change the district where a proceeding is dealt with if he or she is satisfied that the matter can be more conveniently or fairly dealt with in another district.

(2) A defendant who wishes to object to the place where a proceeding is to be dealt with must state this in his or her response or defence.

2.6 Form of documents

(1) All documents filed in the Supreme Court must have the heading as set out in Form 1.

(2) All documents filed in the Magistrates' Court must have the heading as set out in Form 2.

(3) All documents filed in a proceeding must:

(a) be typewritten or in neat legible handwriting; and

(b) show the number of the proceedings, if any; and

(c) have each page consecutively numbered; and

(d) be divided into consecutively numbered paragraphs, with each paragraph dealing with a separate matter; and

(e) show the address of the party's lawyer or, if the party is not represented by a lawyer, the party's address; and

(f) if these Rules require the document to be in a form in Schedule 3, be in that form.

(4) A sworn statement must be in Form 3.

2.7 Applications during a proceeding

(1) A person may apply during a proceeding for an interlocutory order.

(2) The application must:

(a) be signed by the person or the person's lawyer; and

(b) name as defendant anyone whose interests are affected by the order sought.

(3) Nothing in this Rule prevents:

(a) a party to a proceeding making an oral application during the proceeding; or

(b) the court making an order on an oral application.

[NOTE: Applications during a proceeding are dealt with more fully in Part 7.]

2.8 Outline of proceedings

The flow charts in Schedule 4 give an outline of typical undefended and defended proceedings in the Magistrates' Court and the Supreme Court, and the procedure for enforcing judgments.

PART 3 – PARTIES TO A PROCEEDING

Who can be a party to a proceeding
Adding and removing parties
Joining and separating claims
Consolidating proceedings
Costs
Amending documents after change of party
Third parties
Persons under a legal incapacity
Death of party
Party becomes bankrupt, under a legal incapacity or dies during a proceeding
Partners
Representative party

3.1 Who can be a party to a proceeding

(1) A person is a party to a proceeding if he or she is:

(a) the claimant; or

(b) the defendant; or

(c) a person who becomes a party; or

(d) a person whom the Court orders to take part in the proceeding.

(2) There can be more than one claimant and defendant in the one proceeding.

3.2 Adding and removing parties

(1) The court may order that a person becomes a party to a proceeding if the person's presence as a party is necessary to enable the court to make a decision fairly and effectively in the proceeding.

(2) The court may order that a party to a proceeding is no longer a party if:

(a) the person's presence is not necessary to enable the court to make a decision fairly and effectively in the proceeding; or

(b) for any other reason the court considers that the person should not be a party to the proceeding.

(3) A party may apply to the court for an order that:

(a) a person be made a party to the proceeding; or

(b) a person (including the party applying) be removed from the proceeding.

(4) A person affected by a proceeding may apply to the court for an order that the person be made a party to the proceeding.

(5) An application must have with it a sworn statement setting out the reasons why the person should be made a party, or be removed as a party.

3.3 Joining and separating claims

(1) The court may order that several claims against the one person be included in the one proceeding if:

(a) a common question of law or fact is involved in all the claims; or

(b) the claims arise out of the same transaction or event; or

(c) for any other reason the court considers the claims should be included in the proceeding.

(2) The court may order that several claims against the one person be treated and heard as separate proceedings if:

(a) the claims can be more effectively dealt with separately; or

(b) for any other reason the court considers the claims should be heard as separate proceedings.

(3) A party may apply to the court for an order that:

(a) several claims against the one person (including the party applying) be included in the one proceeding; or

(b) several claims that are included in the one proceeding be treated and heard as separate proceedings.

3.4 Consolidating proceedings

The court may order that several proceedings be heard together if:

(a) the same question is involved in each proceeding; or

(b) the decision in one proceeding will affect the other; or

(c) for any other reason the court considers the proceedings should be heard together.

3.5 Costs

When making an order under rule 3.2, 3.3 or 3.4, the court may also make an order about who is to pay the costs of that order.

3.6 Amending documents after change of party

(1) After an order is made changing the parties to a proceeding, the person who applied for the order must:

(a) file an amended claim showing:

(i) the new party; and

(ii) the date of the order; and

(b) serve the amended claim on the new party; and

(c) if the order added or changed a defendant – serve the amended claim on the continuing party.

(2) The amended claim must be filed and served:

(a) within the time fixed by the order; or

(b) if no time was fixed – within 14 days of the date of the order.

(3) If the order added or substituted a defendant, everything done in the proceeding before the order was made has the same effect for the new defendant as for the old defendant, unless the court orders otherwise.

3.7 Third parties

(1) If a defendant claims a contribution, indemnity or other remedy against a person not a party to the proceeding, the defendant may file and serve a notice (a "third party notice") on that person stating:

(a) that the defendant claims the contribution, indemnity or other remedy; and

(b) that the person is a party to the proceeding from the date of service.

(2) The third party notice must be in Form 4.

(3) The defendant must obtain permission of the court (leave of the court) if the third party notice is filed after the defence has been filed.

(4) The person becomes a party to the proceeding with the same rights and obligations in the proceeding as if the defendant had started a proceeding against the person.

3.8 Persons under a legal incapacity

(1) A person is under a legal incapacity if the person:

(a) is a child; or

(b) is a person with impaired capacity.

(2) The court may appoint a person to be the litigation guardian of a person under a legal incapacity.

(3) A person under a legal incapacity may start or defend a proceeding only by acting through the person's litigation guardian.

(4) In all civil proceedings, anything required to be done by a person under a legal incapacity may be done only by the person's litigation guardian.

[NOTES: (i). "child" and "person with impaired capacity" are defined in Part 20.]
(ii). For service on a person under a legal incapacity, see rule 5.10]

3.9 Death of party

(1) If:

(a) the claimant dies during a proceeding; and

(b) the proceeding involves a cause of action that continues after death;

then:

(c) the proceeding may be continued by the claimant's personal representative; and

(d) the court may give whatever directions are necessary to allow the personal representative to continue the proceeding.

(2) If, at the start of a proceeding:

(a) the defendant is dead; and

(b) no personal representative has been appointed; and

(c) the cause of action continues after the defendant's death,

then:

(d) if the claimant knows the person is dead, the claim must name the "estate of [person's name] deceased"; and

(e) after a personal representative is appointed, all documents in the proceeding must name the personal representative as defendant.

3.10 Party becomes bankrupt, under a legal incapacity or dies during a proceeding

(1) If a party becomes bankrupt, becomes a person under a legal incapacity or dies during a proceeding, a person may take another step in the proceeding for or against the party only:

(a) with the court's permission; and

(b) in accordance with the court's directions.

(2) If a party becomes bankrupt or dies, the court may:

(a) order the party's trustee or personal representative or, if there is no personal representative, someone else, to be substituted as a party; and

(b) make other orders about the proceeding.

(3) The court may require notice to be given to anyone with an interest in the deceased party's estate before making an order under this rule.

(4) If:

(a) the court orders someone, other than a personal representative to be substituted for a deceased party; and

(b) another person is later appointed as personal representative;

the first person must give all documents in the proceeding to the personal representative as soon as practicable.

3.11 Partners

(1) One partner may start a proceeding in the partnership name.

(2) A proceeding against persons who are alleged to be partners may be brought against the persons in the partnership name.

(3) A party to a partnership proceeding may by written notice require the partnership, within not less than 2 days of the date of service, to give the names of all partners.

(4) The notice must be served:

(a) at the place of business of the partnership; or

(b) on one of the partners.

(5) If the partnership does not give this information, the court may:

(a) order the proceeding be suspended (stayed) until the information is given; or

(b) order a document that has been filed be struck out; or

(c) make any other order it considers appropriate.

(6) If a judgment is given against a partnership, the court may by order allow enforcement against individual partners.

[NOTES: (i) "Partnership proceeding" is defined in Part 20.
(ii) For working out time, see Part 5 of the Interpretation Act (Cap. 132).
(iii) For proceedings involving the executor or administrator of the estate of a deceased person, see the Queen's Regulation No.7 of 1972 and the Succession, Probate and Administration Regulation 1972.
(iv) For proceedings involving a bankrupt, see the UK Bankruptcy Act as applicable pursuant to Article 95(2) of the Constitution; and the Companies Act (Cap. 191).]

3.12 Representative party

(1) A proceeding may be started and continued by or against one or more persons who have the same interest in the subject-matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceeding.

(2) At any stage of the proceeding the court may appoint one or more parties named in the proceeding, or another person, to represent, for the proceeding, the persons having the same interest.

(3) When appointing a person who is not a party, the court must also order that the person is to become a party.

(4) An order made in a proceeding against a representative party may be enforced against a person not named as a party only with the court's leave.

(5) An application for leave to enforce the order must be served on the person against whom enforcement is sought as if the application were a claim.

PART 4 – STATEMENTS OF THE CASE

4.1 What are statements of the case

(1) A statement of the case is set out in a claim, a defence or a reply.

(2) The purpose of statements of the case is to:

(a) set out the facts of what happened between the parties, as each party sees them; and

(b) show the areas where the parties agree; and

(c) show the areas where the parties disagree (called the "issues between the parties") that need to be decided by the court.

4.2 Content of statements of the case

(1) Each statement of the case must:

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

(b) set out all the relevant facts on which the party relies, but not the evidence to prove them; and

(c) identify any statute or principle of law on which the party relies, but not contain the legal arguments about it; and

(d) if the party is relying on custom law, state the custom law.

(2) If the statement of the case is set out in a claim or a counterclaim, it must also set out the remedies or orders sought.

4.3 Claim

(1) A claim must:

(a) contain a statement of the case; and

(b) set out the address that is to be the claimant's address for service of documents; and

(c) for the Supreme Court, be in Form 5; and

(d) for the Magistrates' Court, be in Form 6; and

(e) have with it a Response Form.

(2) A claim filed in the Magistrates' Court must also show the facts that give the court jurisdiction to decide the claim.

(3) When a claim is filed in the Magistrates' Court, the court must write on the form the date of the first hearing.

4.4 Response

(1) The defendant must file and serve a response within the period required by Rule 4.13.

(2) The response must:

(a) set out the address that is to be the defendant's address for service; and

(b) be in Form 7; and

(c) be completed and signed.

(3) The defendant need not file a response if he or she files and serves a defence within 14 days of the date of service of the claim.

[NOTE: For address for service, see Rule 5.2.]

4.5 Defence

(1) If the defendant intends to contest the claim, the defendant must file and serve a defence on the claimant within the period required by Rule 4.13.

(2) The defence must contain a statement of the case.

(3) A defendant must not deny the claimant's claim generally, but must deal with each fact in the claim.

(4) If the defendant does not agree with a fact that the claimant has stated in the claim, the defendant must file and serve a defence that:

(a) denies the fact; and

(b) states what the defendant alleges happened.

(5) If the defendant does not deny a particular fact, the defendant is taken to agree with it.

(6) If the defendant does not know about a particular fact and cannot reasonably find out about it, the defendant must say so in the defence.

(7) The defence must be in Form 8.

4.6 Reply

(1) If a claimant does not file and serve a reply, the claimant is taken to deny all the facts alleged in the defence.

(2) If a claimant wishes to allege further relevant facts after the defence has been filed and served, the claimant must file and serve a reply.

(3) The claimant's reply must:

(a) contain a statement of the case; and

(b) state what the claimant alleges happened.

(4) If the claimant's reply does not deal with a particular fact, the claimant is taken to deny it.

(5) The reply must be in Form 9.

4.7 Matters to be stated in a defence or reply

In a defence or a reply, the statement of the case must specifically mention a matter that:

(a) makes another party's claim or defence not maintainable; or

(b) shows a transaction is void or voidable; or

(c) may take another party by surprise if it is not mentioned; or

(d) raises a question of fact not arising out of a previous statement of the case.

4.8 Counterclaim

(1) If a defendant in a proceeding wants to make a claim against the claimant (a "counterclaim") instead of bringing a separate proceeding, the defendant must include details of it in the defence.

(2) A counterclaim must contain a statement of the case.

(3) That part of the defence dealing with the counterclaim must:

(a) be shown clearly as the counterclaim; and

(b) set out details of the counterclaim as if it were a claim.

(4) If the defendant has counterclaimed:

(a) the claimant may include a defence to the counterclaim in the claimant's reply; and

(b) rule 4.5 applies to that part of the claimant's reply that deals with the counterclaim as if the reply were a defence.

(5) If the claimant defends the counterclaim:

(a) the defendant may file a reply (headed "defence to counterclaim") dealing with that part of the claimant's reply that relates to the counterclaim; and

(b) rule 4.6 applies to the defendant's reply.

(6) This rule applies to the conduct of a counterclaim (whether the counterclaim is against a person who was a party before the counterclaim was made or not) as if:

(a) the counterclaim is a claim, and the person making it a claimant in an original proceeding; and

(b) the party against whom the counterclaim is made is a defendant to an original proceeding.

4.9 Counterclaim against additional party

(1) A defendant may make a counterclaim against a person other than the claimant if:

(a) the claimant is also a party to the counterclaim; and

(b) either:

(i) the defendant alleges the other party is liable with the claimant for the counterclaim; or

(ii) the relief the defendant claims against the other person is related to or connected with the original subject matter of the proceeding.

(2) The defendant must serve the defence and counterclaim, and the claim, on the other party within the time allowed for service under rule 4.13(1) on the claimant.

(3) The other person becomes a party to the proceeding on being served with the defence and counterclaim.

4.10 Damages

(1) If damages are claimed in a claim or counterclaim, the claim or counterclaim must also state the nature and amount of the damages claimed, including special and exemplary damages.

(2) If general damages are claimed, the following particulars must be included:

(a) the nature of the loss or damage suffered; and

(b) the exact circumstances in which the loss or damage was suffered; and

(c) the basis on which the amount claimed has been worked out or estimated.

(3) In addition, the statement of the case must include any matter about the assessment of damages that, if not included, may take the other party by surprise.

4.11 Amendment of statement of the case

(1) A party may amend a statement of the case to:

(a) better identify the issues between the parties; or

(b) correct a mistake or defect; or

(c) provide better facts about each issue.

(2) The amendment may be made:

(a) with the leave of the court; and

(b) at any stage of the proceeding.

(3) In deciding whether to allow an amendment, the court must have regard to whether another party would be prejudiced in a way that cannot be remedied by:

(a) awarding costs; or

(b) extending the time for anything to be done; or

(c) adjourning the proceedings.

4.12 Court fees

(1) The fees set out in Schedule 1 are payable.

(2) However, if Vanuatu is a party to a Convention that provides that fees are not payable for particular proceedings, no fees are payable for those proceedings.

(3) The following provisions apply to the payment of fees:

(a) the fees are payable to an officer of the court; and

(b) a filing fee is payable at the time of filing; and

(c) if Schedule 1 fixes another time for paying another fee, the fee is payable at that time; and

(d) for a filing fee, the officer must write the amount of the fee, and the date and time it was paid, on the document; and

(e) the fee for setting a proceeding down for trial (“trial fee”) in the Supreme Court is payable by each party equally, unless the judge orders otherwise; and

(f) if a party fails to pay his or her trial fee by 14 days before the trial date, the judge may:

(i) order that the party is not to participate in the trial; or

(ii) make any other appropriate order; and

(g) if a trial is adjourned part heard, the judge may make an order about the proportion of any further trial fees to be paid by each party; and

(h) no fee is refundable.

4.13 Times for filing documents

(1) The following documents must be filed within the following times:

(a) the defendant's response must be filed and served within 14 days of the date of service of the claim;

(b) the defence must be filed and served within 28 days after the date of service of the claim, except if subrule (2) applies;

(c) the claimant's reply must be filed and served within 14 days of the date of service of the defence;

(d) if the defendant has made a counterclaim against a third party – the reply containing the defence to the counterclaim must be filed and served within 28 days of the date of service of the counterclaim;

(e) if the defendant has made a counterclaim against the claimant or a third party – the defendant's reply to the claimant's or third party's defence to the counterclaim must be filed and served within 14 days after the service of the claimant's or third party's reply.

(2) The defendant may file a defence although he or she has not filed a response. However, if he or she did not file a response, the defence must be filed within 14 days of service of the claim.

(3) If:

(a) the defence includes a counterclaim; and

(b) the claimant has filed a defence to the counterclaim;

the defendant may file and serve a reply.

(4) Each document must be served as set out in Part 5.

[NOTE: For further steps in a proceeding, see Part 6 dealing with Conferences, and the later Parts of these Rules generally.]

4.14 Late filing of documents

(1) A party may file a document after the time fixed by Rule 4.13.

(2) The court may decide whether or not the document is effective for the proceeding.

(3) In deciding whether a late filed document is effective, the court may have regard to:

(a) the reasons why the document was filed late; and

(b) any additional expense or inconvenience incurred by the other parties to the proceeding, and the disadvantage to the first party if the late filing is not allowed.

(4) If the court decides the filing of the document is not effective, the court may:

(a) make any order that is appropriate for the proceeding; and

(b) make an order about the costs incurred by a party because of the late filing.

4.15 Renewal of claim

If a claim is not served within the 3 month period required by rule 5.3:

(a) the claimant may apply to the court to have the claim renewed; and

(b) if the claimant does not do this, the claim ceases to be of any effect.

PART 5 – SERVICE

5.1 Who serves a document

(1) If these Rules require a document to be served, the party who filed the document is responsible for ensuring that the document is served.

(2) The party responsible for service may apply to the court for an order that the document be served by an enforcement officer or other person.

(3) The court may order that the document be served by an enforcement officer or other person if the court is satisfied that the circumstances of the proceeding require it.

5.2 Service of claim

The claim and response form must be served on the defendant personally, unless:

(a) rule 5.9 applies (rule 5.9 deals with other ways of service); or

(b) the court orders that the claim may be served in another way.

5.3 Time for serving claim

(1) The claim and response form must be served on the defendant within 3 months of the date on which the claim was filed.

(2) If a claim is not served within that period, it is no longer of any effect.

[NOTE: A claim can be renewed – see rule 4.15.]

5.4 Address for service

(1) An address for service is the address at which documents in a proceeding (other than a claim) can be served on the party giving the address.

(2) Every document filed must state an address for service for the party filing the document.

(3) An address for service must be:

(a) within Vanuatu; and

(b) if the party is represented by a lawyer, the address of the lawyer's office.

(4) If a party's address for service changes, the party must give the Court and the other parties notice in writing of the new address. The notice must include:

(a) the number of the proceeding; and

(b) the names of the parties.

(5) The notice must be filed with the Court and served on each other party.

(6) Service of a document at the address given as the address for service is effective service unless a notice of change of address for service has been given to the party serving the document.

5.5 Service of other documents

A document other than a claim may be served:

(a) on a party personally; or

(b) by leaving it at the party's address for service; or

(c) by sending it to the party's address for service:

(i) by prepaid post; or

(ii) by fax.

5.6 Time for serving other documents

(1) This rule does not apply to the service of a claim.

(2) All other documents must be served within the times required by rule 4.13.

5.7 Late service of documents

(1) A party may serve a document after the time fixed by rule 4.13.

(2) The court may decide whether or not the document is effective for the proceeding.

(3) In deciding whether a late served document is effective, the court may have regard to:

(a) the reasons why the document was served late; and

(b) whether the party is likely to be able to serve the document in the extra time; and

(c) any additional expense or inconvenience incurred by the other parties to the proceeding, and the disadvantage to the first party if the late service is not allowed.

(4) If the court decides the service of the document is not effective, the court may:

(a) make any order that is appropriate for the proceeding; and
(b) make an order about the costs incurred by a party because of the late service.

5.8 What is personal service

(1) A document is served personally on an individual:

(a) by giving a copy of it to the individual; or

(b) if the individual does not accept the document, by putting it down in the person's presence and telling the person what it is.

(2) A document is served personally on a corporation:

(a) by giving a copy of the document to an officer of the corporation; or

(b) by leaving a copy of the document at the registered office of the corporation; or

(c) if the corporation does not have a registered office in Vanuatu, by leaving a copy of the document at the principal place of business, or principal office, of the corporation in Vanuatu.

(3) A document is served personally on the State of Vanuatu or the Government of Vanuatu by leaving a copy of the document at the State Law Office during the business hours of that Office.

[NOTE: If the document has been filed, a sealed copy must be served; see Rule 5.15.]

5.9 Substituted service

(1) If a party is unable to serve a document personally, the party may apply to the court for an order that the document be served in another way (called "substituted service").

(2) The court may order that the document be served:

(a) by serving it on a chief or a minister of the church who lives in the area where it is believed the person named in the document is living; or

(b) by putting a notice in a newspaper circulating in the area where the person lives; or

(c) by arranging for an announcement about the document to be broadcast on the local radio; or

(d) in any other way that the court is satisfied will ensure that the person to be served knows about the document and its contents.

(3) A notice in the paper, or an announcement on the radio:

(a) must be addressed to the person; and

(b) must give the person's name and last known address and the claimant's name and address for service; and

(c) must say where a copy of the document can be picked up by the person; and

(d) if the document requires the person to go to a court, must say the time, date and place of the court where the person is to go.

5.10 Service on person under a legal incapacity

(1) A document to be served on a child must be served:

(a) if the child is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(b) if the child is not a party to the proceeding, on the child's parent or guardian, or on a person who appears to be acting in the position of the child's parent or guardian.

(2) If the child is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the child must:

(a) apply to the court to appoint a litigation guardian for the child; and

(b) serve the document on the litigation guardian.

(3) A document to be served on a person with impaired capacity must be served:

(a) if the person is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(b) if the person is not a party to the proceeding, on the person's guardian, or on a person who appears to be acting in the position of the person's guardian.

(4) If the person with impaired capacity is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the person must:

(a) apply to the court to appoint a litigation guardian for the person; and

(b) serve the document on the litigation guardian.

5.11 Service relating to deceased estate

In a proceeding in which the estate of a deceased person is a party, all documents must be served on one of the legal representatives of the estate.

5.12 Service on partnership

(1) A claim against a partnership must be served:

(a) on a partner; or

(b) at the principal place of business of the partnership.

(2) If a claim is served as required by subrule (1), each partner who was a partner when the claim was issued is taken to have been served.

5.13 Evidence of service

(1) If a defendant files a response or a defence to a claim, the claimant need not file a sworn statement giving proof of service.

(2) If a party on whom another document is served does not subsequently file a document required by this rule to be filed, the party serving the first document cannot take any further action in the proceeding unless he or she files a sworn statement setting out details of the time and manner in which the first document was served.

(3) If a document is served under rule 5.9 (dealing with substituted service), the sworn statement must:

(a) for service on a chief, give details of how and when the claim was served on the chief; and

(b) for service through a newspaper or by radio, give details of the service, including a copy of the notice or of the announcement; and

(c) for service in any other way, give details of how the document was served.

5.14 Service outside Vanuatu

(1) A party may apply to the Supreme Court for an order that a claim in the Supreme Court be served outside Vanuatu.

(2) The court may order that the claim be served outside Vanuatu if:

(a) the claim concerns land in Vanuatu; or

(b) an Act of Parliament, deed, will, contract, obligation or liability affecting land in Vanuatu is sought to be interpreted, rectified, set aside or enforced; or

(c) the claim is against a person who is domiciled or ordinarily resident in Vanuatu; or

(d) the claim is for the administration of an estate of a person who was domiciled in Vanuatu at the date of the person's death; or

(e) the claim is for the execution of a trust, the person to be served is the trustee, and the trust concerns property in Vanuatu; or

(f) the claim concerns a contract made in Vanuatu or governed by the law of Vanuatu; or

(g) the claim is based on a breach of contract committed in Vanuatu, whether or not the contract was made in Vanuatu; or

(h) the claim is based on a tort committed in Vanuatu; or

(i) the claim is for damage suffered in Vanuatu, whether or not the tort causing the damage happened in Vanuatu; or

(j) the claim is for an amount payable under an Act of Parliament to a government body in Vanuatu; or

(k) the proceeding is brought against a person in Vanuatu and the other person outside Vanuatu is a necessary party to the proceeding; or

(l) the proceeding is for an injunction ordering the person to do or not do anything in Vanuatu (whether or not damages are also claimed); or

(m) for any other reason the court is satisfied that it is necessary for the claim to be served on a person outside Vanuatu.

(3) This rule also applies to service of a counterclaim and a third party notice.

(4) The court may give directions extending the time for serving the claim, and filing a response and defence to the claim.

(5) The claimant must also serve on the person a copy of the order and each sworn statement made in support of the order.

(6) The claimant must file a sworn statement giving proof of the service.

5.15 Sealed copy

If these rules require a copy of a filed document to be served, the copy must be a sealed copy.

PART 6 – CONFERENCES

6.1 Application of Part 6

This Part applies only to the Supreme Court.

6.2 Conferences

(1) The purpose of conferences is to enable the judge to actively manage the proceeding.

(2) The same judge must preside at all conferences held in a particular proceeding, if this is practicable.

(3) A party need not attend a conference in person unless the judge orders him or her to attend.

[NOTE: (i) For active case management, see rule 1.4 .
(ii) A conference may be held by telephone; see rule 6.10.]

6.3 First Conference between parties

(1) A judge will arrange a conference (called "Conference 1") between the parties when a defence has been filed by a defendant.

(2) The conference is to take place on the date the judge fixes. This must be a date after the date for filing the last reply in the proceeding.

(3) Any party can apply to a judge to fix a date for Conference 1 to be held.

(4) A judge may also arrange a conference at any other time.

6.4 Purpose of Conference 1

(1) The purpose of Conference 1 is, as far as practicable, to enable the court to actively manage the proceeding by covering the matters mentioned in rule 1.4.

(2) At Conference 1, the judge may:

(a) deal with any interlocutory applications (see Part 7), or fix a date for hearing them; and

(b) make orders:

(i) adding or removing parties (see Part 3); and

(ii) about whether it is necessary to employ experts (see Part 11 dealing with evidence); and

(iii) for the medical examination of a party; and

(iv) about disclosure of information and documents (see Part 8); and

(v) that a party give security for costs (see Part 15); and

(vi) that statements of the case be amended or that further statements of the case be filed; and about any other matter necessary for the proper management of the case.

[NOTE: For case management, see Part 1.]

6.5 Other conferences

(1) At the first conference, a judge will set a date for a Trial Preparation Conference or other conferences unless, in the judge's opinion, the proceeding can be set down for trial without further conferences.

(2) At these conferences the judge:

(a) must check whether all orders made at previous conferences have been complied with; and

(b) if they have not been complied with, must make whatever orders are necessary to ensure compliance; and

(c) may vary existing orders, and make any other orders to give effect to the purposes of Conference 1; and

(d) may make any other orders necessary to continue the progress of the proceeding.

6.6 Trial Preparation Conference

(1) The purpose of the Trial Preparation Conference is:

(a) to identify precisely what are the issues between the parties; and

(b) to identify the evidence needed to prove these matters; and

(c) otherwise to ensure the matter is ready to be tried; and

(d) to see whether the matter can be resolved by alternative dispute resolution.

(2) At the Trial Preparation Conference, the parties should be in a position to:

(a) assist the judge in finally defining the issues; and

(b) tell the judge the number of witnesses each proposes to call, and any special considerations about the taking of evidence; and

(c) give estimates of the time the hearing is likely to take; and

(d) agree on facts that have been admitted (and which will therefore not need to be proved); and

(e) discuss whether expert witnesses will be called; and

(f) report on compliance with orders made at earlier conferences; and

(g) deal with any other matters that can reasonably be dealt with before the trial.

(3) In particular, at the Trial Preparation Conference the judge may:

(a) fix dates for the exchange of proofs of evidence and agreed bundles of disclosed documents, if this has not been done; and

(b) give directions for the further preparation for trial; and

(c) if possible, decide any preliminary legal issues that need to be resolved before the trial, or fix a date for hearing these; and

(d) fix a date for the trial.

6.7 Time for compliance with orders made at conferences

When the judge makes an order at a conference, the judge must also:

(a) fix the date and time within which the order is to be complied with; and

(b) record the order in writing.

6.8 Effect of non-compliance with orders made at conferences

(1) If:

(a) a party does not comply with an order made at a conference by the time fixed for complying; and

(b) another party incurs expense because of this;

the judge may order costs against the non-complying party or his or her lawyer.

(2) If a party or his or her lawyer has failed to comply with an order made at a conference without reasonable excuse, the judge may order that the party's claim or defence be struck out.

(3) A judge may set the proceeding down for trial although some orders made at a conference have not been complied with.

[NOTE: For costs generally, see Part 15.]

6.9 Agreed facts

If the parties agree on facts at a conference, the judge must direct one of the parties to write down the agreed facts and send a copy to the court and each other party.

6.10 Telephone conferences

A conference may be held by telephone if the judge and all parties are able to participate.

6.11 Conference not to be in open court

A conference is not to be held in open court unless:

(a) it is in the public interest that the conference be held in open court; or

(b) the judge is of the opinion for other reasons that the conference should be held in open court.

PART 7 – INTERLOCUTORY MATTERS

7.1 What is an interlocutory order

(1) An interlocutory order is an order that does not finally determine the rights, duties and obligations of the parties to a proceeding.

(2) An interlocutory order may be made during a proceeding or before a proceeding is started.

(3) An application under this Part, if in writing, must be in Form 10.

7.2 Applying for an interlocutory order during a proceeding

(1) A party may apply for an interlocutory order at any stage of a proceeding.

(2) If the proceeding has started, the application must if practicable be made orally during a conference.

(3) An application made at another time must be made by filing a written application.

(4) A written application must:

(a) state what the applicant applies for; and

(b) have with it a sworn statement by the applicant setting out the reasons why the order should be made, unless:

(i) there are no questions of fact that need to be decided in making the order sought; or

(ii) the facts relied on in the application are already known to the court.

7.3 Service of application

(1) An application must be served on each other party to the proceeding unless:

(a) the matter is so urgent that the court decides the application should be dealt with in the absence of the other party; or

(b) the court orders for some other reason that there is no need to serve it.

(2) The application must be served at least 3 days before the time set for hearing the application, unless the court orders otherwise.

7.4 Hearing of interlocutory application made during a proceeding

An interlocutory application made during a proceeding is not to be dealt with in open court unless:

(a) it is in the public interest that the matter be dealt with in open court; or

(b) the judge is of the opinion for other reasons that the matter should be dealt with in open court.

7.5 Application for interlocutory order before a proceeding is started

(1) A person may apply for an interlocutory order before a proceeding has started if:

(a) the applicant has a serious question to be tried; and

(b) the applicant would be seriously disadvantaged if the order is not granted.

(2) The application must:

(a) set out the substance of the applicant's claim; and

(b) have a brief statement of the evidence on which the applicant will rely; and

(c) set out the reasons why the applicant would be disadvantaged if the order is not made; and

(d) have with it a sworn statement in support of the application.

(3) The court may make the order if it is satisfied that:

(a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and

(b) the applicant would be seriously disadvantaged if the order is not made.

(4) When making the order, the court may also order that the applicant file a claim by the time stated in the order.

7.6 Urgent interlocutory applications

The court may allow an oral application to be made if:

(a) the application is for urgent relief; and

(b) the applicant agrees to file a written application within the time directed by the court; and

(c) the court considers it appropriate:

(i) because of the need to protect persons or property; or

(ii) to prevent the removal of persons or property from Vanuatu; or

(iii) because of other circumstances that justify making the order asked for.

7.7 Interlocutory orders

A party may apply for an interlocutory order:

(a) at any stage:

(i) before a proceeding has started; or

(ii) during a proceeding; or

(iii) after a proceeding has been dealt with; and

(b) whether or not the party mentioned an interlocutory order in his or her claim or counterclaim.

7.8 Order to protect property (freezing order, formerly called a Mareva order)

(1) In this rule:

"owner", for assets, includes the person entitled to possession and control of the assets.

(2) The Supreme Court may make an order (a "freezing order") restraining a person from removing assets from Vanuatu or dealing with assets in or outside Vanuatu.

(3) The court may make a freezing order whether or not the owner of the assets is a party to an existing proceeding.

(4) The court may make the order only if:

(a) the court has already given judgment in favour of the applicant and the freezing order is ancillary to it; or

(b) the court is satisfied that:

(i) the applicant has a good and arguable case; and

(ii) a judgement or order in the matter, or its enforcement, is likely to involve the assets; and

(iii) the assets are likely to be removed from Vanuatu, or dealing with them should be restrained.

(5) The application must:

(a) describe the assets and their value and location; and

(b) include the name and address of the owner of the assets, if known, and the identity of anyone else who may be affected by the order and how they may be affected; and

(c) if a proceeding has not been started, set out:

(i) the name and address of anyone else likely to be a defendant; and

(ii) the basis of the applicant's claim; and

(iii) the amount or nature of the claim; and

(iv) what has been done to recover the amount of the claim, or to get the relief claimed; and

(v) any possible defences to the claim; and

(d) in any case, set out:

(i) how the assets to be subject to the order will form part of any judgment or its enforcement; and

(ii) what will be done to preserve the assets; and

(iii) if the application has not been made on notice, the reason for this; and

(e) include an undertaking as to damages that may be caused to the defendant or potential defendant, or anyone else who may be adversely affected, if the order is made; and

(f) have with it:

(i) a sworn statement in support of the application; and

(ii) a draft freezing order.

(6) The sworn statement must include the following:

(a) why the applicant believes:

(i) the assets may be removed from Vanuatu; or

(ii) dealing with the assets should be restrained; and

(b) if the court has already made a judgment or order, why the applicant believes the judgment or order already made may not be able to be satisfied, or may be thwarted, if the freezing order is not made; and

(c) if a proceeding has not been started and the name and address of the owner of the assets, and anyone else likely to be a defendant, are not known, what has been done to find out those names and addresses; and

(d) in any case:

(i) how the assets to be subject to the order will form part of any judgment or its enforcement; and

(ii) what will be done to preserve the assets; and

(iii) if the application has not been made on notice, the reason for this.

(7) If the name and address of the owner of the assets is not known, the application may be served as follows:

(a) for service on a ship, by attaching it to the mast; or

(b) for service on an aircraft, by attaching it to the pilot controls; or

(c) in any case, as the court directs.

(8) When making the freezing order, the court must also:

(a) fix a date on which the person to whom the order is granted is to report back to the court on what has been done under the order; and

(b) if a proceeding has not been started, order that:

(i) the applicant file a claim by the time stated in the order; and

(ii) if the defendant is not known, the defendant be described in the claim as "person unknown"; and

(iii) if the name and address of the defendant or potential defendant is known, fix a time for serving the claim on him or her.

(9) The court may set aside or vary a freezing order.

[NOTE: For the meaning of "assets", see Part 20.]

7.9 Order to seize documents or objects (seizing order, formerly an Anton Pillar order)

(1) The Supreme Court may make an order (a "seizing order") authorising the applicant to seize documents and objects in another person's possession.

(2) The court may make a seizing order:

(a) without notice to the defendant or potential defendant; and

(b) if the matter is extremely urgent, before a proceeding has been started.

(3) The court may make the seizing order only if it is satisfied that:

(a) the order is required to preserve documents and objects as evidence; and

(b) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Vanuatu; and

(c) the applicant has an extremely strong case; and

(d) if the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and

(e) there is clear evidence that the documents or objects are in the defendant's possession.

(4) An application for a seizing order must:

(a) describe the documents and objects, or kinds of documents and objects, to be covered by the seizing order; and

(b) give the address of the premises for which the seizing order is sought; and

(c) set out the basis of the applicant's claim; and

(d) set out proposals for the matters listed in subrule (5); and

(e) include an undertaking as to damages that may be caused to the defendant or potential defendant, or any one else who may be adversely affected, if the seizing order is made; and

(f) have with it:

(i) a sworn statement in support of the application; and

(ii) a draft seizing order.

(5) The sworn statement must include the following:

(a) why the order is required to preserve the documents and objects as evidence; and

(b) the basis for the applicant's belief that:

(i) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Vanuatu; and

(ii) if the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and

(c) verification of the facts that support the applicant's claim; and

(d) the evidence that the documents or objects are in the defendant's possession; and

(e) the damage the applicant is likely to suffer if the order is not made.

(6) The seizing order must include provisions about:

(a) service of the order on the defendant or potential defendant; and

(b) who is to carry out the order; and

(c) the hours when the order may be carried out; and

(d) the name of a neutral person who is to be present when the order is carried out; and

(e) access to buildings, vehicles and vessels; and

(f) making a record of seized documents and objects; and

(g) how and where the documents and objects are to be stored; and

(h) the time given for copying and returning documents, and returning objects; and

(i) how long the order stays in force; and

(j) fixing a date on which the person to whom the order is granted is to report back to the court on what has been done under the order.

(7) The seizing order may also:

(a) require the defendant to give the information stated in the order about the proceeding; and

(b) include another order restraining, for not more than 7 days, anyone served with that order from telling anyone else about the seizing order.

(8) The court may set aside or vary a seizing order.

7.10 Receivers

(1) The Supreme Court may appoint a person to be the receiver of a defendant's property.

(2) In deciding whether to appoint a receiver, the court must consider:

(a) the amount of the applicant's claim; and

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and paying a receiver.

(3) A person must not be appointed as a receiver unless the person consents to the appointment.

(4) The court may require the receiver to give security acceptable to the court for performing his or her duties.

(5) The sworn statement in support of the application for the appointment of a receiver must:

(a) describe the defendant's property; and

(b) give the reasons why the appointment of a receiver is necessary to preserve the defendant's property.

(6) The order appointing the receiver must

(a) specify the receiver's duties; and

(b) state the period of the receiver's appointment; and

(c) specify what the receiver is to be paid; and

(d) require the receiver to file accounts and give copies to the parties, and at the times, the court requires; and

(e) contain anything else the court requires.

(7) The court may set aside or vary the order.

7.11 Service of order

The applicant must serve a copy of an interlocutory order on:

(a) the defendant; and

(b) anyone else who is required to comply with the order.

PART 8 – DISCLOSURE

Division 1 – Disclosure of Documents in the Supreme Court

8.1 Application of Division 1

This Division applies only in the Supreme Court.

8.2 Duty to disclose documents

(1) A party must disclose a document if:

(a) the party is relying on the document; or

(b) the party is aware of the document, and the document to a material extent adversely affects that party's case or supports another party's case.

(2) A party that is not an individual is aware of a document if any of its officers or employees are aware of it.

8.3 Disclosure limited to documents within party's control

(1) A party is only required to disclose a document that is or has been within the party's control.

(2) A document is or has been in a party's control if:

(a) the document is or was in the party's physical possession; or

(b) the party has or has had the right to possess it.

8.4 Copies

(1) A party need only disclose a copy of a document if the copy has been changed from the original or a previous copy in any way, whether by adding, removing, changing or obliterating anything.

(2) A document that has been copied need not be disclosed if the original or another copy has already been disclosed.

8.5 How to disclose documents

(1) A party discloses documents by:

(a) making a sworn statement that:

(i) lists the documents; and

(ii) states that the party understands the obligation to disclose documents; and

(iii) states that, to the best of the party's knowledge, he or she has disclosed all documents that he or she must disclose; and

(iv) for documents claimed as privileged, states that the documents are privileged, giving the reasons for claiming privilege; and

(b) filing and serving a copy of the statement on each other party.

(2) The statement must be in Form 11 and must:

(a) identify the documents; and

(b) list them in a convenient order and as concisely as possible; and

(c) include documents that have already been disclosed; and

(d) list separately all documents claimed as privileged; and

(e) if the party claims a document should not be disclosed on the ground of public interest, include that document, unless it would damage the public interest to disclose that the document exists.

(3) For a list of documents from a person who is not an individual, the sworn statement must also:

(a) be made by a responsible officer or employee; and

(b) give the name and position of the person who identified the individuals who may be aware of documents that should be disclosed; and

(c) give the name and position of the individuals who have been asked whether they are aware of any of those documents.

(4) If a party claims a document should not be disclosed on the grounds of public interest, the party must make an application under rule 8.11.

(5) A party who believes a list is not accurate, or that documents claimed as privileged are not privileged, may apply for an order to correct the list.

(6) A party need not list the documents if the court orders otherwise at a conference.

[NOTE: The application should be made orally if practicable; see rule 7.6.]

8.6 Mistaken disclosure of privileged document

If a privileged document is disclosed to a lawyer, he or she must not use it if, because of the way and circumstances it was disclosed, a lawyer would realise that:

(a) the document is privileged; and

(b) it was disclosed by mistake.

8.7 Inspecting and copying disclosed documents

(1) A party (the "inspecting party") may inspect and ask for copies of the documents on a list served by another party except:

(a) documents that are no longer in the other party's control; or

(b) documents that are privileged.

(2) The inspecting party:

(a) must give the other party reasonable notice; and

(b) if he or she wants a copy of a document, must pay the reasonable costs of copying the document.

8.8 Duty of disclosure continuous

(1) The duty to disclose documents continues throughout a proceeding.

(2) If a party becomes aware of documents that must be disclosed, the party must disclose the documents as required by rule 8.5.

(3) The party must disclose the documents:

(a) within 7 days of becoming aware of the documents, and in any case before the trial starts; or

(b) if the party becomes aware of the documents after the trial has started, as soon as practicable after becoming aware of the documents.

8.9 Disclosure of specific documents

(1) A party may apply for an order to disclose the documents described in the application.

(2) The documents may be identified specifically or by class.

(3) The court may order disclosure of the documents if the court is satisfied that disclosure is necessary to:

(a) decide the matter fairly; or

(b) save costs.

(4) The court must consider:

(a) the likely benefit of disclosure; and

(b) the likely disadvantages of disclosure; and

(c) whether the party who would have to disclose the documents has sufficient financial resources to do so.

(5) The court may order that the documents be disclosed in stages.

8.10 Application to dispense with or limit disclosure

(1) A party may apply for an order:

(a) to dispense with disclosure; or

(b) that particular documents not be disclosed.

(2) The court may order that a party need not disclose some or any documents if the court is satisfied that:

(a) the documents are not relevant to the issues between the parties; or

(b) disclosure is not necessary to decide the matter fairly; or

(c) the costs of disclosure would outweigh the benefits; or

(d) for any other reason, the court is satisfied that the documents need not be disclosed.

8.11 Public interest

(1) A party may apply for an order dispensing with the disclosure of a document on the ground that disclosure would damage the public interest.

(2) The application must:

(a) identify the document, unless to disclose its existence would itself be against the public interest; and

(b) set out the reasons why disclosure would be against the public interest.

(3) If the court considers that disclosure of a document could damage the public interest but no-one has raised the matter, the court must:

(a) tell the parties; and

(b) fix a date for a conference or hearing to decide the question.

(4) The court may:

(a) require the person to produce the document to the court so the court is able to decide whether disclosure of the document would damage the public interest; and

(b) ask a person who is not a party to make representations about whether or not the document should be disclosed.

8.12 Documents referred to in statements of the case

(1) A party may inspect and ask for a copy of a document mentioned in a statement of the case, sworn statement, expert's report or document filed in the court.

(2) The party must:

(a) give reasonable notice to the party who mentioned the document; and

(b) pay the reasonable costs of copying the document.

8.13 Disclosure before proceedings start

(1) A person may apply for an order for disclosure of documents before proceedings have started.

(2) The application must have with it a sworn statement setting out the reasons why the documents should be disclosed.

(3) The court must consider:

(a) the likely benefits of disclosure; and

(b) the likely disadvantages of disclosure; and

(c) whether the party who would have to disclose the documents has sufficient financial resources to do so.

(4) The court must not order documents be disclosed unless the court is satisfied that:

(a) the person in possession and control of the document has had an opportunity to be heard; and

(b) the applicant and person in possession and control of the document are likely to be parties to the proceedings; and

(c) the documents are relevant to an issue that is likely to arise in the proceedings; and

(d) disclosure is necessary to decide the proceedings fairly or to save costs.

(5) The order may state the time and place of disclosure.

8.14 Disclosure by someone who is not a party

(1) A party may apply for an order that documents be disclosed by a person who is not a party to the proceedings.

(2) The application must have with it a sworn statement setting out the reasons why the documents should be disclosed.

(3) The court must consider:

(a) the likely benefits of disclosure; and

(b) the likely disadvantages of disclosure; and

(c) whether the party who would have to disclose the documents has sufficient financial resources to do so.

(4) The court must not order documents be disclosed unless the court is satisfied that:

(a) the person in possession and control of the document has had an opportunity to be heard; and

(b) the documents are relevant to an issue in the proceedings; and

(c) disclosure is necessary to decide the proceedings fairly or to save costs.

(5) The order may state the time and place of disclosure.

8.15 Failure to disclose documents

(1) A party who fails to disclose a document may not rely on the document unless the court allows it.

(2) If a party fails to disclose a document as required by this Part:

(a) another party may apply for an order that the person disclose the document; and

(b) if the party fails to disclose the document within 7 days of the date of service of the order, the court may strike out the non-disclosing party's claim or defence.

8.16 Use of disclosed documents

(1) A party to whom a document is disclosed may only use the document for the purposes of the proceeding unless the document has been:

(a) read to or by the court; or

(b) referred to in open court.

(2) A party, or person in possession or control of a document, may apply for an order restricting or prohibiting use of the document even if it has been:

(a) read to or by the court; or

(b) referred to in open court.

(3) The court may make an order restricting or prohibiting use of the document if it is satisfied that the benefits of restricting or prohibiting the use of the document outweigh the benefits of allowing the document to be used.

8.17 Agreed bundle of documents

(1) The originals of all documents to be used at the trial must be brought to the trial.

(2) The documents to which the parties have agreed must be gathered together, indexed and numbered.

(3) If the parties do not agree about the disclosure of some documents or their use at the trial, the party in possession of the documents must bring the documents to the trial.

Division 2 – Disclosure of information in the Supreme Court

8.18 Application of Division 2

This Division applies only in the Supreme Court.

8.19 Written questions

With the court's permission, a party may ask another party a set of written questions.

8.20 Permission to ask written questions

(1) A party may make an oral application for permission at a conference, telling the judge the matters the questions will cover.

(2) A party may make a written application only if it is not practicable to make an oral application at a conference.

(3) The questions must be attached to the written application.

(4) The written application must be filed and served on the other party at least 3 days before the hearing date.

8.21 Service of questions

The set of written questions must be served on the party to whom they are directed and on all other parties.

8.22 Time for answering

(1) A person who is asked written questions must answer them.

(2) The written questions must be answered:

(a) within 14 days of the questions being served on the party; or

(b) within the period fixed by the court.

8.23 Form of answer

(1) The questions must be answered in writing.

(2) The answers must:

(a) set out each question, followed by the answer; and

(b) be verified by a sworn statement made by the party answering the questions.

(3) The answer must:

(a) answer the substance of each question, without evasion or resorting to technicalities; or

(b) object to answering the question.

8.24 Objections

(1) An objection must:

(a) set out the grounds for the objection; and

(b) briefly state the facts on which the objection is based.

(2) A person may object to answering a written question only on the following grounds:

(a) the question does not relate to a matter at issue, or likely to be at issue, between the parties; or

(b) the question is not reasonably necessary to enable the court to decide the matters at issue between the parties; or

(c) there is likely to be a simpler and cheaper way available at the trial to prove the matters asked about; or

(d) the question is vexatious or oppressive; or

(e) privilege.

(3) The objection is to be dealt with at a conference.

(4) If the judge agrees with the objection, the question need not be answered.

8.25 Failure to answer written questions

(1) If a person does not answer, or does not give a sufficient answer, to a written question, the court may order the person to:

(a) answer the question; or

(b) attend court to answer the question on oath.

(2) If the person does not comply with the order, the court may:

(a) order that all or part of the proceedings be stayed or dismissed; or

(b) give judgment against the person; or

(c) make any other order the court thinks fit.

(3) Subrule (2) does not affect the power of the court to punish for contempt of court.

Division 3 – Disclosure of documents in the Magistrates' Courts

8.26 Application of Division 3

This Division applies only in the Magistrates' Court.

8.27 Disclosure of documents

(1) A party to a proceeding must disclose the documents the party intends to rely on at the trial.

(2) A party discloses a document by giving a copy of the document to each other party at least 14 days before the trial.

8.28 Disclosure of particular documents

(1) A party may apply for an order that another party disclose particular documents.

(2) The magistrate may order that the documents be disclosed if the magistrate is satisfied that:

(a) the documents are relevant to the issues between the parties; or

(b) disclosure is necessary to decide the matter fairly; or

(c) for any other reason the magistrate is satisfied that the documents should be disclosed.

(3) If the magistrate orders that documents are to be disclosed, he or she may also order that Division 1 applies to the extent ordered.

PART 9 – ENDING A PROCEEDING EARLY

Default by defendant
Default – claim for fixed amount
Default – claim for damages
Deciding the amount of damages
Setting aside default judgment
Summary judgment
Offers of settlement, Supreme Court
Settlement, Magistrates' Court
Discontinuing proceeding
Striking out

9.1 Default by defendant

If a defendant:

(a) does not file and serve a response or a defence within 14 days after service of the claim; or

(b) files a response within that time but does not file and serve a defence within 28 days after the service of the claim;

the claimant may file a sworn statement (a "proof of service") that the claim and response form was served on the defendant as required by Part 5.

9.2 Default – claim for fixed amount

(1) This rule applies if the claim was for a fixed amount.

(2) After the claimant has filed a proof of service, the claimant may file a request for judgment against the defendant for the amount of the claim together with interest and costs. The request must be in Form 12.

(3) In the Magistrates' Court, the request may be made orally.

(4) The court may give judgment for the claimant for:

(a) the amount claimed by the claimant; and

(b) interest from the date of filing the claim at a rate fixed by the court; and

(c) costs in accordance with Part 15.

(5) Default judgment must not be given in the Magistrates' Court before the first hearing date.

(6) The claimant must serve a copy of the judgment on the defendant.

(7) If the defendant does not apply within 28 days of service to have the judgment set aside under rule 9.5, the claimant may:

(a) file a sworn statement that the judgment was served on the defendant as required by Part 5; and

(b) apply to the court for an enforcement order.

[NOTE: For enforcement orders, see Part 14.]

9.3 Default – claim for damages

(1) This Rule applies if the claim was for an amount of damages to be decided by the court.

(2) After the claimant has filed a proof of service, the claimant may file a request for judgment against the defendant for an amount to be determined by the court. The request must be in Form 13.

(3) In the Magistrates' Court the request may be made orally.

(4) The court may:

(a) give judgment for the claimant for an amount to be determined; and

(b) either:

(i) determine the amount of damages; or

(ii) if there is not enough information before the court to do this, fix a date for a conference or hearing to determine the amount of damages.

(5) Default judgment must not be given in the Magistrates' Court before the first hearing date.

(6) The claimant must serve on the defendant:

(a) a copy of the judgment; and

(b) if a conference is to be held to determine the amount of damages, a notice stating the date fixed for the conference.

9.4 Deciding the amount of damages

(1) A determination of the amount of damages must be conducted as nearly as possible in the same way as a trial.

(2) However, the court may give directions about:

(a) the procedures to be followed before the determination takes place; and

(b) disclosure of information and documents; and

(c) filing of statements of the case; and

(d) the conduct of the determination generally.

(3) After damages have been determined, the claimant must file judgment setting out the amount of damages and serve a copy of the judgment on the defendant, unless the defendant was present when the damages were determined.

(4) The judgment may be enforced in the same way as a judgment given after a trial.

[NOTES: (i) For disclosure, see Part 8.
(ii) For enforcing judgment, see Part 14.]

9.5 Setting aside default judgment

(1) A defendant against whom judgment has been signed under this Part may apply to the court to have the judgment set aside.

(2) The application:

(a) may be made at any time; and

(b) must set out the reasons why the defendant did not defend the claim; and

(c) must give details of the defendant's defence to the claim; and

(d) must have with it a sworn statement in support of the application; and

(e) must be in Form 14.

(3) The court may set aside the default judgment if it is satisfied that the defendant:

(a) has shown reasonable cause for not defending the claim; and

(b) has an arguable defence, either about his or her liability for the claim or about the amount of the claim.

(4) At the hearing of the application, the court must:

(a) give directions about the filing of the defence and other statements of the case; and

(b) make an order about the payment of the costs incurred to date; and

(c) consider whether an order for security for costs should be made; and

(d) make any other order necessary for the proper progress of the proceeding.

(5) These Rules apply to the proceeding as if it were a contested proceeding.

[NOTE: For security for costs, see Part 15.]

9.6 Summary judgment

(1) This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.

(2) The claimant may apply to the court for a summary judgment.

(3) An application for judgment must:

(a) be in Form 15; and

(b) have with it a sworn statement that:

(i) the facts in the claimant's claim are true; and

(ii) the claimant believes there is no defence to the claim, and the reasons for this belief.

(4) The claimant must:

(a) file the application and statement; and

(b) get a hearing date from the court and ensure the date appears on the application; and

(c) serve a copy of the application and sworn statement on the defendant not less than 14 days before the hearing date.

(5) The defendant:

(a) may file a sworn statement setting out the reasons why he has an arguable defence; and

(b) must serve the statement on the claimant at least 7 days before the hearing date.

(6) The claimant may file another sworn statement and must serve it on the defendant at least 2 days before the hearing date.

(7) If the court is satisfied that:

(a) the defendant has no real prospect of defending the claimant's claim or part of the claim; and

(b) there is no need for a trial of the claim or that part of the claim,

the court may:

(c) give judgment for the claimant for the claim or part of the claim; and

(d) make any other orders the court thinks appropriate.

(8) If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.

(9) The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law.

[NOTE: (i) For working out time, see Part 5 of the Interpretation Act (Cap. 132).
(ii) For security for costs, see Part 15.]

9.7 Offers of settlement, Supreme Court

(1) A party to a proceeding in the Supreme Court may make an offer of settlement by sending Form 16 to the other party to the proceeding.

(2) The offer is without prejudice to the first party's case.

(3) If the parties agree on settlement:

(a) both parties must sign the settlement form; and

(b) the party who made the offer must file the form and serve a copy on the other party.

(4) The terms of the settlement must be complied with as set out in the settlement form.

(5) If a proceeding is settled under this rule, the court must:

(a) note on the file that the matter has been settled; but

(b) must not enter judgment in favour of the claimant.

(6) If the terms of the settlement are not complied with as set out in the settlement form, the other party may file an application for judgment.

(7) An application for judgment must:

(a) be in Form 17; and

(b) have with it a sworn statement that the party has not complied with the terms of the settlement as set out in the settlement form.

(8) The applicant must:

(a) file the application and statement; and

(b) get a hearing date from the court and ensure the date appears on the application; and

(c) serve a copy of the application and sworn statement on the other party not less than 14 days before the hearing date.

(9) If the other party does not appear on the hearing date, the court may give judgment for the applicant in accordance with the settlement as set out in the settlement form.

(10) If:

(a) a party offers to settle under this rule but the other party refuses the offer; and

(b) the other party is successful but for less than the amount offered on the offer to settle claim form, or for less advantageous terms than the terms offered on the offer to settle claim form,

the court may award costs against the other party.

9.8 Settlement, Magistrates' Court

(1) If the parties to a proceeding in the Magistrates' Court decide to settle, they may tell the magistrate.

(2) The magistrate must:

(a) record the case as being settled; and

(b) note in the file the details of the settlement

(c) not enter judgment for any party.

(3) If either party does not comply with the settlement, the other party may apply to the court for the case to be re-opened, whether or not the magistrate has struck the case out under subrule (5).

(4) The magistrate may re-open the case if he or she is satisfied that the party has not complied with the settlement.

(5) If the parties did not tell the magistrate they settled the case, the magistrate may:

(a) set the case aside for 6 months; and

(b) strike the case out under rule 9.10, if nothing has been heard from either party after 6 months.

9.9 Discontinuing proceeding

(1) The claimant may discontinue his or her claim at any time and for any reason.

(2) To discontinue, the claimant must:

(a) file a Notice of Discontinuance in Form 18; and

(b) serve the notice on all other parties.

(3) If there are several defendants:

(a) the claimant may discontinue against one or some only; and

(b) the claimant's claim continues in force against the others.

(4) If the claimant discontinues:

(a) the claimant may not revive the claim; and

(b) a defendant's counterclaim continues in force; and

(c) the party against whom the claimant discontinued may apply to the court for costs against the claimant.

9.10 Striking out

(1) This rule applies if the claimant does not:

(a) take the steps in a proceeding that are required by these Rules to ensure the proceeding continues; or

(b) comply with an order of the court made during a proceeding.

(2) The court may strike out a proceeding:

(a) at a conference, in the Supreme Court; or

(b) at a hearing; or

(c) as set out in subrule (3); or

(d) without notice, if there has been no step taken in the proceeding for 6 months.

(3) If no steps have been taken in a proceeding for 3 months, the court may:

(a) give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and

(b) if the claimant does not appear, or does not show cause, strike out the proceeding.

(4) After a proceeding has been struck out, the Registrar must send a notice to the parties telling them that the proceeding has been struck out.

PART 10 – MEDIATION

10.1 Purpose of this Part

(1) This Part deals with assisting the court to refer matters for mediation.

(2) This Part does not prevent the parties to a proceeding from agreeing to or arranging mediation otherwise than under this Part.

10.2 What is mediation

For this Part, "mediation" means a structured negotiation process in which the mediator, as a neutral and independent party, helps the parties to a dispute to achieve their own resolution of the dispute.

10.3 Referral by court

(1) The court may by order refer a matter for mediation if:

(a) the judge considers mediation may help resolve some or all of the issues in dispute; and

(b) no party to the dispute raises a substantial objection.

(2) For subrule (1), a substantial objection includes:

(a) that the parties do not consent to mediation; or

(b) that the dispute is of its nature unsuitable for mediation; or

(c) anything else that suggests that mediation will be futile, or unfair or unjust to a party.

(3) In particular, a judge may make a mediation order at a conference.

(4) The mediator may be, but need not be, a person whose name is on a list of mediators.

[NOTE: For conferences, see Part 6.]

10.4 Who may be mediators

(1) The Chief Justice may keep a list of persons whom the Chief Justice considers to be suitable to be mediators.

(2) The list may state whether a person may be a mediator for the Supreme Court or the Magistrates' Court, or both.

10.5 Content of mediation order

(1) The mediation order must set out enough information about:

(a) the statements of the case; and

(b) the issues between the parties; and

(c) any other relevant matters;

to tell the mediator about the dispute and the present stage of the proceeding between the parties.

(2) The court may include in the order directions about:

(a) the mediator's role; and

(b) time deadlines; and

(c) any other matters relevant to the particular case.

10.6 Mediation voluntary

(1) Attendance at and participation in mediation sessions are voluntary.

(2) A party may withdraw from mediation at any time.

10.7 Mediator's role

During the mediation, the mediator may see the parties together or separately and with or without their lawyers.

10.8 Mediator's powers

(1) A mediator may:

(a) ask a party to answer questions; and

(b) ask a party to produce documents or objects in the party's possession; and

(c) visit places and inspect places and objects; and

(d) ask a party to do particular things; and

(e) ask questions of an expert witness to the proceeding.

(2) A mediator may at any time ask for guidance and directions from the court.

10.9 Settlement

(1) If a settlement is reached, it must be:

(a) written down, signed and dated by the mediator and the parties; and

(b) filed with the court.

(2) The court may approve the settlement and may make orders to give effect to any agreement or arrangement arising out of mediation.

(3) These orders do not constitute a judgment against a party.

(4) This rule does not affect the enforceability of any other agreement or arrangement that may be made between the parties about the matters the subject of mediation.

10.10 Costs of mediation

The costs of a mediator are to be paid by each party equally, unless the parties agree otherwise.

10.11 Proceeding suspended during mediation

If a matter is referred to mediation by the court under this Part, the proceeding about that matter is suspended during the mediation.

10.12 Privileged information and documents

(1) Anything said during mediation, or a document produced during mediation, has the same privilege as if it had been said or produced during a proceeding before the court.

(2) Evidence of anything said during mediation is not admissible in a proceeding before a court.

(3) A document prepared for, or in the course of or as a result of, mediation is not admissible in a proceeding before a court.

(4) Subrules (2) and (3) do not apply to evidence or a document if the parties to the mediation, or persons identified in the document, consent to the admission of the evidence or document.

10.13 Secrecy

A mediator must not disclose to any person who is not a party to a mediation information obtained during the mediation except:

(a) with the consent of the person who gave the information; or

(b) in connection with his or her duties under this Part; or

(c) if the mediator believes on reasonable grounds that disclosing the information is necessary to prevent or minimise the danger of injury to a person or damage to property; or

(d) if both parties consent; or

(e) if disclosing the information is required by another law of Vanuatu.

10.14 Liability of mediators

A mediator is not liable for anything done or omitted to be done during mediation if the thing was done in good faith for the purposes of the mediation.

10.15 Unsuccessful mediation

If a mediation is unsuccessful, no inference may be drawn against a party because of the failure to settle the matter through mediation.

PART 11 – EVIDENCE

11.1 Definition for this Part

In this Part:

"document" includes an object.

11.2 How to give evidence – Magistrates' Court

(1) Evidence in the Magistrates' Court is to be given orally.

(2) However, a magistrate may order that evidence in a particular case, or particular evidence, be given by sworn statement.

11.3 How to give evidence – Supreme Court

(1) Evidence in chief in the Supreme Court is to be given by sworn statement.

(2) However, a judge may order that evidence in a particular case, or particular evidence, be given orally.

[NOTE: Evidence can also be given by link – see Rule 11.8.]

11.4 Content of sworn statement

(1) A sworn statement may contain only:

(a) material that is required to prove a party's case, and references to documents in support of that material; and

(b) material that is required to rebut the other party's case, and references to documents in support of that material.

(2) In particular, a sworn statement must not contain material, or refer to documents, that would not be admitted in evidence.

[NOTE: A sworn statement must be in Form 3 – see rule 2.6.]

11.5 Attachments and exhibits to sworn statement

(1) A document may only be attached to a sworn statement after disclosure if the document has been disclosed.

(2) Documents referred to in a sworn statement must be:

(a) attached to the statement; and

(b) identified by the initials of the person making the statement and numbered sequentially.

(3) A sworn statement may refer to a thing other than a document (an "exhibit").

(4) The sworn statement must state where the exhibit may be inspected.

(5) The party making the sworn statement must ensure that the exhibit is available at reasonable times for inspection by other parties.

(6) If a person makes more than one sworn statement, the numbering of the attachments and exhibits must follow on from the previous statement.

[NOTE: For disclosure of documents, see Part 8.]

11.6 Service of sworn statement

A sworn statement must be filed and served on all other parties to the proceeding:

(a) if the court has fixed a time, within that time; or

(b) for a sworn statement to be used during a trial, at least 21 days before the trial; or

(c) for a sworn statement that relates to an application, at least 3 days before the court deals with the application.

[NOTE: For service generally, see Part 5.]

11.7 Use of sworn statement in proceedings

(1) A sworn statement that is filed and served becomes evidence in the proceeding unless the court has ruled it inadmissible.

(2) The sworn statement need not be read aloud during the trial unless the court orders.

(3) A witness may be cross-examined and re-examined on the contents of the witness's sworn statement.

(4) A party who wishes to cross-examine a witness must give the other party notice of this:

(a) at least 14 days before the trial; or

(b) within another period ordered by the court.

11.8 Giving evidence by telephone, video or in other ways

(1) The court may allow a witness to give evidence by telephone, by video or by another form of communication (called "evidence by link") if the court is satisfied that it is not practicable for the witness to come to court to give oral evidence or to be cross-examined.

(2) The court may do this whether the witness is in or outside Vanuatu.

(3) The application for evidence to be given by link must:

(a) be in writing; and

(b) have with it a sworn statement setting out:

(i) the name and address of the witness and the place where he or she will be giving evidence; and

(ii) the matters the witness will be giving evidence about; and

(iii) why the witness cannot or should not be required to come to court, and any other reason why the evidence needs to be given by link; and

(iv) the type of link to be used and the specific facility to be used; and

(v) any other matter that will help the court to make a decision.

(4) The court must take the following into account in deciding whether to allow the evidence to be given by link:

(a) the public interest in the proper conduct of the trial and in establishing the truth of a matter by clear and open means; and

(b) the question of fairness to the parties and balancing their competing interests; and

(c) any compelling or overriding reason why the witness should come to court; and

(d) the importance of the evidence to the proceeding; and

(e) whether or not the reason for seeking the evidence to be given by link is genuine and reasonable, having regard to:

(i) how inconvenient it is for the witness to come to court; and

(ii) the cost of the witness coming to court, particularly in relation to the amount claimed in the proceeding; and

(ii) any other relevant matter; and

(f) whether the link will be reliable and of good quality; and

(g) whether or not an essential element in the proceeding can be decided before the evidence is given; and

(h) whether the kind of link will make examination of the witness difficult; and

(i) for evidence to be given by telephone, that it is not practicable for the witness to give evidence in a way that allows for the witness to be identified visually; and

(j) any other relevant matter.

(5) For evidence given by telephone:

(a) if practicable, a fax machine should be available at each end of the link; and

(b) the court must be satisfied, when the evidence is being given:

(i) of the identity of the witness; and

(ii) that the witness is giving evidence freely.

(6) The court may take into account a certificate by a magistrate, police officer or chief who was present when the witness gave telephone evidence that:

(a) the person was present when the witness gave the evidence; and

(b) the person knows the witness; and

(c) the witness seemed to give the evidence freely.

(7) The certificate must be in Form 19.

(8) For evidence given by video or another link showing the witness:

(a) the witness should sit at a plain table or desk, with only the required documents and exhibits in front of him or her; and

(b) the link should show a reasonable part of the room but still be close enough to enable the court to see the witness clearly and assess him or her; and

(c) no-one else should be in the room with the witness except a technical person to help with the link.

(9) The court may end the giving of evidence by link if the court considers:

(a) the quality of the link is unacceptable; or

(b) to continue would cause unfairness to a party.

(10) The court may give directions about giving evidence by link, including about:

(a) which party is to arrange and pay for the link; and

(b) when and where the evidence will be given by the witness and heard by the court; and

(c) the stage of the hearing when the evidence will be given.

(11) Evidence taken by link for the purpose of a proceeding is taken to be evidence given in court during the proceeding.

11.9 Giving evidence before trial

(1) A party may apply to the court for an order that a witness give evidence before trial.

(2) The court may order that the witness give evidence if the court is satisfied that:

(a) the witness can give evidence that will be relevant to the person's case; and

(b) the witness's evidence is admissible; and

(c) the witness will not be available to give evidence at the trial because:

(i) of the witness's state of health; or

(ii) the witness is leaving Vanuatu either permanently or for an extended period of time.

(3) The witness:

(a) must give the evidence to the court, in the presence of the lawyers for each party, if any; and

(b) may be cross-examined and re-examined.

(4) Evidence given under this rule has the same value as evidence given during a trial.

11.10 Evidence by children

(1) If a child is required to give evidence, the court must take whatever steps are necessary to enable the child to give evidence without intimidation, restraint or influence.

(2) In particular, the court may:

(a) allow the child to give evidence screened from the rest of the court (but not from the judge); and

(b) sit in a place other than the court-room; and

(c) allow only the parties' lawyers to be present while the child gives evidence; and

(d) appoint a person to be with the child while the child gives evidence; and

(e) do anything else that may assist the child to give evidence.

11.11 Evidence by other vulnerable persons

If the court is satisfied that a witness may be unable to give evidence without intimidation, restraint or influence, the court may take any of the steps set out in rule 11.10 to ensure the witness is able to give evidence without intimidation, restraint or influence.

11.12 Expert witnesses

(1) A party who intends to call a witness to give evidence as an expert must:

(a) tell every other party; and

(b) give them a copy of the witness's report.

(2) In the Magistrates' Court, this must be done at least 21 days before the trial date, or if the report is a response to an existing report, within 14 days of the trial date or such other date approved by the court.

(3) In the Supreme Court, this must be done at Conference 1.

(4) A party may only call one expert witness in a field unless the court orders otherwise.

11.13 Court-appointed experts

(1) The court may appoint a person as an expert witness if a question arises that needs an expert to decide it.

(2) The court may:

(a) direct the expert to inquire into the question and report back to the court within the time the court specifies; and

(b) give the expert instructions about the terms of reference and the report.

(3) The expert's costs are payable by the parties equally unless the court orders otherwise.

(4) If the court appoints an expert, a party may not call another person as an expert witness in that field unless the court orders otherwise.

11.14 Medical evidence

(1) In a claim for damages for personal injury, the defendant can request that the claimant be examined by a medical practitioner chosen by the defendant.

(2) If the claimant does not attend and allow the examination without reasonable excuse, the court may:

(a) order the proceedings be stayed until the claimant does so; or

(b) take the circumstances of the claimant's refusal into account when considering the claimant's evidence.

11.15 Summons to give evidence and produce documents

(1) The court may order that a summons be issued requiring a person to attend court to give evidence, or to produce documents.

(2) The order may be made:

(a) at a conference; and

(b) at a party's request or on the court's initiative.

(3) The summons must:

(a) give the full name of the witness; and

(b) if it is a summons to produce documents, clearly identify the documents; and

(c) state when and where the witness is to attend court; and

(d) be in Form 20.

11.16 Service of summons

A summons under rule 11.15 must be served personally, unless the court orders otherwise.

11.17 Travel expenses

(1) At the time of service, the person must be given enough money to meet the reasonable costs of travelling to comply with the order.

(2) However, if the summons is not served personally, it is sufficient if the person is reimbursed the reasonable costs of travelling to comply with the order when the person attends court in answer to the summons.

(3) A person who gives evidence without being summoned is entitled to be reimbursed his or her reasonable costs of travelling to give the evidence as if the person had been summoned.

11.18 Producing documents or objects

(1) A person summoned to produce documents may do so by giving the documents to the court office at the place stated in the summons.

(2) The court officer must give the person a receipt for the documents.

(3) If a person who is summoned to produce documents is not a party, the person is entitled to be paid or reimbursed the reasonable costs of producing the documents.

11.19 Failure to comply with summons

(1) Failure to attend court as required by a summons to attend and give evidence, or produce documents, without a lawful excuse is contempt of court.

(2) A person who fails to attend court as required by a summons to attend and give evidence, or produce documents, without a lawful excuse may be dealt with for contempt of court.

11.20 Evidence taken in Vanuatu for use in proceedings outside Vanuatu

(1) Evidence taken in Vanuatu for use in a proceeding outside Vanuatu can only be taken in accordance with this rule.

(2) If the court receives a letter of request from a court in another country asking that evidence be taken in Vanuatu for use in proceedings in the other country, the evidence must be taken in accordance with this rule.

(3) The letter of request must have with it a sworn statement by an officer of the court of the other country verifying the letter of request.

(4) The court is to give effect to the letter by:

(a) issuing a summons to the person named in the letter to appear and give evidence or produce documents or both; and

(b) hearing the witness's evidence orally; and

(c) making a written record of the evidence; and

(d) sending this to the court in the requesting country.

(5) The written record must be signed by the judge before whom the evidence is given and sealed.

(6) A person who gives evidence under this rule is to be treated as if the person is giving evidence in proceedings in the Supreme Court.

11.21 Evidence taken outside Vanuatu for use in proceedings in Vanuatu

(1) A party to a proceeding may apply to have evidence in the proceeding taken from a witness outside Vanuatu.

(2) The application must have with it a sworn statement that:

(a) the person's evidence is relevant and admissible; and

(b) the evidence cannot be obtained from a person in Vanuatu.

(3) If the court is satisfied that;

(a) the person's evidence is relevant and admissible; and

(b) the evidence cannot be obtained from a person in Vanuatu; and

(c) there is an arrangement between Vanuatu and the country concerned for the taking of evidence in that country for use in civil proceedings in Vanuatu;

the court must issue a letter of request addressed to a court in the other country asking that court to take the witness's evidence.

(4) Evidence taken outside Vanuatu for the purpose of a proceeding is taken to be evidence given in the proceeding.

[NOTE: Evidence can also be given by link; see rule 11.8.]

PART 12 – TRIAL

12.1 Conduct of trial

(1) The court may give directions for a particular trial about the order of evidence and addresses and the conduct of the trial generally.

(2) This rule applies subject to any directions the court gives.

(3) At the trial:

(a) the claimant presents his or her case first if the claimant has the burden of proof on any question; and

(b) the defendant presents his or her case first if the defendant has the burden of proof on every question.

(4) Evidence is to be brought, and addresses made, in the following order:

(a) the party who presents his or her case first (the "first party") makes an address opening the proceeding and, if evidence is to be given orally, brings evidence in support of his or her case;

(b) the other party cross-examines the first party's witnesses;

(c) the other party then makes an address opening their case and, if evidence is to be given orally, brings evidence in support of their case;

(d) the first party cross-examines the other party's witnesses;

(e) if there are any other parties, they in turn make their opening addresses, bring their evidence in support and cross-examine each other's witnesses;

(f) the first party then makes a closing address;

(g) the other parties in turn make their closing addresses.

12.2 Trial in open court

The trial of a proceeding must be held in open court unless the court orders otherwise.

12.3 Adjournment

The court may at or before a trial adjourn the trial.

12.4 Preliminary issues

The court may hear legal argument on preliminary issues between the parties if it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial.

12.5 Court may hear evidence early

If a witness will not be available at the time of the trial, the court may hear the witness's evidence before the trial, in accordance with rule 11.9.

12.6 Giving of evidence

(1) A witness's evidence is to be given as provided in Part 11.

(2) The witness must attend at the trial, if required under Part 11, and may be examined on his or her evidence by all other parties to the proceeding.

12.7 Referee

(1) This rule applies only in the Supreme Court.

(2) If a proceeding raises questions of a complex technical nature, the court may by order appoint a person qualified and experienced in that field as a referee to hear and determine those questions.

(3) The court may give the referee power to:

(a) give directions about preparing for the hearing, including directions about written submissions, disclosure of documents and information, compiling bundles of diagrams and sketches and dealing with technical information; and

(b) issue summonses in Form 20 requiring persons to attend the hearing and give evidence, give evidence and produce documents or produce documents; and

(c) hear argument and oral evidence as the court does at a trial; and

(d) inspect objects and places; and

(e) adjourn the hearing from time to time; and

(f) deal with any matters incidental to the hearing.

(4) The referee may refer a matter to the judge for assistance or determination.

(5) The court may not give the referee any power of enforcement or punishment.

(6) The referee must give his or her findings to the judge in the form, and in the time, set out in the order of appointment.

(7) The judge must give each party a copy of the referee's findings.

(8) The judge may accept all, some or none of the referee's findings.

12.8 Hearing of question of law only

If the parties have agreed on the facts but there remains a question of law in dispute, the court must hear argument from the parties about the question of law.

12.9 Failure to attend

(1) If a defendant does not attend when the trial starts:

(a) the court may adjourn the proceeding to a date it fixes; or

(b) the court may give judgment for the claimant; or

(c) the claimant, with permission of the court, may call evidence to establish that he or she is entitled to judgment against the defendant.

(2) If a claimant does not attend when the trial starts:

(a) the court may adjourn the proceeding to a date it fixes; or

(b) the court may dismiss the claimant's claim and give judgment for the defendant; or

(c) the defendant, with permission of the court, may call evidence to establish that he or she is entitled to judgment under a counterclaim against the claimant.

(3) The court may give directions about further dealing with the proceeding and must consider the question of costs.

12.10 Re-opening a proceeding

The court may by order allow a party to re-open a proceeding after trial but before judgment if the court is satisfied that it is necessary to do so in order for substantial justice to be done.

12.11 Judgment

After the trial, the court must give judgment, as set out in Part 13.

PART 13 – JUDGMENT

Time of giving judgment
Filing of order
Suspension of enforcement
Enforcement of foreign judgments

13.1 Judgment

(1) The court gives judgment in a proceeding by:

(a) setting out the relevant evidence; and

(b) stating its finding of the facts as found; and

(c) stating its findings of law and the application of these to the facts; and

(d) giving the reasons for those decisions; and

(e) making orders as a consequence of those decisions.

(2) The judgment must set out the entitlement of a party to payment of money or to any other form of final relief.

(3) The court may give judgment and make an order at any stage of a proceeding.

(4) A copy of the judgment must be given to the parties and made available to the public.

13.2 Time of giving judgment

(1) In the Supreme Court, a judge may:

(a) give judgment as soon as the trial ends; or

(b) give his or her decision, and give judgment at a later time; or

(c) give his or her decision and judgment at a later time.

(2) The judgment must be in writing or be written down as soon as practicable.

(3) In the Magistrates' Court, the magistrate must as far as practicable give judgment at the end of the trial and fix the amount of costs at the same time.

13.3 Filing of order

(1) If a judge or magistrate writes the terms of an order on a file or on a document in a file, then until the order is filed the writing is sufficient proof that the order was made and of its date and terms.

(2) In subrule (1), "filed" means written in a separate document, signed by the judge or magistrate and sealed.

[NOTE: For enforcement of judgments see Part 14.]

13.4 Suspension of enforcement

Filing an appeal against a judgment does not affect the enforcement of the judgment unless:

(a) the party appealing applies for a suspension; and

(b) the court grants a suspension.

13.5 Enforcement of foreign judgments

(1) A person who wishes to enforce a judgment of a foreign court in Vanuatu (a "foreign judgment") may file a claim in the Supreme Court under Part 2.

(2) The claim must set out the following:

(a) the foreign judgment is for a fixed amount; and

(b) the foreign court had jurisdiction over the person against whom the judgment was made; and

(c) the foreign judgment is final and conclusive; and

(d) the amount payable under the judgment that has not been paid; and

(e) regarding an appeal:

(i) the time for an appeal has ended and no appeal has been lodged; or

(ii) an appeal was lodged but it was unsuccessful.

(3) The claim must have with it a sworn statement that:

(a) supports the claim; and

(b) verifies the foreign judgment.

(4) The claim must also have with it a sworn statement by a lawyer practising in the foreign country that:

(a) sets out his or her qualifications to give evidence on the law of the foreign jurisdiction; and

(b) confirms the foreign judgment is valid, final and conclusive.

PART 14 – ENFORCEMENT OF JUDGMENTS AND ORDERS

Division 1 – General

14.1 Definitions for this Part

(1) In this Part:

"enforcement conference" means a conference referred to under rule 14.3 or 14.37;

"enforcement creditor" means a person entitled to enforce a money order;

"enforcement debtor" means a person required to pay money under a money order;

"enforcement officer" means the sheriff or a police officer;

"enforcement order" means an order made under rule 14.3, 14.4, 14.7 or 14.37;

"exempt property" means property that cannot be divided among a bankrupt's creditors under the bankruptcy laws of Vanuatu as in force from time to time;

"judgment debt" means the amount payable under a money order and the costs of gaining the order;

"money order " means an order of the court for the payment of an amount of money;

"non-money order" means an order of the court other than a money order.

(2) In the application of this Part to the Magistrates' Court, a reference to an enforcement conference is a reference to an enforcement hearing.

14.2 Enforcement of judgments

(1) Judgments are enforced by enforcement orders and enforcement warrants as set out in this Part.

(2) An enforcement order must be in Form 21.

(3) An enforcement warrant to enforce a money order must be in Form 22.

(4) An enforcement warrant to enforce a non-money order must be in Form 23.

[NOTE: Filing an appeal does not affect the enforcement of a judgment unless the court grants a suspension – see rule 13.4.]

Division 2 – Enforcement of judgments to pay money (money orders)

14.3. Procedure after judgment for claimant – money orders

(1) Immediately after giving a judgment that includes a money order, the court must ask the enforcement debtor how he or she proposes to pay the money and must either:

(a) make an enforcement order for the payment of the judgment debt; or

(b) fix a date for an enforcement conference to examine the enforcement debtor about how he or she proposes to pay the amount of the judgment debt.

(2) When the court fixes the date for the enforcement conference, the court must tell the enforcement debtor to:

(a) come to court on the date fixed for the conference; and

(b) bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances.

(3) If the enforcement debtor is not present, the court must:

(a) fix a date for an enforcement conference; and

(b) issue a summons in Form 24 against the enforcement debtor requiring the enforcement debtor to:

(i) come to court on the date fixed for the enforcement conference; and

(ii) bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances.

[NOTE: For a default judgment, see rule 9.2.]

14.4 Agreement about payment

(1) If the parties agree about paying the judgment debt, the court may make an enforcement order in the terms of the agreement.

(2) The order may:

(a) fix a date by which the enforcement debtor will pay the judgment debt; or

(b) if the parties have agreed on payment by instalments, set out the dates and amounts of the instalments; or

(c) make another order about payment.

14.5 Enforcement conference

(1) The purpose of the enforcement conference is to find out how the enforcement debtor proposes to pay the amount of the judgment debt.

(2) The date fixed for the enforcement conference must be:

(a) within 28 days after the date of the money order; or

(b) if it is not possible to fix a date within that period, as soon as practicable after that period.

(3) The enforcement debtor must attend the conference.

(4) The court may issue a summons to another person to attend the conference and give evidence about the enforcement debtor's affairs.

14.6 Enforcement conference warrant

If the enforcement debtor does not appear at the conference in answer to a requirement under rule 14.2 or a summons, the court may issue a warrant for his or her arrest if the court is satisfied that the enforcement debtor:

(a) was present when the court fixed the date for the enforcement conference, or was personally served with, or otherwise received, the summons; and

(b) did not have sufficient cause for not attending the conference.

14.7 Examination of enforcement debtor

(1) At the enforcement conference, the enforcement creditor may ask the enforcement debtor about his or her financial affairs and how he or she proposes to pay the judgment debt.

(2) The enforcement creditor may also examine any other person summonsed to attend the conference.

(3) The court must then:

(a) if the parties have agreed on payment, make an enforcement order in the terms of the agreement; or

(b) make an enforcement order about how the enforcement debtor will pay; or

(c) issue an enforcement warrant; or

(d) make another order about the payment.

14.8 Amount recoverable on enforcement

(1) The costs of enforcing a money order are recoverable as part of the order.

(2) Interest on the amount of the order is recoverable as part of the order.

14.9 Enforcement period

(1) An enforcement creditor may enforce an enforcement order at any time within 6 years after the date of the order.

(2) An enforcement creditor must get the court's leave to enforce an enforcement order if:

(a) it is more than 6 years since the enforcement order was made; or

(b) there has been a change in the enforcement creditor or enforcement debtor, by assignment, death or otherwise.

(3) The court may grant leave if it is satisfied:

(a) that the amount is still owing; and

(b) if more than 6 years has passed, about the reason for the delay; and

(c) if there has been a change, that the change has happened; and

(d) that the enforcement creditor is entitled to enforce the order; and

(e) that the enforcement debtor is liable to pay the money.

14.10 Suspension of enforcement

(1) An enforcement debtor may apply to the court for an order suspending the enforcement of an enforcement order.

(2) The application must be:

(a) supported by a sworn statement; and

(b) filed and served on the enforcement creditor at least 7 working days before the application is to be heard.

(3) The court may:

(a) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and

(b) make other orders it considers appropriate, including another enforcement order.

Division 3 – Enforcement warrants generally (money orders)

14.11 Enforcement warrant

(1) An enforcement creditor may apply for the issue of an enforcement warrant if the enforcement debtor does not comply with the enforcement order.

(2) However, if an enforcement warrant is in force to enforce payment under a money order, no other enforcement warrant may be issued for the money order.

14.12 Procedure to apply for Enforcement Warrant

(1) The enforcement creditor must file:

(a) an application in Form 25; and

(b) a copy of the enforcement order; and

(c) 2 copies of the form of warrant; and

(d) a sworn statement made not earlier than 2 business days before filing the application, setting out:

(i) the date of the enforcement order; and

(ii) the amount payable under the order; and

(iii) the date and amount of any payment made under the order; and

(iv) the costs of previous enforcement; and

(v) the interest due at the date of the statement; and

(vi) any other details needed to work out the amount payable under the enforcement order at the date of the statement, and how the amount is worked out; and

(vii) the daily amount of future interest; and

(viii) any other information needed for the warrant.

(2) The court may require the enforcement debtor and enforcement creditor to attend a conference if the court is of the view that a hearing is required.

14.13 Form of warrant

(1) An enforcement warrant must state:

(a) the enforcement debtor's name; and

(b) the date the warrant ends; and

(c) the amount recoverable under the warrant, including:

(i) costs of the enforcement; and

(ii) the amount of interest; and

(d) anything else these rules require.

(2) If the warrant is for seizure and sale of property, the court must give the warrant to an enforcement officer.

(3) In any other case, the court must give the warrant to the enforcement creditor.

[NOTE: A warrant for the seizure and sale of property is dealt with by an enforcement officer – see rule 14.16. The warrant must be in Form 22]

14.14 Enforcement throughout Vanuatu

(1) An enforcement warrant is enforceable throughout Vanuatu.

(2) An enforcement warrant issued in one district of the Magistrates' Courts is enforceable in any other district.

(3) However, before enforcing the warrant in another district, the person enforcing it must take the warrant to the office of the Magistrates' Court in that district for sealing by that office.

14.15 Deceased enforcement debtor

If the enforcement debtor has died, only the assets of his or her estate can be the subject of the warrant.

Division 4 – Enforcement warrants for seizure and sale of property

14.16 Property that may be seized under enforcement warrant

(1) The court may issue an enforcement warrant authorising an enforcement officer to seize and sell all real and personal property (other than exempt property) in which an enforcement debtor has a legal or beneficial interest.

(2) The court must give the warrant to an enforcement officer to be enforced.

(3) The enforcement officer may seize the property listed in the warrant and must store it safely until it is sold.

(4) If there are several enforcement warrants against the same enforcement debtor, the enforcement officer must deal with them in the order they were issued.

14.17 Order of seizing and selling property

The enforcement officer must seize and sell property:

(a) in the order that appears to the enforcement officer to be best for promptly enforcing the warrant without undue expense; and

(b) subject to paragraph (a), in the order that appears to the enforcement officer to be best for minimising hardship to the enforcement debtor and his or her family.

14.18 Sale by public auction

(1) Unless the court orders otherwise, the enforcement officer must sell the seized property by public auction.

(2) The auction must be held:

(a) as soon as is practicable; and

(b) at the place, and in the circumstances, most likely to get the best price for the property.

(3) The enforcement officer must do everything practicable to ensure the property is sold for the best price obtainable.

14.19 Advertising sale

(1) The enforcement officer must arrange for an advertisement of the auction:

(a) to be published in a newspaper circulating in the area, if there is one, or to be broadcast on the radio; and

(b) to be available at the nearest court office and police station.

(2) Unless the property is perishable, the advertisement must be published between 2 and 4 weeks before the auction.

14.20 Postponing sale

(1) The court may order that the sale be postponed to a date the court specifies, on application by the enforcement creditor or the enforcement officer.

(2) The postponement extends the enforcement warrant if it would otherwise end before that date.

14.21 Accounting for proceeds of sale

(1) As soon as practicable after the sale, the enforcement officer must pay the proceeds of the sale to the court.

(2) The court must:

(a) first, pay the enforcement officer the costs of enforcing the warrant; and

(b) then pay any balance, up to the amount of the enforcement warrant, to the enforcement creditor; and

(c) then pay any balance remaining to the enforcement debtor.

Division 5 – Enforcement warrants for redirection of debts and earnings

14.22 Debts that may be redirected

(1) A court may issue an enforcement warrant requiring a third person to pay to an enforcement creditor a debt that is:

(a) certain and payable; and

(b) payable to the enforcement debtor; and

(c) specified in the warrant.

(2) In deciding whether to issue the warrant, the court must consider whether, if the debt is paid to the enforcement creditor:

(a) the enforcement debtor has adequate means to pay:

(i) the necessary living expenses of the enforcement debtor and his or her family; and

(ii) any other known liabilities; and

(b) unreasonable hardship would be imposed on the enforcement debtor ; and

(c) it is appropriate to issue the warrant, having regard to the nature and the amount of the debt.

14.23 Service of warrant

(1) The warrant does not take effect until it is served on the third person.

(2) When the warrant is served, the third person must pay the debt to the enforcement creditor, in accordance with the warrant.

14.24 Other debtor disputes liability

If the third person claims the debt is not payable to the enforcement debtor, the third person may apply to the court for directions.

14.25 Regular redirection of debts

(1) If:

(a) the enforcement debtor has an account with a financial institution; and

(b) another person ("the depositor") regularly pays money into the account:

the court may issue an enforcement warrant directing the institution to make regular payments to the enforcement creditor of amounts equal to the amounts paid into the account by the depositor.

(2) As well as the matters required to be in a warrant by rule 14.13, an enforcement warrant issued under this rule must state:

(a) the institution's name; and

(b) details of the enforcement debtor's account; and

(c) the amount to be paid; and

(d) the enforcement creditor's name and address; and

(e) how the amount is to be paid to the enforcement creditor.

14.26 Service of warrant for regular redirection

(1) An enforcement warrant for the regular redirection of debts must be served personally on the enforcement debtor and the financial institution.

(2) The enforcement warrant does not come into effect until 7 days after service on the financial institution.

14.27 Payment under warrant

(1) The financial institution must:

(a) deduct the amount specified in the warrant within 2 days after each regular deposit is made; and

(b) pay the amount as specified in the warrant; and

(c) give the enforcement debtor a notice with details of the deduction.

(2) The enforcement debtor:

(a) must ensure sufficient funds are in the account to cover the deduction; and

(b) must not encourage the depositor to stop making the deposits, or do anything else to hinder the regular redirections.

(3) The enforcement debtor must tell the enforcement creditor if:

(a) the depositor fails to make a deposit; or

(b) the enforcement debtor changes his or her account.

14.28 Enforcement warrants for redirection of earnings

(1) A court may issue an enforcement warrant requiring particular earnings of the enforcement debtor to be paid by the enforcement debtor's employer to the enforcement creditor.

(2) When it issues the warrant, the court must also fix:

(a) the amount of each deduction; and

(b) the minimum amount to be available to the employee as take-home pay.

(3) In deciding whether to issue the warrant and fixing the amount of each deduction and the amount of take-home pay, the court must consider whether:

(a) the enforcement debtor is employed by the employer; and

(b) the enforcement debtor has adequate means to pay:

(i) the necessary living expenses of the enforcement debtor and his or her family; and

(ii) any other known liabilities; and

(c) unreasonable hardship would be imposed on the enforcement debtor.

(4) As well as the matters required to be in a warrant by rule 14.13, an enforcement warrant issued under this rule must state:

(a) the enforcement debtor's name; and

(b) the name of the employer; and

(c) the total amount to be deducted under the warrant; and

(d) the amount to be deducted each pay day; and

(e) the minimum amount to be available to the employee as take-home pay; and

(f) the name and address of the enforcement creditor, and how the amount is to be paid to the creditor.

14.29 Service of warrant for redirection of earnings

(1) The enforcement warrant must be served personally on the enforcement debtor and on his or her employer.

(2) The enforcement creditor must also serve on the employer a notice in Form 26 telling the employer of the effect of the order and what the employer must do.

14.30 Payment under warrant for redirection of earnings

(1) On each pay day while the enforcement creditor is employed by the employer, the employer must:

(a) deduct the amount specified in the warrant from the enforcement debtor's earnings (unless the amount remaining to be paid is less); and

(b) pay the amount to the person specified in the warrant; and

(c) give the enforcement debtor a notice giving details of the deduction.

(2) In spite of subrule (1), if the amount to be deducted would leave the employee with less than the take-home pay fixed by the court, the employer must deduct a lesser amount that will leave the employee with the take-home pay the court fixed.

(3) A deduction made under a warrant satisfies, to the extent of the deduction, the employer's obligation to pay the enforcement debtor's wages.

14.31 If person is not enforcement debtor's employer

If a person served with a warrant for the redirection of an enforcement debtor's earnings is not, or stops being, the debtor's employer, the person must notify the court as soon as practicable.

14.32 Setting aside an enforcement warrant for the regular redirection of debts or earnings

(1) The enforcement creditor or enforcement debtor may apply for an enforcement warrant for the redirection of debts or earnings to be set aside, suspended or varied.

(2) The order setting aside, suspending or varying the warrant must be served on:

(a) the enforcement creditor, unless he or she is the applicant; and

(b) the enforcement debtor, unless he or she is the applicant; and

(c) the debtor, the institution or the enforcement debtor's employer, as the case requires.

Division 6 – Other enforcement warrants for money orders

14.33 Enforcement warrants for charging orders

The Supreme Court may issue an enforcement warrant charging all or part of the enforcement debtor's legal or equitable interest in any of the following property:

(a) annuities;

(b) debentures, shares, stocks, bonds and other marketable securities;

(c) interests in managed investment schemes;

(d) units of shares or marketable securities.

14.34 Service of enforcement warrant charging property

To have effect on a person, the warrant must be served personally on:

(a) the enforcement debtor; and

(b) each other person who has an interest in the property; and

(c) the person who issued or administers the property; and

(d) for partnership property, each of the partners.

14.35 Effect of warrant

(1) An enforcement warrant charging property entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge over the property had been made by the enforcement debtor in favour of the enforcement creditor.

(2) However, the enforcement creditor must not do anything to enforce the remedies until 3 months after the latest service under rule 14.34.

(3) After being served with the warrant, the enforcement debtor must not sell, transfer or otherwise deal with the property.

(4) The court may set aside or restrain a sale, transfer or other dealing in contravention of subrule (3), unless this would prejudice the rights or interests of a genuine purchaser without notice.

(5) After being served with the warrant, the person who issued or administers the property must not sell, transfer or otherwise deal with the property.

14.36 Appointment of receivers

(1) The Supreme Court may issue an enforcement warrant appointing a receiver.

(2) In deciding whether to appoint a receiver, the court must consider:

(a) the amount of the enforcement debt; and

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and paying a receiver.

(3) A person must not be appointed as a receiver unless the person consents to the appointment.

(4) The court may require the receiver to give security acceptable to the court for performing his or her duties.

(5) As well as the material required by rule 14.13, the enforcement warrant must:

(a) specify the receiver's duties; and

(b) state the period of the receiver's appointment; and

(c) specify what the receiver is to be paid; and

(d) require the receiver to file accounts and give copies to the parties, and at the times, the court requires; and

(e) contain anything else the court requires.

(6) While the receiver is appointed, his or her powers operate to the exclusion of the enforcement debtor's powers.

Division 7 – Enforcement of non-money orders

14.37 Procedure after judgment for claimant – non-money orders

(1) Immediately after giving a judgment that includes a non-money order, the court must ask the person against whom the order is made how he or she proposes to comply with the order and must either:

(a) make an enforcement order; or

(b) fix a date for an enforcement conference to examine the person about how he or she proposes to comply with the non-money order.

(2) When the court fixes the date for the enforcement conference, the court must tell the person to:

(a) come to court on the date fixed for the conference; and

(b) bring with him or her sufficient information to enable him or her to tell the court how he or she proposes to comply with the order.

(3) If the person is not present, the court must:

(a) fix a date for an enforcement conference; and

(b) issue a summons in Form 27 against the person requiring the person to:

(i) come to court on the date fixed for the enforcement conference; and

(ii) bring with him or her sufficient information to enable him or her to tell the court how he or she proposes to comply with the order.

14.38 Agreement about compliance

If the parties agree about how the person required to comply with the order proposes to do so, the court may make an enforcement order in the terms of the agreement.

14.39 Possession of customary land

The court must not make an enforcement order for the possession of customary land except after hearing a claim under rule 16.25.

[NOTE: Rule 16.25 deals with the enforcement of decisions of land tribunals under the Customary Land Tribunal (Cap. 271).]

14.40 Suspension of enforcement

(1) A person against whom an enforcement order is made may apply to the court for an order suspending the enforcement of the order.

(2) The application must be:

(a) supported by a sworn statement; and

(b) filed and served on the person in whose favour the order is made at least 7 working days before the application is to be heard.

(3) The court may:

(a) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and

(b) make other orders it considers appropriate, including another enforcement order.

14.41 Enforcement throughout Vanuatu

(1) An enforcement warrant is enforceable throughout Vanuatu.

(2) An enforcement warrant issued in one district of the Magistrates' Court is enforceable in any other district.

(3) However, before enforcing the warrant in another district, the person enforcing it must take the warrant to the office of the Magistrates' Court in the second district for sealing by that office.

14.42 Deceased enforcement debtor

If the enforcement debtor has died, only the assets of his or her estate can be the subject of a warrant.

14.43 Issue and service of enforcement warrant

(1) A person applying for an enforcement warrant to enforce a non-money order must file:

(a) an application that has with it 2 copies of the warrant; and

(b) a sworn statement stating that the person against whom the order was made has not complied with the order, and in what way he or she has not complied.

(2) Unless the court orders otherwise, the warrant must be issued without a hearing.

(3) The court must give the warrant to an enforcement officer to be enforced.

(4) If there are several enforcement warrants under different non-money orders, the enforcement officer must deal with them in the order in which they were issued.

14.44 Form of warrant

An enforcement warrant for a non-money order must state:

(a) the name of the person who must comply with the order; and

(b) the date, within 1 year of the date of the warrant, that the warrant ends; and

(c) what the warrant authorises; and

(d) any other details these rules require.

[NOTE: The warrant must be in Form 23 – see rule 14.2.]

14.45 Return of enforcement warrant

If the enforcement officer:

(a) enforces the warrant; or

(b) is unable after doing all that is practicable to enforce the warrant,

the enforcement officer must:

(c) write on the warrant what has been done; and

(d) file a copy of the endorsed warrant in the court; and

(e) give a copy to the person who obtained the warrant.

14.46 Enforcement warrant for possession of land

(1) A court may issue an enforcement warrant for possession of land.

(2) The warrant authorises an enforcement officer to enter on the land described in the warrant and deliver possession of the land to the person named in the warrant as being entitled to possession of the land.

(3) The warrant must:

(a) be served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and

(b) be displayed prominently at the entrance to the land.

(4) The warrant cannot be enforced until 7 days after the display and the latest service.

14.47 Enforcement warrant for delivery of goods

(1) A court may issue an enforcement warrant for the delivery of goods if:

(a) the order for the delivery of the goods does not give the person against whom the order is made the option of keeping the goods and paying the assessed value of the goods; or

(b) the order does give the person that option but the person does not choose to pay for the goods.

(2) The warrant authorises an enforcement officer to seize the goods and give them to the person who is entitled to them under the order.

(3) If the order gives the person the option for keeping the goods and paying the assessed value of the goods and the person chooses to do that, the order may be enforced in the same way as a money order.

14.48 Order to do or not do an act

(1) This rule applies to an order if:

(a) it is a non-money order; and

(b) it requires a person to do an act within a specified time; and

(c) the person does not do the act within the time.

(2) This rule also applies to an order that requires a person not to do an act and the person does not comply with the order.

(3) The order may be enforced in one or more of the following ways:

(a) by punishing the person for contempt;

(b) seizing the person's property;

(c) if the person is a body corporate, punishing an officer for contempt or seizing the officer's property.

(4) The court may also enforce an order to do an act by:

(a) appointing another person to do the act; and

(b) ordering the person required to do the act to pay the costs and expenses caused by not doing the act.

(5) The costs and expenses may be recovered under an enforcement warrant for a money order.

Division 8 – Claim by third party

14.49 Notice of claim

(1) A person (the "third party") who claims ownership of goods or money seized under an enforcement warrant must notify the sheriff in writing of the claim.

(2) The notice may be given to the sheriff personally or by filing it in an office of the court.

(3) The sheriff must not sell or otherwise dispose of the goods or money for 7 days after being given the notice.

14.50 Application by third party

(1) The third party must file an application within 7 days of giving notice to the sheriff.

(2) The application must:

(a) describe the goods or money; and

(b) state where they were when they were seized; and

(c) state why the third party claims the goods or money; and

(d) have with it a sworn statement in support of the application.

(3) The application and sworn statement must be served on the person on whose behalf the enforcement warrant was issued.

(4) The court may require the third party to give security for the costs of the proceeding.

(5) An enforcement debtor may not make an application under this Division.

PART 15 – COSTS

Division 1 – General

15.1 General provisions about costs

(1) The court has discretion in deciding whether and how to award costs.

(2) As a general rule, the costs of a proceeding are payable by the party who is not successful in the proceeding.

(3) However, nothing in this Part prevents the parties to a proceeding from agreeing to pay their own costs.

(4) The court may order that each party is to pay his or her own costs.

15.2 When court may make order for costs

(1) The court may make an order for costs at any stage of a proceeding or after the proceeding ends.

(2) If the court awards the costs of a part of a proceeding during the proceeding, the court must also if practicable determine the amount of the costs and fix a time for payment.

15.3 Costs determination

If the parties do not agree on the amount of costs to be awarded, the judge must determine the costs as set out in these Rules.

15.4 Self-represented parties

A party who is not represented by a lawyer:

(a) may recover disbursements; but

(b) is not entitled to recover costs.

15.5 Standard basis and indemnity basis for costs

(1) Costs awarded on a standard basis (formerly known as a party and party basis) are all costs necessary for the proper conduct of the proceeding and proportionate to the matters involved in the proceeding.

(2) Costs awarded on an indemnity basis (formerly known as a solicitor and client basis) are all costs reasonably incurred and proportionate to the matters involved in the proceeding, having regard to:

(a) any costs agreement between the party to whom the costs are payable and the party's lawyer; and

(b) charges ordinarily payable by a client to a lawyer for the work.

(3) Costs are normally to be awarded on a standard basis unless the court orders the costs to be awarded on an indemnity basis.

(4) The court may order costs to be paid on an indemnity basis if the costs are:

(a) to be paid to a party who sues or is sued as a trustee; or

(b) the costs of a proceeding brought for non-compliance with an order of the court; or

(c) to be paid out of a fund.

(5) The court may also order a party's costs be paid on an indemnity basis if:

(a) the other party deliberately or without good cause prolonged the proceeding; or

(b) the other party brought the proceeding in circumstances or at a time that amounted to a misuse of the litigation process; or

(c) the other party otherwise deliberately or without good cause engaged in conduct that resulted in increased costs; or

(d) in other circumstances (including an offer to settle made and rejected) if the court thinks it appropriate.

15.6 Costs in Supreme Court

(1) The judge must make an order for costs of a proceeding in the Supreme Court.

(2) The order must be made at the time of judgment or, if that is not practicable, as soon as practicable after judgment.

(3) The judge may order that:

(a) one party pay all the other party's costs; or

(b) one party pay only some of the other party's costs, either:

(i) a specific proportion of the other party's costs; or

(ii) the costs of a specific part of the proceeding; or

(iii) the costs from or up to a specific day; or

(c) the parties pay their own costs.

15.7 Amount of costs in Supreme Court

(1) If possible, the judge must also determine the amount of costs at the time of judgment.

(2) However, if the judge cannot do this, the judge must:

(a) ask the successful party to prepare a statement of costs, and fix a time by which this is to be done; and

(b) fix a date for determining the costs.

(3) The statement must set out:

(a) each item of work done by the lawyer, in the order in which it was done, and numbered consecutively; and

(b) the amount claimed for each item; and

(c) the amount disbursed for each item; and

(d) the lawyer's rate of charge.

(4) The statement of costs must be filed and served on the other party within the time fixed by the judge.

(5) The judge may give directions to facilitate the costs determination.

15.8 Matters judge to take into account

(1) In determining an amount of costs, the judge must consider:

(a) whether it was reasonable to carry out the work to which the costs relate; and

(b) what was a fair and reasonable amount of costs for the work concerned.

(2) The judge must determine the amount of costs that, in his or her opinion, is a fair and reasonable amount.

(3) In determining what is a fair and reasonable amount of costs, the judge may have regard to:

(a) the skill, labour and responsibility shown by the party's lawyer; and

(b) the complexity, novelty or difficulty of the proceeding; and

(c) the amount of money involved; and

(d) the quality of the work done and whether the level of expertise was appropriate to the nature of the work; and

(e) where the legal services were provided; and

(f) the circumstances in which the legal services were provided; and

(g) the time within which the work was to be done; and

(h) the outcome of the proceeding.

15.9 Proceeding brought in wrong court

(1) The Supreme Court may determine lower costs where, because of the small nature or amount of the claim and of any final order made, it would have been more appropriate to sue in the Magistrates' Court.

(2) Subrule (1) does not apply if the claim involves an important issue or a complex question of law.

15.10 Particular provisions for costs in Magistrates' Court

(1) A magistrate must make an order for costs of a proceeding.

(2) The order must be made when the magistrate gives judgment.

(3) Costs of a proceeding in the Magistrates' Court are to be worked out according to the appropriate scale in Schedule 2.

(4) In deciding which is the appropriate scale, the magistrate to take into account:

(a) the amount recovered or claimed; and

(b) the complexity of the case; and

(c) the length of the proceeding; and

(d) any other relevant matter.

15.11 Court to take into account offers to settle

When considering the question of costs, the court must take into account any offer to settle that was rejected.

15.12 Costs of amendments

A party who amends a document must pay the costs arising out of the amendment, unless:

(a) the amendment was made because of another party's amendment or default; or

(b) the court orders another party to pay them.

15.13 Extending or shortening time
A party who applies to extend or shorten a time set under these Rules must pay the costs of the application.

15.14 Trustee's costs
(1) This rule applies to a party who sues or is sued as trustee.

(2) The trustee is entitled to have the costs that are not paid by someone else paid out of the funds held by the trustee, unless the court orders otherwise.

15.15 Costs of counterclaim
A party who is successful on a counterclaim may be awarded the costs of the counterclaim although the party was unsuccessful in the proceeding overall.

15.16 Costs of determination
The costs of determining costs of a proceeding form part of the costs of the proceeding.

Division 2 – Security for costs

15.17 Security for costs ordinarily only in Supreme Court
An order requiring that security be given for the costs of a proceeding may not be made in a proceeding in the Magistrates' Court unless:

(a) the proceeding is to set aside a default judgment; or

(b) the claimant is ordinarily resident outside Vanuatu.

15.18 Security for costs
(1) On application by a defendant, the Court may order the claimant to give the security the court considers appropriate for the defendant's costs of the proceeding.

(2) The application must be made orally, unless the complexity of the case requires a written application.

15.19 When court may order security for costs
The court may order a claimant to give security for costs only if the court is satisfied that:

(a) the claimant is a body corporate and there is reason to believe it will not be able to pay the defendant's costs if ordered to pay them; or

(b) the claimant's address is not stated in the claim, or is not stated correctly, unless there is reason to believe this was done without intention to deceive; or

(c) the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or

(d) the claimant is ordinarily resident outside Vanuatu; or

(e) the claimant is about to depart Vanuatu and there is reason to believe the claimant has insufficient fixed property in Vanuatu available for enforcement to pay the defendant's costs if ordered to pay them; or

(f) the justice of the case requires the making of the order.

15.20 What court must consider
In deciding whether to make an order, the court may have regard to any of the following matters:

(a) the prospects of success of the proceeding;

(b) whether the proceeding is genuine;

(c) for rule 15.19 (a), the corporation's finances;

(d) whether the claimant's lack of means is because of the defendant's conduct;

(e) whether the order would be oppressive or would stifle the proceeding;

(f) whether the proceeding involves a matter of public importance;

(g) whether the claimant's delay in starting the proceeding has prejudiced the defendant;

(h) the costs of the proceeding.

15.21 How security is to be given

(1) If the court orders the claimant to give security for costs, the court must also order:

(a) the form of the security; and

(b) when it is to be given; and

(c) any conditions the court thinks appropriate for giving the security.

(2) As soon as practicable after the security is given, the claimant must give the defendant written notice of when and how security was given.

15.22 Suspension or dismissal of proceedings

(1) If the court orders the claimant to give security for costs, any time set for another party to do anything in the proceeding does not run until security is given.

(2) If security is not given:

(a) the proceeding is suspended as far as things to be done by the claimant are concerned; and

(b) the defendant may apply to have the proceeding dismissed; and

(c) if the defendant does, the court may order all or part of the proceeding be dismissed.

15.23 Setting aside or varying order

The court may set aside or vary an order for security for costs if the court is satisfied that:

(a) the security is no longer necessary; or

(b) there are other special circumstances.

15.24 Finalising security

The security must be discharged:

(a) after the costs have been paid; or

(b) if judgment is given and the party who gave the security is not required to pay all or part of the costs; or

(c) if the court orders the security be discharged; or

(d) if the claimant entitled to the benefit of the security consents.

Division 3 – Costs unnecessarily incurred

15.25 Costs for time wasted

(1) If:

(a) a party does not appear at a conference or hearing when the party was given notice of the date and time; or

(b) a party has not filed and served on time a document that the party was required by the court to file and serve; or

(c) a party's actions, or failure to act, have otherwise led to the time of the court or other parties being wasted;

and costs were incurred unnecessarily by another party, the court may order costs against the first party for the time wasted by the other party.

(2) The order may be for costs of the whole or a part of the proceeding.

(3) The order may be made at a conference or hearing.

(4) Any other party may apply for the order.

(5) If the court is satisfied that the unnecessary costs were incurred because of conduct by the party's lawyer, the court may order the costs to be paid by the lawyer personally.

(6) The costs are to be paid within the period the court orders, being not less than 7 days.

(7) If the costs are not paid within that period, or another period that the court fixes, the court may order that the proceeding, or a part of the proceeding, be struck out.

15.26 Costs payable by lawyer for wasted proceeding

(1) The court may order that the costs of the whole or a part of a proceeding be paid by a party's lawyer personally if the party brings a proceeding that:

(a) has no prospect of success, is vexatious or mischievous or is otherwise lacking in legal merit; and

(b) a reasonably competent lawyer would have advised the party not to bring the proceeding.

(2) The court may order that the costs of the whole or a part of a proceeding be paid by a party's lawyer personally if the court is satisfied that the costs of the proceedings were increased because the lawyer:

(a) did not appear when required to; or

(b) was not ready to proceed or otherwise wasted the time of the court; or

(c) incurred unnecessary expense for the other party.

(3) The court must not make an order for costs against a lawyer personally without giving the lawyer an opportunity to be heard.

15.27 Application for costs against lawyer

(1) A party may apply for an order for costs against a lawyer personally under rule 15.26.

(2) The application must:

(a) set out the reasons why a costs order is being applied for; and

(b) fix a date, being not sooner than 14 days, for the lawyer to file a sworn statement in answer to the application; and

(c) fix a date for hearing the application.

(3) A copy of the application, and notice of the hearing date, must be served on the lawyer concerned.

(4) The application is to be dealt with by the trial judge, if practicable.

15.28 Order for wasted costs

(1) If the court is satisfied that the circumstances in subrule 15.26 (1) or (2) apply, the court may order that the costs be paid by the lawyer personally.

(2) The order is enforceable under Part 14 as if it were a money order within the meaning of that Part.

PART 16 – PARTICULAR PROCEEDINGS

Division 1 – Introductory

16.1 Application of Part 16
This Part applies as follows:

(a) Division 2 (dealing with claims for release), Division 3 (dealing with accounts and inquiries) and Division 8 (dealing with customary land) apply only to the Supreme Court;

(b) Division 4 (dealing with domestic violence protection orders), Division 5 (dealing with civil claims made in criminal proceedings), Division 6 (dealing with referring maters from the Magistrates' Court to the Supreme Court) and Division 7 (dealing with interpleader) apply in the Magistrates' Court and the Supreme Court;

(c) Division 9 (dealing with appeal from Magistrates' Courts) apply only to the Supreme Court;

(d) Division 10 (dealing with appeal from Island Courts) apply in the Magistrates' Court and the Supreme Court.

16.2 Application of the rest of these Rules to a proceeding under Part 16
The rest of these Rules apply to a proceeding under this Part subject to the rules in this Part.

Division 2 – Claims for Release (Habeas Corpus)

16.3 Definition for this Division
In this Division:

"claim for release" (formerly known as a writ of habeas corpus) means a claim for the release of a person who is being held under unlawful restraint;

16.4 Claim for release (habeas corpus)
(1) A person seeking the release of a person who is held under unlawful restraint may file a claim claiming that the person be released.

(2) The claim must name as defendant the person who, to the best of the claimant's knowledge, is responsible for holding the first person.

(3) A claim may be made:

(a) by the person being held or by someone else on his or her behalf; and

(b) without notice being given to anyone.

(4) The claim must:

(a) set out the grounds for making the claim; and

(b) have with it a sworn statement in support of the claim; and

(c) be in Form 28.

(5) The sworn statement may:

(a) be made by the person being held or by another person; and

(b) contain statements based on information and belief if it also states the sources of the information and the grounds for the belief.

16.5 Hearing of claim

(1) After the claim and sworn statement have been filed:

(a) the Registrar must immediately tell a judge about the claim; and

(b) the judge must hold a hearing as soon as practicable.

(2) At the hearing, the judge must consider the claim and sworn statement and may:

(a) order the defendant to release the person being held; or

(b) dismiss the claim; or

(c) order that:

(i) the claim and sworn statement be served on the defendant and on anyone else named in the order; and

(ii) the defendant and anyone else served file a defence within the time stated in the order; and

(iii) the claim be further heard at the date and time stated in the order; and

(iv) the defendant bring the person being held to the court at the time stated in the order; and

(v) any other steps stated in the order be taken to deal with the claim.

16.6 Service of claim

If the defendant is a person in charge of a police station, prison or other institution, it is sufficient if the claim is served on the person for the time being in charge of the police station, prison or institution.

16.7 Further hearing of claim

At the further hearing of the claim, the court may do any of the following:

(a) hear evidence in support of the claim;

(b) let the respondent show cause why the person should not be released;

(c) if it considers the restraint of the person is unlawful, order the person be released or held in another place;

(d) dismiss the claim;

(e) if the court is satisfied someone other than the defendant has custody of the person being held, adjourn the proceeding and make orders about the service of the claim and other matters the court thinks appropriate to deal with the claim;

(f) make any other orders it thinks appropriate.

Division 3 – Accounts and Inquiries

16.8 Definition for this Division

In this Division:

"accounting party" means the party required to account.

16.9 Order for account

(1) If a claim involves taking an account, the court may at any stage order an account.

(2) The order must state:

(a) the transaction or series of transactions of which the account is to be taken; and

(b) the basis of the account; and

(c) the period of the account.

(3) The order may also include directions about:

(a) any advertisements to be published, the evidence to be brought, the procedure to be followed, and the time and place for taking the account; and

(b) whether in taking the account the books and records of account are evidence of the matters they contain; and

(c) who is to be served with the order (including persons who are not parties to the proceeding); and

(d) who is entitled to be heard on the taking of the account; and

(e) the persons to be called as witnesses; and

(f) whether a judgment should be given for any amount found to be owing; and

(g) any other matter the court considers appropriate.

16.10 Service of order

(1) If the order is to be served on a person who is not a party to the proceeding, it must be served personally.

(2) The account may not be taken until everyone ordered to be served has been served, unless the court orders otherwise.

(3) If the court orders some people need not be served, it may also order that those people are bound by the order for the account unless it was obtained by fraud or non-disclosure of material facts.

16.11 Form and verification of account

(1) Unless the court orders otherwise:

(a) all items in the account must be numbered consecutively; and

(b) the accounting party must verify the account by sworn statement and the account must be attached to the sworn statement; and

(c) all payments over VT10.000 must be verified by receipts.

(2) An alteration in an account must not be made by erasure and the party before whom the accounting party's sworn statement was made must initial the alteration.

16.12 Filing and service of account

The accounting party must:

(a) file the account and sworn statement within the period specified by the court; and

(b) serve copies as soon as practicable on all the people entitled to be heard at the taking of the account.

16.13 Certificate of account

(1) After the account has been taken:

(a) the accounting party must file a draft certificate in Form 29 setting out the result of the taking of the account, stating that the account has been taken and attaching a copy of the account; and

(b) after the certificate has been sealed, it must be served on everyone who was served with the accounting order.

(2) The account becomes final and binding 7 days after the last service, unless it is challenged under rule 16.14.

16.14 Challenging the account

(1) A person who wishes to challenge an account must:

(a) set out details of the errors and omissions in the account; and

(b) within 7 days of being served with the certificate under rule 16.12, file and serve a copy of the statement on the accounting party.

(2) The court may set aside or vary the certificate and make any other order that it considers appropriate.

Division 4 – Domestic Violence

16.15 Definitions for this Division

In this Division:

"domestic violence" means actual or threatened physical violence or abuse by a man, woman or child of a family to another man, woman or child of the family;

"domestic violence protection order" means an exclusive occupation order, a non-molestation order and a non-violence order;

"exclusive occupation order" means an order requiring the defendant:

(a) to leave a residence shared with the claimant immediately or at the time stated in the order; and

(b) not to return to the residence except at the times and under the conditions stated in the order;

"family" includes a person who is accepted as a member of a family, whether or not the person is related by blood or marriage to the other members of the family;

"non-molestation order" means an order that prohibits the defendant from doing any of the following:

(a) contacting the claimant personally, by talking, meeting or in any other way;

(b) contacting the claimant by telephone, fax or email;

(c) in any way disturbing the claimant or any child of the family on whose behalf the claim was made in his or her daily life;

"non-violence order" means an order that prohibits the defendant from using force, or threatening to use force, for any reason, against the claimant or a child of the family on whose behalf the claim was made, but does not prohibit other contact between the parties.

16.16 Claim for domestic violence protection order

(1) A person may file a claim claiming a domestic violence protection order against another member of the person's family.

(2) The claim must:

(a) set out the order claimed and the reasons why the order should be made; and

(b) include a statement that, if the order is made, the claimant agrees to pay damages to the defendant if it turns out that the order should not have been made; and

(c) have with it a sworn statement in support of the claim; and

(d) be in Form 30.

(3) The sworn statement must be in Form 31.

16.17 Hearing of claim

(1) After the claim and sworn statement have been filed:

(a) the Registrar must immediately tell the magistrate about the claim; and

(b) the magistrate must hear the matter as soon as practicable.

(2) The claimant may appear in person or be represented by a lawyer or another person approved at the hearing by the magistrate.

(3) The hearing is to be without notice to the defendant.

(4) At the hearing, the magistrate:

(a) may make whichever domestic violence protection order is appropriate, or may dismiss the claim; and

(b) may make whatever other order is appropriate; and

(c) must fix a date, not later than 28 days after the date of the order, for a further hearing and write the date on the order.

(5) The order must be in Form 32.

(6) The order must include a statement authorising the police to arrest the defendant if he or she breaches the order, unless the magistrate directs that this power is not to be included.

16.18 Service of order

(1) The order must be served on the defendant as soon as practicable.

(2) The magistrate must direct who is to serve the order. This is not to be the claimant.

(3) A copy of the order must be given to the police in the area concerned.

16.19 Further hearing

(1) The further hearing is to be held on the date fixed by the magistrate or, if either party asks for an earlier date, on that earlier date.

(2) At the hearing, the magistrate must:

(a) consider whether the domestic violence protection order should be continued, amended or revoked and make an order accordingly; and

(b) if the order is continued or amended, give directions about the progress of the case.

16.20 Referral to Supreme Court

(1) A magistrate may refer a domestic violence protection proceeding to the Supreme Court if at any time the magistrate is of the view that the level of violence or threatened violence is serious.

(2) The Supreme Court must deal with the proceeding as soon as practicable.

(3) In dealing with the proceeding, the Supreme Court may make any order that a magistrate can make under these Rules.

Division 5 – Civil Claim in Criminal Proceedings

16.21 Civil claim against person charged with criminal offence

These Rules apply to the progress and hearing of a claim under section 213 of the Criminal Procedure Code (Cap. 136) as if the claim had been filed under these Rules, but subject to Part 12 of the Criminal Procedure Code.

[NOTE: Part 12 of the Criminal Procedure Code allows a civil claim arising out of a criminal offence to be dealt with by the court at the same time as it tries the criminal offence.]

Division 6 – Referring matters from Magistrates' Court to Supreme Court

16.22 Referral of Constitutional issue or question of law

(1) This rule applies when a magistrate:

(a) refers a question about interpretation of the Constitution to the Supreme Court under Article 53(3) of the Constitution; or

(b) reserves a question of law for the consideration of the Supreme Court under section 11 of the Courts Act (Cap. 122).

(2) In each case the magistrate must:

(a) state the question to be decided; and

(b) state concisely the facts necessary to enable the Supreme Court to decide the question.

(3) The questions and facts (the "case stated") must be set out in numbered paragraphs.

(4) A copy of the case stated must be served on all parties to the proceeding.

(5) The Supreme Court:

(a) must hear the matter as soon as practicable; and

(b) may hear argument on the constitutional question or the question of law from all parties to the proceeding; and

(c) when it decides the question, must return the matter to the Magistrates' Court for action in accordance with the Supreme Court's decision.

(6) The magistrate and a party must not take any steps in the proceeding until the Supreme Court has decided the question and returned the proceeding to the Magistrates' Court.

[NOTES: (i) If a question concerning the interpretation of the Constitution and raising a fundamental point of law arises in the Magistrates' Court, the magistrate must refer it to the Supreme Court for its determination – see Article 53(3) of the Constitution.
(ii) A magistrate may reserve a question of law that arises during a proceeding to the Supreme Court for consideration – see s.11 of the Courts Act (Cap. 122).]

Division 7 – Interpleader

16.23 Claim for interpleader

(1) A person may file a claim for interpleader if the person:

(a) owes a debt; or

(b) has possession of goods (including money) on behalf of another person;

and expects to be sued by competing claimants for the debt or the goods.

(2) The claim must:

(a) name as defendants all persons who claim the debt or goods; and

(b) describe the debt or goods; and

(c) state why the claimant owes the debt or possesses the goods; and

(d) state that the claimant has no claim to the goods personally, except for charges and costs the claimant has incurred; and

(e) state where and how the goods are kept, and the charges for keeping them; and

(f) state that there is no collusion between the claimant and any defendant; and

(g) have with it a sworn statement in support of the claim; and

(h) ask the court to decide to whom the debt should be paid or the goods given.

(3) The claim and sworn statement must be served on all the defendants, as set out in rules 5.2 and 5.3.

(4) If the person is already a party to a proceeding, the person must make an application setting out the matters in subrule (2).

[NOTE: For service generally, see Part 5.]

Division 8 – Enforcement of decisions under the Customary Land Tribunal Act (Cap. 271)

16.24 Definitions for this Division

In this Division:

"Act" means the Customary Land Tribunal Act (Cap. 271);

"decision" means a decision of a land tribunal;

"land tribunal" means a land tribunal established under the Act;

"record of the decision" means a record of a decision as set out in Schedule 3 of the Act.

16.25 Claim for enforcement

(1) A person who wishes to enforce a decision of a land tribunal may file a claim in the Supreme Court.

(2) The claim must:

(a) set out the decision, the date it was made and who made it; and

(b) name as defendant the person against whom the decision is to be enforced; and

(c) state in what way the defendant is not complying with the decision; and

(d) set out the orders asked for; and

(e) have with it a sworn statement in support of the claim.

(3) The sworn statement must:

(a) give full details of the claim; and

(b) have with it a copy of the record of the decision; and

(c) state that:

(i) the time for an appeal from the decision has ended and no appeal has been lodged; or

(ii) an appeal was made but was unsuccessful.

(4) The claim and sworn statement must be served on the defendant.

(5) A defence filed in the proceeding must not dispute anything in the record of the decision.

(6) If the court is satisfied that the defendant is in breach of the decision, the court may make an enforcement order.

[NOTE: For enforcement orders and enforcement warrants for possession of land, see Division 7 of Part 14.]

Division 9 – Appeal from Magistrates' Court

16.26 Definition for this Division

In this Division:

"decision" means:

(a) a judgment or final order of the Magistrates' Court; and

(b) an interim injunction;

but does not include any other interlocutory order.

16.27 Right of appeal

(1) A party to a proceeding in the Magistrates' Court may appeal from a decision of the Magistrates' Court.

(2) The appeal may be made on a question of law or fact or mixed law and fact.

[NOTE: Filing an appeal does not result in a stay of enforcement unless the appellant applies for a stay; see rule 13.4.]

16.28 Procedure for appeal

(1) An appeal is made by filing and serving an application within 28 days of the date of the decision.

(2) The application must:

(a) set out the grounds of the appeal; and

(b) be in Form 33.

(3) The court must write the first hearing date on the application.

16.29 Service of application

(1) The application must be served on all other parties to the Magistrates' Court proceeding not less than 7 days before the first hearing date.

(2) For subrule (1), service on the lawyer who acted for a party in the Magistrates' Court proceeding is sufficient.

16.30 First hearing date

At the first hearing date, the court must:

(a) set a date and time for hearing the appeal; and

(b) give any directions necessary for hearing the appeal, including directions about:

(i) preparing the appeal book; and

(ii) written submissions from the parties; and

(iii) security for costs.

16.31 Hearing of appeal

At the hearing of the appeal, the court may:

(a) deal with the appeal on the notes of evidence recorded in the case without hearing the evidence again; or

(b) hear any evidence again; or

(c) hear any fresh evidence.

16.32 Orders court may make

After the hearing, the court may do any of the following:

(a) confirm or quash all or part of the decision appealed from;

(b) by order, refer part or all of the proceeding back to the Magistrates' Court for rehearing;

(c) make any order the Magistrates' Court can make.

Division 10 – Appeal from Island Court

16.33 Definition for this Division

In this Division:

"Island Court" means a court established under the Island Courts Act (Cap. 167).

[NOTE: Section 22 of the Island Courts Act (Cap. 167) gives rights of appeal as follows:
(a) from decisions about ownership of land, to the Supreme Court; and
(b) from decisions about any other matters, to the Magistrates' Court.]

16.34 Appeal to the Supreme Court

(1) This Rule applies to appeals from Island Courts to the Supreme Court.

(2) The appellant must:

(a) file a Notice of Appeal in the Supreme Court; and

(b) give a copy of the notice to each other party.

(3) Each party must give an address for service of documents to the Supreme Court.

(4) The Island Court must ensure that the notice of the appeal and all supporting documents are given to a judge.

(5) The judge must:

(a) fix a date for Conference 1; and

(b) tell the parties about this.

(6) At Conference 1, the judge:

(a) must appoint 2 or more assessors knowledgeable in custom to sit on the appeal; and

(b) may make any other orders, or give any directions, the judge can make under Part 6.

(7) At the hearing of the appeal, the assessors sit with the judge.

[NOTE: (i) Part 6 deals with Conferences.
(ii) The Supreme Court must consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit; see s.22 of the Island Courts Act (Cap.167).]

16.35 Appeal to the Magistrates' Court

(1) This rule applies to appeals from island courts to the Magistrates' Court.

(2) The appellant must:

(a) file a Notice of Appeal in the Magistrates' Court; and

(b) give a copy of the notice to each other party.

(3) Each party must give an address for service of documents to the Magistrates' Court.

(4) The Island Court must ensure that the notice of the appeal and all supporting documents are given to the Magistrates' Court.

(5) The magistrate must:

(a) fix a first hearing date; and

(b) tell the parties about this.

(6) At the first hearing, the magistrate:

(a) must appoint 2 or more assessors knowledgeable in custom to sit on the appeal; and

(b) may make any other orders, or give any directions, for hearing the appeal; and

(c) must fix a date for hearing the appeal.

(7) At the hearing of the appeal, the assessors sit with the magistrate.

[NOTE: The magistrate must consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as he or she thinks fit; see s.22 of the Island Courts Act (Cap. 167).]

PART 17 – JUDICIAL REVIEW

17.1 Application of Part 17

This Part applies only to the Supreme Court.

17.2 Definitions for Part 17

In this Part:

"decision" means a decision, an action or a failure to act in relation to the exercise of a public function or a non-public function;

"decision-maker" means a person who made a decision;

"declaration" means an order declaring an enactment to be of no effect;

"enactment" means an Act of Parliament or subsidiary legislation, orders or by-laws made by a person empowered by an Act to do so;

"judicial review" means a review of the lawfulness of an enactment or a decision;

"mandatory order" (formerly called a writ of mandamus) means an order that a person do something;

"non-public function" means a function whose exercise can infringe proprietary or contractual rights or jeopardise a person's status or livelihood;

"prohibiting order" (formerly called a writ of prohibition) means an order that a person not do something;

"quashing order" (formerly called a writ of certiorari) means an order that the decision of a decision-maker is quashed.

17.3 Application of the rest of these Rules to judicial review

The rest of these Rules apply to a claim for judicial review subject to the rules in this Part.

17.4 Claim for judicial review

(1) A person claiming judicial review may file a claim claiming:

(a) a declaration about an enactment; or

(b) a mandatory order, a prohibiting order or a quashing order about a decision.

(2) The claim must name as defendant:

(a) for a declaration, the Attorney General; and

(b) for an order about a decision, the person who made or should have made the decision.

(3) The claim must:

(a) set out the grounds for making the claim; and

(b) have with it a sworn statement in support of the claim; and

(c) be in Form 34.

17.5 Time for filing claim

(1) The claim must be made within 6 months of the enactment or the decision.

(2) However, the court may extend the time for making a claim if it is satisfied that substantial justice requires it.

17.6 Serving claim

(1) The claim and sworn statement must be served on the defendant within 28 days of filing.

(2) The claim and sworn statement must also be served:

(a) on any other person who is directly affected by the claim, within 28 days of filing; and

(b) on any other person the court orders to be included as a party, within 28 days of the order.

17.7 Response

(1) The defendant must file a defence within 14 days of service of the claim.

(2) Any other person served with the claim who wants to take part in the judicial review must file a defence within 14 days of service of the claim.

(3) The defence must be served on the claimant within 14 days of service of the claim.

(4) With the defence the defendant and other person must file:

(a) detailed grounds for disputing or supporting the claim; and

(b) a sworn statement supporting those grounds.

17.8 Court to be satisfied of claimant's case

(1) As soon as practicable after the defence has been filed and served, the judge must call a conference.

(2) At the conference, the judge must consider the matters in subrule (3).

(3) The judge will not hear the claim unless he or she is satisfied that:

(a) the claimant has an arguable case; and

(b) the claimant is directly affected by the enactment or decision; and

(c) there has been no undue delay in making the claim; and

(d) there is no other remedy that resolves the matter fully and directly.

(4) To be satisfied, the judge may at the conference:

(a) consider the papers filed in the proceeding; and

(b) hear argument from the parties.

(5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.

17.9 Orders the court may make

(1) After hearing a claim, the court may make any of the following orders:

(a) an order declaring that the enactment being challenged is of no effect;

(b) a mandatory order, requiring the person named in the order to take the actions stated in the order;

(c) a prohibiting order, prohibiting the person named in the order from taking the action stated in the order;

(d) a quashing order, that the decision is quashed.

(2) If the court makes a quashing order, the court may also:

(a) send the matter back to the decision-maker; and

(b) direct the decision-maker to reconsider the matter and make a new decision in accordance with the court's decision.

PART 18 – MISCELLANEOUS

18.1 Extending and shortening time

(1) The court may, on its own initiative or on the application of a party, extend or shorten the time set out in these Rules for doing an act.

(2) The application may be made before or after the time for doing the act has ended.

[NOTE: For working out time, see Part 5 of the Interpretation Act (Cap. 132).]

18.2 Urgency

If a claim asks for urgent relief, the claimant must:

(a) state this in the claim; and

(b) tell the court staff separately in writing at the time the claim is filed.

18.3 Office hours

(1) The offices of the Supreme Court and Magistrates' Courts must be open during the hours fixed by the Chief Justice.

(2) The Chief Justice may fix the periods when the court is closed, except for dealing with urgent claims.

18.4 Records

(1) The registrar of a court must keep a record of all claims filed in the court.

(2) The registrar must not allow a document filed in the court, or a record kept by the court, to be taken out of the court, unless the court orders otherwise.

18.5 Court seal

(1) The registrar of a court must keep a seal showing the name of the court and, for the Magistrates' Court, its location.

(2) The seal must be stamped on each document filed in the court or issued by the court.

18.6 Copies of documents

(1) A person may ask the registrar for a copy of a document filed in the court.

(2) If the person pays the fee (if any) prescribed for copies of documents, the registrar must give the person the copy.

(3) The copy must be sealed and have the word "copy" stamped on it.

18.7 Delegation

(1) The Chief Justice may delegate his or her powers under the following Rules to a person from time to time holding, occupying or performing the duties of the office of Registrar of a court:

(a) rule 10.3 (dealing with mediators);

(b) rule 18.3 (dealing with court office hours);

(2) The following provisions apply to a delegation by the Chief Justice:

(a) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and

(b) the powers that may be delegated do not include that power to delegate; and

(c) a function or power so delegated, when performed or exercised by the delegate, is taken to be performed or exercised by the Chief Justice; and

(d) a delegation by the Chief Justice does not prevent the performance or exercise of a function or power by the Chief Justice.

18.8 Lawyer ceasing to act

(1) A lawyer who begins to act for a party during a proceeding, or ceases to act for a party, must:

(a) as soon as practicable, file a notice in Form 35; and

(b) serve the notice on each party to the proceeding.

(2) The notice is effective after the last service.

(3) Filing the notice does not affect the power of the court to make an order for costs against the lawyer personally under these Rules.

18.9 Forms

Strict compliance with a form prescribed by these Rules is not required and substantial compliance is sufficient.

18.10 Failure to comply with these Rules

(1) A failure to comply with these Rules is an irregularity and does not make a proceeding, or a document, step taken or order made in a proceeding, a nullity.

(2) If there has been a failure to comply with these Rules, the court may:

(a) set aside all or part of the proceeding; or

(b) set aside a step taken in the proceeding; or

(c) declare a document or a step taken to be ineffectual; or

(d) declare a document or a step taken to be effectual; or

(e) make another order that could be made under these Rules; or

(f) make another order dealing with the proceeding generally that the court considers appropriate.

(3) If a written application is made for an order under this rule, it must set out details of the failure to comply with these Rules.

18.11 Failure to comply with an order

(1) This rule applies if a party fails to comply with an order made in a proceeding dealing with the progress of the proceeding or steps to be taken in the proceeding.

(2) A party who is entitled to the benefit of the order may require the non-complying party to show cause why an order should not be made against him or her.

(3) The application:

(a) must set out details of the failure to comply with the order; and

(b) must have with it a sworn statement in support of the application; and

(c) must be filed and served, with the sworn statement, on the non-complying party at least 3 business days before the hearing date for the application.

(4) The court may:

(a) give judgment against the non-complying party; or

(b) extend the time for complying with the order; or

(c) give directions; or

(d) make another order.

(5) This rule does not limit the court's powers to punish for contempt of court.

18.12 Vexatious litigants

(1) A person may apply to the Supreme Court for an order that another person be declared a vexatious litigant.

(2) A judge or magistrate may refer the question whether a person is a vexatious litigant to the Supreme Court.

(3) The following provisions apply:

(a) the judge dealing with the matter must refer it to the Registrar; and

(b) the Registrar must list the number and kind of proceedings that the person has started, and their outcome; and

(c) the person must be summonsed to appear and show cause why he or she should not be declared a vexatious litigant.

(4) If the question has been referred by a judge, it must be dealt with by a different judge.

(5) If the Supreme Court is satisfied that a person persistently and without reasonable cause has started vexatious proceedings or proceedings that disclose no reasonable cause of action, the court may declare the person to be a vexatious litigant.

(6) The declaration remains in force for the period stated in the declaration, not being longer than 2 years.

(7) A person declared to be a vexatious litigant may not start a proceeding while the declaration is in force without the leave of the court.

(8) If a party persistently makes unmeritorious applications in a proceeding, the court may order that the party may not make any further applications in the proceeding without leave of the court.

18.13 Contempt in the hearing of the court

(1) If it appears to a court that a person is guilty of contempt in the court's hearing, the court may:

(a) direct the person be brought before the court; or

(b) issue a warrant for the person to be arrested and brought before the court.

(2) When the person is brought before the court, the court must:

(a) explain to the person how the person committed the contempt; and

(b) ask the person to give reasons why the person should not be punished for the contempt; and

(c) decide the matter in any way the court thinks appropriate; and

(d) order that the person be punished or be discharged.

(3) If the court cannot deal with the matter straight away, the court may order that the person be kept in custody, be released, or be released on conditions.

18.14 Contempt by failing to comply with an order

(1) This rule applies where a person fails to comply with an order of the court or an undertaking given to the court during or at the end of a proceeding.

(2) If the failure happens during a proceeding:

(a) the court may initiate proceedings for contempt; or

(b) another party may apply for an order that the first person be punished for contempt.

(3) If the failure happens after the proceeding has ended, another person may apply to reopen the proceeding, and ask that the person be punished for contempt.

(4) The application:

(a) must have with it a sworn statement giving details of the contempt; and

(b) must be served personally on the person.

(5) After hearing the matter, the court may do all or any of the following:

(a) fine the person;

(b) order the person be imprisoned for the period the court decides;

(c) for a body corporate, order that the body corporate's property be seized;

(d) release the person, whether on conditions or not.

18.15 General form of warrant
A general warrant must be in Form 36.

18.16 Repeal of old Rules
The High Court (Civil Procedure) Rules 1964 and the Magistrates' Courts (Civil Procedure) Rules 1976 are repealed.

18.17 Commencement
These Rules come into operation on 31st January 2003.

PART 19 – TRANSITIONAL

19.1 Interpretation
In this Part:

"commencement date" means the date on which the new Rules come into operation;

"continuing proceeding" means a proceeding started before the commencement date.

[NOTE: "old Rules" is defined in Part 20.]

19.2 Application of these Rules to new proceedings
These Rules apply to a proceeding started on and after the commencement date.

19.3 Application of these Rules to continuing proceeding
(1) These Rules apply to a continuing proceeding to the exclusion of the old Rules.

(2) In the application of these Rules to a continuing proceeding:

(a) every step to be taken in the proceeding on and after the commencement date must be taken under these Rules; and

(b) the court may give all directions necessary for the application of these Rules to the proceeding.

PART 20 – DEFINITIONS

Definitions

20.1 Definitions

The words listed below have the meaning given to them:

“agreed documents” means documents that both parties agree should be disclosed;

“application” means an application made in a proceeding;

“applicant” means the person who makes an application;

“assets”, for a person, includes any tangible or intangible property in which the person has a legal or equitable interest;

“child” means a person under 18 years of age;

“claimant” means the person filing a claim;

“conference” means a conference held under Part 6;

“copy”, of a document, means anything into or onto which the contents of the document have been copied by any means, directly or indirectly;

“defendant” means a person against whom a claim is filed;

“disclose”, for a document, means state that the document exists and identify it;

“document” includes anything in or on which information is recorded by any means;

"evidence by link" means evidence given by telephone, by video or by another means of communication;

“lawyer” means a person entitled to practice in Vanuatu as a barrister and solicitor;

“list” means the list of documents mentioned in rule 8.5;

“litigation guardian” means a person appointed by the court to represent a person under a legal incapacity in a proceeding;

"old Rules” means the High Court (Civil Procedure) Rules 1964 and the Magistrates’ Courts (Civil Procedure) Rules 1976 as in force immediately before the commencement of these Rules;

"partnership proceeding" means a proceeding started by or against a partnership, including a proceeding against the partnership by one of the partners;

“person” includes the State of Vanuatu and the Government of Vanuatu;

“person under a legal incapacity” means a child or a person with impaired capacity;

“person with impaired capacity” means a person who is not capable of making the decisions required to be made by a party to a proceeding to be able to conduct the proceeding;

“proof of service” means a sworn statement setting out details of the time and manner in which a document was served on a person;

“sealed”, for a document, means sealed with the seal of the court concerned.

[Schedules are contained in a separate electronic file.]